Supreme Court of Florida

THURSDAY, JUNE 4, 2009

CASE NO.: SC08-1055
Lower Tribunal No.: 2D05-3424

GAYNOR EARL TEDDER, JR. vs. STATE OF FLORIDA
Petitioner(s) Respondent(s)

This cause was previously submitted to the Court for jurisdictional review pursuant to article V, section 3(b)(3) of the Florida Constitution. We have determined that we should decline to accept jurisdiction because the portion of Tedder v. State, 33 Fla. L. Weekly D704 (Fla. 2d DCA Mar. 7, 2008), that addressed the purported conflict issue (i.e., police retention of an individual's driver's license followed by interrogation) did not garner a majority vote and, hence, was not a "decision of a district court of appeal" within the meaning of article V, section 3(b)(3). See, e.g., Kennedy v. Kennedy, 641 So. 2d 408, 409 (Fla. 1994).

No motion for rehearing will be entertained by the Court. See Fla. R. App. P. 9.330(d)(2).

It is so ordered.

QUINCE, C.J., and LEWIS, POLSTON, LABARGA, and PERRY, JJ., concur.
LEWIS, J., specially concurs with an opinion.
CANADY, J., recused.
PARIENTE, J., did not participate.

LEWIS, J., specially concurring.

I fully agree with my colleagues that we lack jurisdiction to review Tedder v. State, 33 Fla. L. Weekly D704 (Fla. 2d DCA Mar. 7, 2008), with regard to the license-retention issue. Our prior precedent in Burns v. State, 676 So. 2d 1366, 1366 (Fla. 1996), Kennedy v. Kennedy, 641 So. 2d 408, 409 (Fla. 1994), and Seaboard Air Line Railroad v. Branham, 104 So. 2d 356, 358 (Fla. 1958) (addressing analogous provision of the 1885 Florida Constitution as amended in 1956), mandates this conclusion. In those decisions, we explained that our discretionary conflict jurisdiction under article V, sections 3(b)(3) and 3(b)(4) of the Florida Constitution[1] requires that the "decision" under review provide a

---

1. In relevant part, section 3(b)(3) provides:

> The supreme court [of Florida] . . . [m]ay review any decision of a district court of appeal that . . . expressly and directly conflicts with a decision of another district court of appeal or of the supreme court [of Florida] on the same question of law.

(Emphasis supplied.) Inter alia, section 3(b)(4) provides a mechanism for the district courts of appeal to certify direct conflict with the decision of another district court:

> The supreme court [of Florida] . . . [m]ay review any decision of a district court of appeal that passes upon a question certified by it . . . to be in direct conflict with a decision of another district court of appeal.

judgment and decision endorsed by a majority of the district court of appeal. I write separately to more fully explain why the decision below does not meet this standard and, further, does not constitute Florida precedent.

In Tedder, the Second District did not provide a majority analysis with regard to the license-retention issue. See 33 Fla. L. Weekly at D705-06. Consequently, the relevant reasoning—which was endorsed by a single judge—may not supply conflict jurisdiction and, furthermore, is not Florida precedent. See, e.g., Kennedy, 641 So. 2d at 409 (explaining that "this Court must look to [the] 'opinion' upon which the district court's 'decision' is based to determine [the] probable existence of direct conflict," and holding that "because the [supplied analysis] exists only in [an] isolated plurality opinion, the [asserted] doctrine should not be considered the law of this state" (emphasis supplied)). The license-retention analysis provided below did not garner a majority or plurality vote;[2]

(Emphasis supplied.)

2. See Black's Law Dictionary 1125, 1193 (8th ed. 2004) ("plurality opinion. An opinion lacking enough judges' votes to constitute a majority, but receiving more votes than any other opinion." "plurality. The greatest number (esp. of votes), regardless of whether it is a simple or an absolute majority."). Only one out of three district court judges supported the legal analysis regarding the license-retention issue. See Tedder, 33 Fla. L. Weekly at D706 (Whatley, J.,

therefore, Florida appellate courts must presume that the trial court order was affirmed on the basis of the trial court's reasoning, which is not appellate precedent in the Second District or any other district court of appeal. See, e.g., Dale v. Jennings, 107 So. 175, 181 (Fla. 1926) (holding that a judgment issued by an equally divided court resolves the case on the grounds supplied by the lower court and does not establish precedent); State v. McClung, 37 So. 51, 52 (Fla. 1904) (same).

Here, the pertinent portion of the district court's "decision" (i.e., what two panel judges agreed upon)[3] affirmed the denial of Tedder's motion to suppress statements without providing any shared analysis. In contrast, the First and Fourth District Courts of Appeal have provided persuasive majority decisions addressing substantially similar factual scenarios. See Brye v. State, 927 So. 2d 78 (Fla. 1st DCA 2006); Barna v. State, 636 So. 2d 571 (Fla. 4th DCA 1994). Since we have

---

concurring in part and in result); id. at D706-07 (Stringer, J., concurring in part and dissenting in part).

3. See art. V, § 4(a), Fla. Const. ("Each district court of appeal shall consist of at least three judges. Three judges shall consider each case and the concurrence of two shall be necessary to a decision.").

not definitively addressed this type of totality-of-circumstances license-retention situation when coupled with a search or interrogation,[4] the district-court decisions in Brye and Barna remain binding precedent throughout this state. See, e.g., Pardo v. State, 596 So. 2d 665, 666 (Fla. 1992) (holding that in the absence of inter-district conflict or contrary precedent from this Court, the decision of a district court of appeal is binding precedent throughout Florida).

For these reasons, I specially concur in the order denying review of Tedder v. State, 33 Fla. L. Weekly D704 (Fla. 2d DCA Mar. 7, 2008).

A True Copy
Test:

Thomas D. Hall
Clerk, Supreme Court

4. See Golphin v. State, 945 So. 2d 1174, 1185 (Fla. 2006) ("[T]he retention of identification during the course of further interrogation or search certainly factors into whether a seizure has occurred." (emphasis supplied)); cf. United States v. Johnson, 326 F.3d 1018, 1022 (8th Cir. 2003) ("A reasonable person would not believe that he was free to leave a scene where three uniformed officers drew him away from their party, stood closely at either side of him, and took possession of his personal property—here, his driver's license—while conducting a brief interrogation.").

jn
Served:

SIOBHAN HELENE SHEA
ROBERT J. KRAUSS
HELENE S. PARNES
HON. THOMAS SIMPSON REESE, JUDGE
HON. JAMES BIRKHOLD, CLERK
HON. CHARLIE GREEN, CLERK