

Third District Court of Appeal

State of Florida

Opinion filed June 21, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D18-2484
Lower Tribunal Nos. 18-1144 & 18-35228

Damian Garcia,
Appellant,

vs.

Jennifer Ann Schneider,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, William Altfield,
Judge.

Eugene F. Zenobi, Criminal Conflict and Civil Regional Counsel, Third
Region, and Jacqueline Rae Brandt, Assistant Regional Counsel, for appellant.

Solowsky & Allen, P.L., and Lauren Kain Whaley, for appellee.

Before SCALES, HENDON and MILLER, JJ.

PER CURIAM.

On Motion to Discharge Appellate Counsel

On December 10, 2018, appellant Damian Garcia, through private counsel, filed a notice of appeal challenging a trial court order entered that same day that found Garcia in indirect criminal contempt of court for violating the terms of a March 2, 2018 final judgment of injunction. The injunction prohibited Garcia from attempting to communicate in any manner or to have any contact with a woman Garcia allegedly had threatened, stalked, and whose property he had vandalized.¹ The trial court sentenced Garcia to ninety days in jail. While not entirely clear from the record before us, it appears Garcia posted a supersedeas bond and has not been incarcerated.

Prior to the filing of Garcia's initial brief in this appeal, on March 11, 2019, Garcia's private counsel filed in this Court a motion to withdraw citing irreconcilable differences. We granted private counsel's motion to withdraw on April 2, 2019. Shortly thereafter, on April 15, 2019, Regional Conflict Counsel filed a notice of appearance on behalf of Garcia. On May 24, 2019, Garcia filed with this Court the instant motion to discharge Regional Conflict Counsel. Accompanying

¹ Garcia has filed in this Court a *pro se* appeal of this final judgment of injunction (case no. 3D18-949) and a *pro se* appeal of the trial court's denial of his motion seeking to vacate the final judgment of injunction (case no. 3D18-2574). Both of these appeals are pending in this Court. These appeals are civil in nature and, unlike the instant criminal appeal, do not implicate self-representation issues.

the motion was Garcia's *pro se* proposed initial brief, and included in the motion was a request that we deem this proposed initial brief as being timely filed.²

A criminal defendant's right to self-representation does not extend to appellate proceedings. Robinson v. State, 766 So. 2d 471, 472 (Fla. 3d DCA 2000). While an appellate court has discretion to permit self-representation, Grant v. State, 780 So. 2d 131, 133 (Fla. 4th DCA 2000), we decline to exercise such discretion in in this case. See Martinez v. Court of Appeal of Cal., 528 U.S. 152, 163 (2000); Davis v. State, 789 So. 2d 978, 981 (Fla. 2001).

We therefore deny Garcia's May 24, 2019 motion seeking to discharge his counsel and requesting that we deem his *pro se* initial brief timely filed. We strike Garcia's *pro se* initial brief, and also strike Garcia's May 20, 2019 and May 31, 2019 motions. See Logan v. State, 846 So. 2d 472, 474-76 (Fla. 2003). We direct the currently assigned Regional Conflict Counsel representing Garcia in this appeal to file an initial brief within thirty days and otherwise to proceed with the appeal in accordance with the applicable rules of appellate procedure.

Motion to discharge appellate counsel denied; *pro se* filings stricken.

² After the filing of the Regional Conflict Counsel's April 15, 2019 notice of appearance, and despite same, Garcia, *pro se*, filed in this Court a May 20, 2019 Motion to Supplement the Record and a May 31, 2019 Motion to Dissolve Modification of Post-Trial Release, or Alternatively, Petition for Belated Appeal.