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OTHER AUTHORITIES:

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PRELIMINARY STATEMENT

The petitioner was the appellee in the District Court of Appeal, Fourth District, and the prosecution in the trial court. The respondent was the appellant in the Fourth District and the defendant in the trial court. In this brief, the parties will be referred to as the petitioner and the respondent. The symbol "R" will be used to designate the record on appeal which includes the transcript of the trial proceedings. All emphasis is supplied unless the contrary is indicated.

STATEMENT OF THE CASE AND FACTS

The respondent is charged by information with inciting to riot in Count I and battery in Count II (R. 440-441). The respondent was tried by a jury and found guilty as charged as to Count I and not guilty as to Count II (R. 443-444).

Prior to the respondent taking the stand in his own behalf, the state, out of the jury's presence, announced that the respondent had two convictions for larceny (R. 253). The state produced a certified copy of a prior conviction for petit larceny and a notarized copy of another conviction (R. 287-288). The respondent argued that under Sections 90.609 and 90.610, Florida Statutes (1981), petit larceny was not a crime involving dishonesty or false statement (R. 289). The trial court ruled that the two petit larceny convictions would be allowed for impeachment purposes (R. 289-290). On direct examination, the Respondent admitted to having been convicted twice of crimes (R. 296).

The respondent was adjudicated and sentenced to a term of 3 1/2 years (R. 446-449). The respondent appealed to the Fourth District Court of Appeal which reversed his conviction and remanded for a new trial. Rivers v. State, 423 So. 2d 444 (Fla. 4th DCA 1982). On January 26, 1983, petitioner filed a Notice to Invoke Discretionary Jurisdiction in this Court. Petitioner filed its brief on jurisdiction on February 4, 1983 submitting that this Court has jurisdiction under Article V, Section 3(b)(3), Florida Constitution (1980) and Rule 9.030(a)(2)(A)(iii), Florida Rules of Appellate Procedure as the instant case expressly affected a class of constitutional officers, that is, prosecuting attorneys and trial judges in the trial of criminal cases and substantially affected the law of the state of Florida. Petitioner also alleged that this Court had jurisdiction where the decision of the District Court of Appeals expressly and directly conflicted with decisions of this Court and other district courts in its application of the rules of statutory construction. On May 21, 1984, this Court accepted jurisdiction and dispensed with oral argument.

POINT INVOLVED ON REVIEW

WHETHER THE TRIAL COURT WAS CORRECT IN ALLOWING
PETIT LARCENY CONVICTIONS TO BE USED FOR IM-
PEACHMENT OF THE RESPONDENT?

ARGUMENT

POINT ON APPEAL

THE TRIAL COURT WAS CORRECT IN ALLOWING PETIT LARCENY CONVICTIONS TO BE USED FOR IMPEACHMENT OF THE RESPONDENT.

At trial, the trial court allowed the state to impeach the respondent by using a certified copy and a notorized copy of two prior convictions for petit larceny (R. 287-290, 296). On appeal, the Fourth District Court of Appeals reversed, agreeing with the First District's decision in Hall v. Oakley, 409 So. 2d 93, 97 (Fla. 1st DCA 1982), which held that under Section 90.610(1), Florida Statutes, the "simple crime of petit larceny may not be used for impeachment purposes unless the prosecution had demonstrated that such crime involves some element of deceit, untruthfulness or falsification bearing upon the defendant's capacity to testify truthfully." Rivers v. State, 423 So. 2d 444, 446 (Fla. 4th DCA 1982).

In State v. Page, ___ So. 2d ___, Case No. 63,360, Fla., opinion filed April 26, 1984 [9 FLW 148], this Court had the opportunity to review the decision in Hall v. Oakley, supra. The Second District certified the following question as one of great public importance:

WHETHER THE STATE IS PREVENTED BY SECTION 90.610(1), FLORIDA STATUTES (1981), FROM IMPEACHING A DEFENDANT BY USE OF A PRIOR PETIT THEFT CONVICTION WITHOUT SHOWING THAT SUCH CRIME INVOLVES SOME ELEMENT OF DECEIT, UNTRUTHFULNESS, OR FALSIFICATION BEARING UPON THE DEFENDANT'S CAPACITY TO TESTIFY TRUTHFULLY? Page v. State, 436 So. 2d 153 (Fla. 2d DCA 1983).

This Court answered the certified question in the negative.

This Court in Page held that "the commission of petit theft, or any other offense falling within the scope of Chapter 812, Florida Statutes (1981), necessarily involves 'dishonesty' so as to bring any conviction for such a crime within the scope of subsection 90.610(1)." This Court then disapproved of the First District's opinion in Hall v. Oakley, supra, 9 FLW at 149, noting that the Fourth District in the instant case had agreed with Hall's interpretation of Section 90.610(1). Id. at n.1.

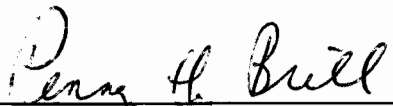
The petitioner submits that the instant case is controlled by this Court's decision in State v. Page, and thus this Court must reverse and quash the decision of the Fourth District in the instant case, remanding the cause for reinstatement of the respondent's conviction and sentence.

CONCLUSION

BASED upon the foregoing reasons and citations of authority, the petitioner submits that this Court should reverse and quash the decision of the Fourth District, remanding the cause for reinstatement of the respondent's conviction and sentence.

Respectfully submitted,

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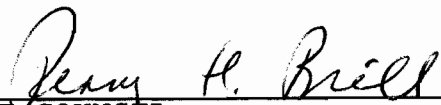


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief Of Petitioner On The Merits has been furnished to ALLEN J. DeWEESE, ESQUIRE, Assistant Public Defender, Attorney For Respondent, 224 Datura Street, 13th Floor, West Palm Beach, Florida 33401 by mail/courier this 29TH day of May, 1984.



OF COUNSEL