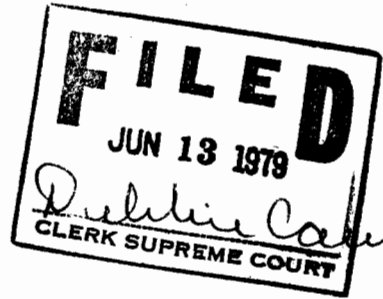


57,072



IN THE FLORIDA SUPREME COURT

STATE OF FLORIDA,

Petitioner,

vs.

CASE NO. \_\_\_\_\_

PETE M. JAMES,

Respondent.

PETITION FOR WRIT OF CERTIORARI

BASIS FOR INVOKING JURISDICTION

Comes now petitioner, State of Florida, and pursuant to Fla. Constitution, Article V, Section 3(b)(3) and Fla. R. App. P. 9.100 and 9.030(a)(2)(B), files this petition seeking review by this Court's certiorari jurisdiction in that the lower court entered an interlocutory order passing upon a matter which, upon final judgment, would be directly reviewable by the Supreme Court; viz: declared Sections 322.261 and 322.262, Florida Statutes, unconstitutional.

FACTS UPON WHICH PETITIONER RELIES

The respondent, Pete M. James, was issued four (4) traffic citations on January 27, 1979, charging the following offenses:

- (1) Driving while under the influence of alcoholic beverages contrary to Section 316.193, Florida Statutes (A1).
- (2) No valid driver's license contrary to Section 322.34, Florida Statutes (A2).
- (3) Driving on the wrong side of the road contrary to Section 316.193, Florida Statutes (A3).
- (4) Driving with unlawful blood alcohol level contrary to Section 316.193, Florida Statutes (A4)

Respondent, on March 21, 1979, filed a Motion to Dismiss (A12) which was denied by an Order filed May 22, 1979 (A16), of the lower court. Respondent, on March 20, 1979, filed a Motion to Suppress Breathalyzer Because of Improper Delegation of Authority (A8) which was granted by an Order filed May 22, 1979 (A16), of the lower court on the grounds that the delegation of authority by the Florida Legislature to HRS and DHSMV is unconstitutional in that said delegation lacks proper guidelines and standards. Respondent, on March 20, 1979,

filed a Motion to Suppress Breathalyzer for Failure to Properly Incorporate Material by Reference (A5), which was denied by an Order filed May 22, 1979 (A16), as the above motion to suppress which was grounded in an improper delegation of authority had been granted. All pertinent accusatory pleadings, motions and orders appear in the Appendix attached hereto.

NATURE OF RELIEF SOUGHT

Petitioner, State of Florida, requests this Court provide certiorari review as provided in the aforementioned constitutional and rules of procedure provisions and for an Order quashing the lower court's ruling which held Sections 322.261 and 322.262, Florida Statutes, unconstitutional.

ISSUE PRESENTED

WHETHER SECTIONS 322.261 and 322.262, FLORIDA STATUTES ARE UNCONSTITUTIONAL.

ARGUMENT

The lower court erred in concluding the statute to constitute an improper delegation of authority. Petitioner attaches hereto as EXHIBIT I the brief filed in Kelly v. Florida, Case No. 56,509, pending before this court. For brevities sake petitioner incorporates, by reference, the argument contained therein and makes the same a part hereof. (See pages 6 through 20 of Kelly brief)

WHEREFORE, Petitioner prays that this honorable court grant certiorari, quash the order of the lower court and hold Sections 322.261 and 322.262, Florida Statutes, constitutional.

Respectfully submitted,

JIM SMITH  
ATTORNEY GENERAL



CHARLES CORCES, JR.  
Assistant Attorney General  
1313 Tampa Street, Suite 804  
Park Trammell Building  
Tampa, Florida 33602

Counsel for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petition for Writ of Certiorari has been furnished by U.S. Mail to Michael McMillan, Public Defender, County Building, 150 5th Street North, St. Petersburg, Florida 33701, on this 11th day of June, 1979.



Of Counsel for Petitioner