IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,)
Petitioner,)
vs.) CASE NO. 63,145
STAN JEROME RIVERS,)
Respondent.)

RESPONDENT'S REPLY BRIEF ON JURISDICTION

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AUTHORITIES CITED

PRELIMINARY STATEMENT

Respondent was the Defendant in the Criminal Division of the Circuit Court of the Seventeenth Judicial Circuit, in and for Broward County, Florida, and the Appellant in the District Court of Appeal, Fourth District. Petitioner was the Prosecution and Appellee in the lower courts. In the brief the parties will be referred to as they appear before this Honorable Court.

STATEMENT OF THE CASE AND FACTS

Respondent adds these facts, as set forth in the opinion of the District Court of Appeal (p. 1 of decision):

> The question concerns the impeachment of Rivers under Section 90.610, Florida Statutes (1981), on the basis of two prior petit larceny convictions. The trial court ruled that these prior petit larceny convictions could be used for impeachment purposes and threatened to hold Rivers in contempt if he took the stand and testified that he had not been convicted of a crime. Rivers did testify and on direct examination stated he had been convicted of a crime twice.

ARGUMENT

POINT I

THE DECISION OF THE DISTRICT COURT OF APPEAL DOES NOT EXPRESSLY, DIRECTLY, AND EXCLUSIVELY AFFECT A CLASS OF CONSTITUTIONAL OFFICERS (RESTATED)

The State claims that this Court has discretionary jurisdiction over this case under the provisions of law allowing review of decisions affecting a "class of constitutional officers." Article V, Section 3(b)(3), Florida Constitution; Rule 9.030(a)(2)(A)(iii), Fla.R.App.P. However, the decision fails to meet the requirements of these provisions and does not affect any class of constitutional officers to the extent required as a predicate for review by this Court.

In 1980, the Florida Constitution was amended to greatly tighten the requirements for discretionary jurisdiction; the specific provision in question here was amended to require that the District Court of Appeal decision presented for review must "expressly" affect a class of constitutional officers. Under the new amendments, this Court has held that the constitutional term "expressly" means "in an express manner"..."represent[ed] in words." Where the decision in question does not state the jurisdictional basis in words, jurisdiction is not conferred. Jenkins v. State, 385 So.2d 1356 (Fla. 1980).

In the opinion in the instant case, neither of the State officers put forth by the State are even mentioned by title. Thus, the decision does not "expressly" affect prosecuting attorneys or trial judges. The opinion refers only to "the prosecution", "the State", and "the trial court". It refers to the State, just as it does to "the defendant" and "the appellant", merely to designate the parties. It refers to the trial court only to designate the

procedural context and the origin of the error. Neither State Attorneys nor Circuit Judges, the proper designations for the constitutional officers, are referred to at all. Plainly, this is because the decision does not deal with their constitutional authority and responsibilities, but only with a point of criminal procedure to be followed by them.

In Spradley v. State, 293 So.2d 697 (Fla. 1974), this Court receded from Richardson v. State, 246 So.2d 771 (Fla. 1971), relied upon by the State in its brief. This Court in Spradley held, counter to what the State urges here, that just because criminal decisions establish rules of law to be followed by judges and prosecutors does not mean that those decisions affect judges and prosecutors in the constitutional, jurisdictional sense:

> This jurisdictional holding of Richardson however, if literally followed, would mean that this Court had jurisdiction to review nearly all cases, both civil and criminal, because nearly all decisions which review the actions or rulings of trial judges impose upon other trial judges a requirement to follow the law as stated therein in similar situations. Likewise, any decision concerning the propriety of the actions of a prosecuting attorney imposes upon all prosecuting attorneys the duty to henceforth follow the law as therein decided. We are of the opinion that our jurisdictional holding in Richardson was, therefore, much too broad and inconsistent with the often-stated philosophy behind the formation of our District Courts of Appeal—that these courts are to be courts of final appellate jurisdiction except in a limited number of specific situations enumerated in the Constitution. 293 So.2d at 701.

This Court went on to enunciate a firm rule:

> A decision which "affects a class of constitutional or state officers" must be one which does more than simply modify or construe or add to the case law which comprises much of the substantive

> and procedural law of this state. Such cases naturally affect all classes of constitutional or state officers, in that the members of these classes are bound by the law the same as any other citizen. To vest this Court with certiorari jurisdiction, a decision must directly and, in some way, exclusively affect the duties, powers, validty, formation, termination or regulation of a particular class of constitutional or state officers. Id. (emphasis in original)

Plainly this test is not met where, as here, the decision is merely on a point of criminal procedure to be followed in the courts. In Spradley, this Court held it was without jurisdiction on a point of procedure similar to that here. Since Spradley, only three cases have survived the new jurisdictional test, and none has involved a point of criminal procedure: Pinellas County v. Nelson, 362 So.2d 279 (Fla. 1978) (formulation of budget by county commission); Taylor v. Tampa Electric Company, 356 So.2d 260 (Fla. 1978) (commissions extracted by court clerks); and Satz v. Perlmutter, 317 So.2d 359 (Fla. 1980) ("death with dignity"). The only case other than Richardson cited by the State, Treasure, Inc. v. State Beverage Department, 238 So.2d 580 (Fla. 1970), is inapplicable here because, like Richardson, it predates Spradley.

It is evident that the State in the instant case has attempted to invoke "constitutional officer" jurisdiction because there is no basis whatsoever for "conflict" jurisdiction; the decision here is in complete accord with the other District Court of Appeal decision most directly on point, Hall v. Oakley, 409 So.2d 93 (Fla. 1st DCA 1982). However, this cannot be permitted if this Court is to avoid the growing flood of litigation which the new amendments to the constitution were intended to reduce. The very purpose of adding the "expressly" requirement to the class of constitutional officers was to prevent a loophole for review of decisions no longer

reviewable under conflict jurisdiction. England, Constitutional Jurisdiction of the Supreme Court of Florida: 1980 Reform, 32 U.Fla.Law Review 147, 187 (1980). The floodgates will again open, wider than before, if this Court sets a precedent by granting jurisdiction here.

POINT II

FAILURE OF A DISTRICT COURT OF APPEAL TO "FOLLOW ESTABLISHED DECISIONAL RULES" IS NOT A BASIS FOR DISCRETIONARY REVIEW BY THIS COURT (RESTATED)

The State in this point has failed to even state a proper basis of Supreme Court jurisdiction. Under Article V, Section 3(b)(3), and Rule 9.030(a)(2)(A), there are six bases of discretionary jurisdiction. Failure to follow "established decisional rules", asserted by the State, is not one of the six.

The State cites two cases in which this Court granted "conflict" certiorari review under the old constitution, Rinker Materials Corp. v. City of North Miami, 286So.2d 552 (Fla. 1973); and Nielson v. City of Sarasota, 117 So.2d 731 (Fla. 1960). Since these cases, however, this Court's "conflict" jurisdiction has been severely narrowed. Both Rinker and Nielson looked behind the District Court of Appeal decisions in question in a way wholly inappropriate under the 1980 amendments. Since 1980, the constitution requires that conflict be "express" and "direct". "Express" means "expressed in words". Jenkins v. State, 385 So.2d 1356 (Fla. 1980). Under the new constitutional amendments, neither Rinker or Nielson could be accepted for review because neither directly states in words the existence of conflict. In short, the State is basing its argument on outdated law.

The opinion in the instant case acknowledges no conflict whatsoever. In fact, the decision follows and is in complete accord with the other District Court of Appeal decision most directly on point, Hall v. Oakley, 409 So.2d 93 (Fla. 1st DCA 1982). The court even states in so many words that its decision is "in complete accord" with Oakley (p. 4 of opinion).

Any attempt to look behind the plain words of the decision to what the District Court of Appeal "assumed", or to some rules of law which the court allegedly "fail[ed] to apply" or "ignored" (pp. 7-8 of brief) is unauthorized under the new constitutional amendments. In fact, one of the major objectives of the new "express and direct" provision was to do away with the harmful effects of the "doctrine of inherency" which allowed this Court to look behind opinions to supposed reasoning not identified in the opinions themselves. See, England, Constitutional Jurisdiction of the Supreme Court of Florida: 1980 Reform, 32 U.Fla.Law Review 147, 151 (1980). To accept the State's position here would be to resurrect that doctrine.

Under current law this Court has no jurisdiction to review this case.

CONCLUSION

Based upon the foregoing Arguments and authorities cited therein, Respondent respectfully requests this Honorable Court deny acceptance of jurisdiction of this cause.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to SHARON LEE STEDMAN, Assistant Attorney General, 111 Georgia Avenue, West Palm Beach, Florida, by courier, this 16th day of FEBRUARY, 1983.

Of Counsel