

FILED

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SID J. WHITE
CLERK SUPREME COURT
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,
Petitioner,
v.
STAN JEROME RIVERS,
Respondent.

CASE NO. 63,145

PETITIONER'S BRIEF ON JURISDICTION

JIM SMITH
Attorney General
Tallahassee, Florida

SHARON LEE STEDMAN
Assistant Attorney General
111 Georgia Avenue - Suite 204
West Palm Beach, Florida 33401-5295
Telephone (305) 837-5062

Counsel for Petitioner

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PRELIMINARY STATEMENT

The Petitioner was the Appellee in the Fourth District Court of Appeal and the Prosecution in the trial court. The Respondent was the Appellant and the Defendant below. In the brief, the parties will be referred to as the "Petitioner" and the "Respondent."

The symbol "R" will denote the conformed copies of the record proper filed herewith and "A" will denote the Appendix attached herewith.

STATEMENT OF THE CASE AND FACTS

The Respondent was charged by information with inciting to riot in Count I and battery in Count II (R 1-2).

The Respondent was tried by a jury and found guilty as charged as to Count I and not guilty as to Count II (R 3-4).

Prior to the Respondent taking the stand in his own behalf, the state, out of the jury's presence, announced that the Defendant/Respondent had two convictions for larceny (R 5). The state produced a certified copy of a prior conviction for petit larceny and a notarized copy of another conviction (R 6-7). The Respondent argued that under section 90.609, .610, petit larceny was not a crime involving dishonesty or false statement (R 8). The trial court ruled that the two petit larceny convictions would be allowed for impeachment purposes (R 8-9). On direct examination, the Respondent admitted to having been convicted twice of crimes (R 10).

The Respondent was adjudicated and sentenced to a term of 3 1/2 years (R 11-14). The Respondent appealed to the Fourth District Court of Appeal which reversed his conviction and remanded for a new trial (R 15-18). The Petitioner's timely motion for rehearing was denied (R 19-24).

POINTS INVOLVED

POINT I

WHETHER THE PETITIONER HAS PROPERLY INVOKED THE DISCRETIONARY JURISDICTION OF THIS COURT AS THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL EXPRESSLY AFFECTS A CLASS OF CONSTITUTIONAL OR STATE OFFICERS?

POINT II

WHETHER THE PETITIONER HAS PROPERLY INVOKED THE DISCRETIONARY JURISDICTION OF THIS COURT AS THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL FAILS TO FOLLOW ESTABLISHED DECISIONAL RULES OF STATUTORY CONSTRUCTION IN THE CONSIDERATION OF THE LEGISLATIVE INTENT APPLYING TO THE LAW IN QUESTION?

ARGUMENT

POINT I

THE PETITIONER HAS PROPERLY
INVOKED THE DISCRETIONARY
JURISDICTION OF THIS COURT
AS THE DECISION OF THE FOURTH
DISTRICT COURT OF APPEAL
EXPRESSLY AFFECTS A CLASS
OF CONSTITUTIONAL OR STATE
OFFICERS.

The Petitioner seeks to establish this court's discretionary jurisdiction under Article V, Section 3(b)(3), Florida Constitution (1980) and Rule 9.030(a)(2)(A)(iii), Florida Rules of Appellate Procedure. The instant case expressly affects a class of constitutional officers, i.e., prosecuting attorneys and trial judges in the trial of criminal cases and substantially affects the law of the State of Florida.

The decision below reviewed the ruling of the trial judge that allowed the prosecuting attorney to use for impeachment purposes two prior petit larceny convictions pursuant to section 90.610, Florida Statutes (1981). The district court held that before petit larceny convictions could be used for impeachment purposes, the prosecution must first go forward with proof as to the nature of the prior convictions in order to demonstrate that the offenses involved deceitfulness, untruthfulness, or falsification. The trial judge then must make a ruling on the circumstances of the prior petit larceny convictions as to whether the offenses involved more than stealth. Thus, the decision of the district court expressly affects two classes of constitutional officers, Article

5, Sections 5,17, Florida Constitution (1980), viz, prosecuting officers and trial judges in the exercise of their respective powers and duties in the prosecution and trial of criminal cases. The decision below requires a trial within a trial thus having an extremely adverse effect on the judicial system and substantially affects the law of the State of Florida.^{1/}

The ultimate effect of the decision below affects all prosecuting attorneys insofar as it interprets their duties in connection with proving the circumstances of prior convictions which could very well prove to be an impossible task thereby effectively eliminating their right to use prior convictions for impeachment purposes, a right given prosecuting attorneys by the Florida Legislature via section 90.610, Florida Statutes (1981). The decision below also affects all trial judges when called upon to decide whether a particular petit larceny offense involves deceitfulness, untruthfulness, or falsification, which in all practicality could lead to conflict decisions as it requires an interpretation of "more than mere stealth." The Petitioner submits that the district court's pronouncement presents to this court the duty to determine if the district court of appeal has properly interpreted section 90.610, Florida Statutes (1981) and the concurrent duties of all prosecuting attorneys and trial judges

^{1/} According to the Uniform Crime Reports 1981 Annual Report compiled by the Florida Department of Law Enforcement, larcenies accounted for 59.8 percent of nonviolent crimes and 52.8 percent of all offenses reported (A 1-3). Thus, the decision below substantially affects the laws of the state.

thereunder. See, Richardson v. State, 246 So.2d 771 (Fla. 1971)(decision of district court of appeal that noncompliance with discovery requirements of criminal rule does not ipso facto constitute grounds for reversal of conviction, and that reversal depends upon prejudice, affects two classes of constitutional or state officers, so that supreme court had jurisdiction to review such decision); Treasure, Inc. v. State Beverage Dept., 238 So.2d 580 (Fla. 1970)(supreme court had certiorari jurisdiction by virtue of authority to review decisions affecting class of state officers to review district court order denying petition for writ of certiorari to state beverage department).

POINT II

THE PETITIONER HAS PROPERLY
INVOKED THE DISCRETIONARY
JURISDICTION OF THIS COURT
AS THE DECISION OF THE FOURTH
DISTRICT COURT OF APPEAL FAILS
TO FOLLOW ESTABLISHED DECISIONAL
RULES OF STATUTORY CONSTRUCTION
IN THE CONSIDERATION OF THE
LEGISLATIVE INTENT APPLYING
TO THE LAW IN QUESTION.

In the decision below, the district court assumed the legislative intent to give the new impeachment statute a meaning similar to its federal counterpart, Federal Rule 609. In assuming legislative intent, rather than following established decisional rules of statutory construction in the consideration of the legislative intent applying to the law in question, conflict appears. Rinker Materials Corp. v. City of North Miami, 286 So.2d 552 (Fla. 1973). In failing to apply the plain and ordinary meaning and common usage of the language of the statute in determining intent, the district court misapplied the established decisional rules of statutory construction. Such misapplication is a clear basis of conflict. Nielson v. City of Sarasota, 117 So.2d 731 (Fla. 1960); Art. V, §3(b)(3), Fla. Const.

Further, ordinary words should be given their plain and ordinary meaning when construing a statute. State, Dept. of H.R.S. v. McTigue, 387 So.2d 454 (Fla. 1st DCA 1980). "Theft is the act of stealing. The common and ordinary meaning of stealing is to take dishonestly or wrongfully and secretly property belonging to another." Hall v. Oakley, 409 So.2d 93 (Fla. 1st DCA 1982) (Thompson, J., dissenting).

A third rule of statutory construction ignored by the district court is that the legislature is presumed to have acted with cognizance of the decisional law in affect when a statutory provision is enacted. Baker v. State, No. 80-748 (1982 F.L.W. 2559)[5th DCA December 8, 1982]. The law in Florida at the time the new impeachment statute was enacted was that crimes of theft, as distinguished from acts of violence, were regarded as conduct which reflected adversely on a man's honesty and integrity. Dodson v. State, 356 So.2d 878 (Fla. 3d DCA 1978). See also, United States v. Carden, 529 F.2d 443 (5th Cir. 1976)(federal decision interpreting Rule 609 which held petit larceny conviction admissible as impeachment evidence since the crime involved dishonesty; the decision below incorrectly stated, therefore, that Rule 609 had been uniformly interpreted as requiring proof of more than stealth).

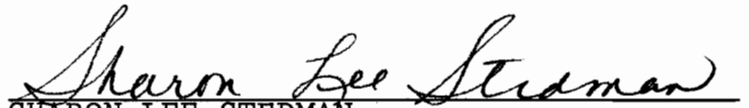
Since the decision below failed to follow established decisional rules of statutory construction in the consideration of the legislative intent, this court has jurisdiction to review the decision below.

CONCLUSION

Based on the foregoing Argument, the Petitioner respectfully requests that this Honorable Court accept jurisdiction of the case and reverse the decision of the court below.

Respectfully submitted,

JIM SMITH
Attorney General

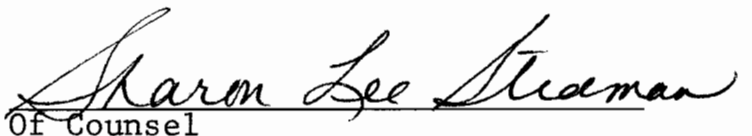


SHARON LEE STEDMAN
Assistant Attorney General
111 Georgia Avenue - Suite 204
West Palm Beach, Florida 33401-5295
Telephone (305) 837-5062

Counsel for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished, by mail/courier, to Allen J. DeWeese, Esquire, Assistant Public Defender, 224 Datura Street, 13th Floor, West Palm Beach, Florida 33401, this 4th day of February, 1983.


Of Counsel