

**IN THE DISTRICT COURT OF APPEAL  
OF THE STATE OF FLORIDA  
THIRD DISTRICT**

CASE NO: 3D20-1461  
L.T. CASE NO: F90-354C

JERMAINE CLARINGTON  
Appellant / Petitioner

and

STATE OF FLORIDA  
Appellee / Respondent

**RENEWED MOTION TO STAY LOWER TRIBUNAL  
PROCEEDINGS BASED ON TODAY'S FLORIDA SUPREME  
COURT ORDER.**

This case is set for a probation violation hearing over Zoom on Monday, December 14, 2020. Petitioner filed a writ of prohibition which this Court denied on December 2. On December 7, Petitioner filed a Motion to Certify Question of Great Public Importance and Motion to Stay Proceedings in Lower Tribunal Pending Florida Supreme Court Decision on Whether To Exercise Jurisdiction. On December 9, this Court denied the Motion to Stay the lower tribunal proceedings and ordered Respondent to file a response within ten days regarding the motion to certify. Because that timeframe would push any decision on certification past the scheduled probation violation hearing date, Petitioner on December 10 filed a Notice of

Intent to Invoke Jurisdiction of the Florida Supreme Court, on the basis that this Court's decision expressly construed a provision of the state and federal constitutions. Also on December 10, in the Florida Supreme Court, Petitioner filed a Motion to Stay the Circuit Court proceedings pending a Florida Supreme Court decision on exercising jurisdiction.

Today, December 11, the Florida Supreme Court issued an Order in newly assigned case SC20-1797, which states in full "The proceedings in the above cause are hereby stayed in this Court pending disposition of the Motion to Certify in the Third District Court of Appeal. Counsel is to advise this Court thirty days from the date of this order, and every thirty days thereafter, of the status of the motion to certify which is now pending in said district court." (attached). Petitioner does not read this order as a stay of the proceedings in the Circuit Court. It is unknown to Petitioner whether the Florida Supreme Court will separately issue an order regarding the motion to stay the Circuit Court proceedings.

When this Court previously denied the motion to stay the lower tribunal proceedings, there was no Supreme Court case and the above order staying in the Supreme Court pending this Court's disposition of the motion to certify had not been issued. Given the new information, which Petitioner believes indicates that the Florida Supreme Court is at a minimum

considering exercising its jurisdiction in this case, but waiting for this Court to complete its judicial labor first, Petitioner renews the motion to stay the lower tribunal proceedings. Without such a stay, this case is almost certainly not going to be able to be reviewed by the Florida Supreme Court. That is because this case was filed as a writ of prohibition, and the action sought to be prohibited is the Zoom probation violation hearing scheduled for Monday. If it occurs, there is nothing to prohibit. There has already been thorough litigation and a detailed opinion from this Court, and the implications of this case on the workings of Florida courts over the next months are obvious. It does not make sense to moot the case at this point when an opportunity for an authoritative decision from the Florida Supreme Court that will resolve this issue statewide is at hand. Respondent has been ordered to respond to the motion to certify by December 19<sup>th</sup>. Petitioner is willing to commit to filing a Reply if necessary the next day, and the case will be ripe for ruling on the motion to certify. This Court could do so quickly and then the Florida Supreme Court can take whatever action it sees as appropriate. It is realistic to think that we could have a resolution on whether the Florida Supreme Court will exercise jurisdiction by late December or early January. The case was already effectively stayed since October in the lower tribunal pending this Court's decision, and significant

judicial (and attorney) labor has already been expended on litigating this issue in this case. A few more weeks of delay on this one case, with Petitioner in custody held no bond, seems a small price to pay to allow the process of seeking the intervention of the highest court in the state to play out, particularly given the implications for many other cases throughout Florida.

Thus, given the new development of a case being opened at the Florida Supreme Court and today's Florida Supreme Court order, Petitioner moves this Court to stay the lower tribunal proceedings (specifically staying the lower tribunal from holding the Zoom probation violation hearing, Petitioner has no objection to the lower tribunal taking any other supervisory actions in the case).

I CERTIFY that a copy of this Motion has been efiled with the Clerk of Courts of the Third District Court of Appeals and served by email service on the Attorney General's Office at [crimappmia@myfloridalegal.com](mailto:crimappmia@myfloridalegal.com), on Assistant Attorney General David Llanes at [David.Llanes@myfloridalegal.com](mailto:David.Llanes@myfloridalegal.com), on the State Attorneys Office at [felonyservice@miamisao.com](mailto:felonyservice@miamisao.com), on ASA Sonali Desai at

[SonaliDesai@miamisao.com](mailto:SonaliDesai@miamisao.com), and on the Honorable Miguel De La O at [mdelao@jud11.flcourts.org](mailto:mdelao@jud11.flcourts.org), this 11th day of December, 2020.

Respectfully submitted,

/s/ Daniel Tibbitt  
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# Supreme Court of Florida

FRIDAY, DECEMBER 11, 2020

**CASE NO.: SC20-1797**

Lower Tribunal No(s):  
3D20-1461; 131990CF000354C000XX

JERMAINE CLARINGTON

vs.

STATE OF FLORIDA

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Petitioner(s)


Respondent(s)

The proceedings in the above cause are hereby stayed in this Court pending disposition of the Motion to Certify in the Third District Court of Appeal.

Counsel is to advise this Court thirty days from the date of this order, and every thirty days thereafter, of the status of the motion to certify which is now pending in said district court.

A True Copy

Test:



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John A. Tomasino  
Clerk, Supreme Court



tr

Served:

DANIEL TIBBITT  
SONALI DESAI  
DAVID LLANES  
HON. MERCEDES M. PRIETO, CLERK