IN THE SUPREME COURT OF FLORIDA

CASE NO. 63,613

THE STATE OF FLORIDA,

Petitioner,

-v-

G.P., a juvenile,

Respondent.

ON PETITION FOR DISCRETIONARY REVIEW
TO THE DISTRICT COURT OF APPEAL OF FLORIDA,
THIRD DISTRICT

BRIEF OF RESPONDENT ON THE MERITS

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STATEMENT OF THE CASE AND FACTS

The respondent accepts the Statement of the Case and Facts of the petitioner as substantially correct.

ARGUMENT

THE STATE IS NOT AUTHORIZED TO APPEAL AN ORDER OF DISMISSAL ENTERED IN A JUVENILE DELINQUENCY CASE.

A. Chapter 39 only authorizes appeals from juvenile court by the child or his representatives.

In the lower court, the state sought review of an order discharging the respondent due to a speedy trial violation. The Third District Court of Appeal dismissed the appeal for want of jurisdiction. State v. G.P., 429 So.2d 786 (Fla.3d DCA 1983).

The state's right to seek appellate review is purely statutory. Whidden v. State, 159 Fla. 691, 32 So.2d 577 (1947); State v. Brown, 330 So.2d 535 (Fla.1st DCA 1976). In Brown, which is not addressed in the petitioner's brief, the state's notice of appeal provided: "The nature of the Order appealed from is an Order granting Defendant's Motion of Acquittal Not Withstanding Verdict." Id. The First District granted the defendant's motion to quash the appeal on the ground that there was no authority for the appeal.

Brown relied upon the Whidden rationale, as well as the axiom recited in State v. Smith, 260 So.2d 489 (Fla.1972), that appellate review of any order or judgment is not a right derived from the common law, but is derived from the sovereign. In its attempt to find a statutory basis for the appeal in Brown, the state argued that the statutory

language which might be construed to authorize the appeal was that of Section 924.07(1), Florida Statutes, which allowed for an appeal of "An order dismissing an indictment or information or any count therefor;". In rejecting the state's argument, the court held: "We decline to place such a tortuous construction upon the plain language and meaning of 'indictment or information'.". Id., at 536.

Similar tortuous constructions are proffered by the state in the case at bar in an attempt to find a basis for the appeal. There is none.

Effective October 1, 1951, [Laws of Florida, General Laws, 26880, No. 401 (1951)], the Florida Legislature passed an extensive bill directed toward the treatment of children in juvenile courts. On the subject of appellate rights in juvenile proceedings, the legislature excluded the state from appealing any rulings entered in the interests of a child. Section 39.14, Florida Statutes. Since 1951, the legislature has never deemed it appropriate to allow the state the right to appeal juvenile court orders. Section 39.14 provides in pertinent part:

> (1) Any child, and any parent or legal custodian of any child, affected by an order of the court may appeal to the appropriate district court of appeal within the time and in the manner prescribed by the Florida Appellate Rules.

In the decision sought to be reviewed, the Third District properly concluded that "it is readily apparent that Section 39.14, Florida Statutes (1981) has not legislatively conferred upon the state the right to appeal a juvenile's discharge for a speedy trial violation. Consequently, we agree with the defendant that the state has

no right to appeal the juvenile's discharge on constitutional speedy trial grounds." State v. G.P., 429 So.2d 786, 788 (Fla.3d DCA 1983).

The rule that the state's right to appeal is purely statutory derives from the common law. The sovereign generally did not have a right to appeal. United States v. Sanges, 144 U.S. 310, 12 S.Ct. 609 (1892). In analyzing the state decisions on the matter, the United States Supreme Court in Sanges noted:

> [I]t is settled by an overwhelming weight of American authority that the state has no right to sue out a writ or error upon a judgment in favor of the defendant in a criminal case, except under and in accordance with express statutes, whether that judgment was rendered upon a verdict of acquittal, or upon the determination by the court of a question of law.

Sanges, 12 S.Ct. at 610. In its review of state court decisions bearing upon the subject, the United States Supreme Court in Sanges noted that this Court held in State v. Burns, 18 Fla. 185 (1881), that the state was not entitled to a writ of error to reverse a judgment quashing an indictment, and discharging the accused. In Burns, this Court followed the long-standing rule:

> The weight of authority is overwhelming, not only in this country but in England, that the writ [of error] will not lie at the instance of the State, and it is evident from the character of the legislation on the subject in this State that it has never been contemplated that the State could further pursue parties who had obtained judgment in their favor in prosecutions by indictment, whether by the judgment of the court or verdict of a jury.

State v. Burns, supra, 18 Fla. at 187.

This overwhelming weight of authority was established long before the Fifth Amendment guarantee against double jeopardy was held applicable to the states in Benton v.

Maryland, 395 U.S. 784, 89 S.Ct. 2056, 23 L.Ed.2d 707 (1969), and has survived that holding, as evidenced by the following language of the United States Supreme Court in a case where the Court found no statutory basis for the government's appeal:

> What disadvantage there be [from no statute allowing the government the right to appeal] springs from historic policy over and above the constitutional protection against double jeopardy that denies the Government the right to appeal in criminal cases save as expressly authorized by statute.

Di Bella v. United States, 369 U.S. 121, 82 S.Ct. 610, 654 (1962). Absent statutory or constitutional authority to the contrary, the common and statute laws of England are declared to be of force in this state. Section 2.01, Florida Statutes. Quite clearly, Section 39.14 does not modify the common law in its grant of appellate rights solely to children or their representatives. Additionally, under the principle expressio unius est exclusio alterius - the mention of one thing in a statute implies the exclusion of another - the silence of Section 39.14 on a state right to appeal is controlling, see Thayer v. State, 335 So.2d 815, 817 (Fla.1976), and is consistent with the liberal construction to be afforded Chapter 39. Section 39.001(3). If the legislature had intended to confer the right to appeal upon the state in Section 39.14, it would not, since 1951, have provided only for the appellate rights of the children. Cf., Section 39.336, which confers the right to review of dispositions by the community arbitrator upon "[a]ny interested agency or party".

The state apparently does not take issue with the analysis by the Third District of Chapter 39. Rather, the state argues that Article V of the Florida Constitution authorizes state appeals in juvenile cases, and argues alternatively that Chapter 924 affords a statutory basis for state appeals in juvenile cases. Brief of Petitioner at 15-19.

B. Chapter 924 does not confer upon the state the right to appeal in juvenile cases.

Chapter 924 does not apply to the case at bar because juvenile cases are not "criminal cases". This conclusion becomes evident when Chapter 924 is read in pari materia with Chapters 775 and 39. All statutes relating to the same subject matter should be construed with reference to each other so that effect may be given to all the provisions of each, if this can be done by any fair and reasonable construction. District Sch. Bd. of Lake City v. Talmadge, 381 So.2d 698, 703 (Fla.1980); State v. Hayles, 240 So.2d 1, 3 (Fla.1970); In re Estate of Watkins, 75 So.2d 194 (Fla.1954).

Section 924.02, Florida Statutes (1982) provides: "The defendant or the state may appeal in criminal cases." The meaning of "criminal cases" can be discerned from Chapter 775. Section 775.08(4) provides: "The term 'crime' shall mean a felony or misdemeanor." "Felony" is defined as any criminal offense punishable by death or imprisonment in a state penitentiary, Section 775.08(1), and "misdemeanor" as any offense punishable by imprisonment in a county correctional facility not in excess of one year.

Chapter 39 does not authorize imprisonment. The authority for Chapter 39 stems from Article I, Section 15(b), Florida Constitution, which provides in part:

> When authorized by law, a child as therein defined may be charged with a violation of law as an act of delinquency instead of crime and tried without a jury or other requirements applicable to criminal cases.

Accordingly, the above constitutional provision was interpreted by this Court in State v. D.H., 340 So.2d 1163, 1165 (Fla.1976) as follows:

> It is clear that through adoption of the quoted constitutional provision as well as the predecessor provision in Article V of the Constitution of 1885 the people of this State determined that violations of law by children should not be treated as crimes but rather as acts of delinquency.

(Emphasis by this Court).

Section 39.10(4) provides that "an adjudication by a court that a child has committed a delinquent act shall not be deemed a conviction; nor shall the child be deemed to have been found guilty or to be a criminal by reason of that adjudication". Section 924.05 provides: "Appeals provided for in this chapter are a matter of right." Section 924.07 specifies the criminal appeals which may be taken by the state. Consistent with the conclusion that juvenile cases are not "criminal cases" within the meaning of Chapter 924, Section 924.05 does not list any orders or rulings regarding juveniles as being appealable by the state. Thus, the case law and statutory framework are in harmony. There is no statutory basis in Chapter 924 for juvenile appeals by the state. The traditionally different treatment afforded children in the justice system is one possible and perhaps even compelling explanation for the legislature's desire

that juvenile court decisions favoring children be final, and is consistent with the policies underlying the doctrine of the state as parens patriae. Another reason for not providing appeals to the state is the alternative the legislature afforded the state in the following forms: waiver procedures for juveniles at least fourteen years of age, Section 39.02(5)(a); the right to direct file an information against sixteen or seventeen year olds, Section 39.02(2)(e)(4); and the right to seek a grand jury indictment for any capital crime or crime punishable by life imprisonment, Section 39.02(5)(c).

C. There is no constitutional right of the state to appeal juvenile court orders.

There remain three lines of analyses advanced by the state for review of the order in question. The first being that Article V is self-executing, without regard to the absence of statutory authority, in favor of state appeals in juvenile cases. The second argument is that the rules promulgated by this Court regarding appeals and juveniles provide support for state review. Third is the state's fallback contention that the common law writ of certiorari lies to review the order.

The second argument, which appears in the brief of the petitioner beginning at page 16, is easily answered. In State v. Furen, 118 So.2d 6, 12 (Fla.1960), this Court analogized Article II of the Florida Constitution to the Act of Congress that provides that the United States Supreme Court may promulgate rules for the lower courts, but such rules shall not enlarge, modify, or alter the substantive

rights of litigants. Similarly, Article II of our constitution provides for a separation of powers. Any rule of this Court which purports to confer substantive rights upon a litigant would be unconstitutional. Id. Therefore, the state cannot look toward the rules of juvenile court or the appellate courts for a basis for this appeal.

The state's constitutional argument appears to be the primary focus of the petitioner's brief, as is its reliance upon State v. W.A.M., 412 So.2d 49 (Fla.5th DCA), pet. for review denied, 419 So.2d 1201 (Fla.1982), which held, without citation to any supporting authority, that the state has a constitutional right of appeal from an order discharging a juvenile on speedy trial grounds. A case nearly identical to the one at bar arose in the Supreme Court of Kansas in State v. Waterman, 212 Kan. 826, 512 P.2d 466 (1973), which affords the careful analysis of the issue lacking in W.A.M.

In Waterman, the state appealed a final order entered by the juvenile court. The merits of the case were not reached because the Supreme Court of Kansas found that the state had no statutory right to appeal. The applicable Kansas statute, K.S.A.1972 Supp. 38-833, relating to appeals from juvenile court, is similar to that of Florida:

> An appeal shall be allowed to the district court by any child from any final order made by the juvenile court, and may be demanded on the part of the child by his parent, guardian, guardian ad litem or custodian, or by any relative of such child within the fourth degree of kinship. Such appeal shall be taken within thirty (30) days after the making of the order complained of, by written notice of appeal filed with the judge of the juvenile court, which shall specify the order appealed from. It shall be the duty of the judge of said court, without unnecessary delay, to

transmit a transcript of the record of the case to the district court of his county.

Upon quoting the above statute, 512 P.2d at 469-70, the Supreme Court of Kansas in Waterman held:

> It will be noted that nowhere in the statute is any provision made for the state to appeal to district court; only the child or someone acting in his behalf is so authorized. We believe the omission is significant and meaningful.
>
> The juvenile court act is a comprehensive inclusive act covering the entire field of juvenile delinquency, miscreancy, dependency, and neglect, and it provides its own specific procedures. It is full and complete within itself. It governs an area which is distinctly unique; where the position of the state is that of parens patriea; and where the juvenile court serves as an arm of the state, acting as will best serve the child's welfare and the best interests of the state.

Waterman, supra, 512 P.2d at 470. The Kansas Supreme Court went on to note:

> The fact that the legislature saw fit to provide for an appeal by the child would seem persuasive that by not providing for an appeal by the state, the legislative intention was that there be no appeal by the state.
>
> The right to appeal is neither a vested nor a constitutional right, but is strictly statutory in nature.

Id. The court found its reasoning was in general accord with authorities elsewhere. Citing the text of 47 Am.Jur.2d, Juvenile Courts, Etc., § 60, p. 1031, which states: "There are statements in the decisions indicating that in the absence of an express statutory authorization, there is no right to appeal from a juvenile court's determinations. . . ", the Kansas Supreme Court found:

> Cases from a number of jurisdictions are cited in support of the text. In one of them, Ginn v. Superior Court, In and for County of Pima, 1 Ariz.App. 455, 404 P.2d 721, it was said:
>
> > "No provision is made in the juvenile laws for an appeal from the juvenile court to this court.

> Absent a provision for appeal, we hold that there is not right to appeal. . . . " (p. 458, 404 P.2d 724.)
>
> The Arizona court went on to say that the statute prescribing the procedure for juvenile courts was complete in itself, and the general statute relating to appeals from the superior court had no application. (See, also, Marlowe v. Commonwealth, 142 Ky. 106, 133 S.W. 1137; Wissenburg v. Bradley, 209 Iowa 813, 229 N.W. 205, 67 A.L.R. 1075).

Waterman, supra, 512 P.2d at 471. By contrast, the Waterman court noted that the Tennessee statute provides that where the juvenile court makes any disposition of a child, either aggrieved party, including the state or a subdivision thereof, may appeal to the circuit court. Id. But in Kansas, "The statute with which we are dealing here contains no such language, although we are not prepared to say that the legislature could not adopt similar broad appellate provisions should it be so inclined." Id.

In response to the state's argument that it was "unfair" that the child could appeal and the state could not, the Kansas court replied: "We shall not debate the merits of that question - although there might be no great difficulty in justifying the distinction - for in our opinion Sprague Oil Service v. Fadely, 189 Kan. 23, 367 P.2d 56, may be said to dispose of any legal objection." In Sprague, the court found that a director of revenue had no statutory right to appeal to the district court from an order of the board of tax appeals. Since that decision, the Kansas legislature amended the statutes to give the director a right of appeal "in plain language." Id.

The Supreme Court of Kansas also rejected the state's contention that the statute relating to the appellate

jurisdiction of district courts in general conferred upon the state the right to appeal final juvenile court orders, citing the principle that the provisions of a special statute prevail over a general statute. Waterman, supra, 512 P.2d at 472.

The Waterman case answers most, if not all, of the arguments pressed here by the petitioner. The legislative analysis also answers the state's contention that Article V relating to the general jursidiction of the district courts of appeal confers upon the state the right to appeal from juvenile court final orders. There is no language in the present Article V or its predecessor which specifically purports to change the will of the people, as evidenced by Section 39.14, that only the child may appeal. Upon the creation of the district courts, Article V provided:

> Appeals from trial courts in each appellate district . . . may be taken to the court of appeal of such district, as a matter of right, from all final judgments or decrees except those from which appeals may be taken direct to the supreme court or to a circuit court.

Article V, Section 5(3), Florida Constitution (1956).

Today, Article V provides as follows:

> District courts of appeal shall have jurisdiction to hear appeals, that may be taken as a matter of right, from final judgments or orders of trial courts . . . .

Article V, Section 4(b)(1), Florida Constitution (1972).

The respondent is aware of no extrinsic evidence to support the proposition that along with the creation of the district courts in 1956, Article V sought to override the 1951 statute limiting appeals from juvenile court. In fact, it seems that the 1956 amendment was understood at the time

to have changed the rights of no litigants. See Biennial Report of the Attorney General, Opinion 056-307, October 17,1956 "Courts", "Proposed Amendment to Art.V, State Const. - Construction of Words Appeal "As a Matter of Right". ("Litigants now can appeal as a matter of right, and this has been our practice in Florida for generations . . . . The revised article, in other words, simply continues the current practice under the existing constitution of allowing the supreme court or the legislature to set time limits for taking appeals.") Thus, Article V continued, rather than altered, the rights of litigants to appeal. The state never had and was never afforded the right to appeal juvenile court orders.

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Both the petitioner, and the Fifth District in W.A.M., have ignored the principle that: "The state's right to appeal is purely statutory,". Whidden v. State, 159 Fla. 691, 32 So.2d 577, 578 (1947); State v. Brown, supra. See also Balikes v. Speleos, 173 So.2d 735, 737 (Fla.3d DCA 1965). The rule of Whidden, dating back to this Court's decision in Burns, supra, of 1881, and its progeny, is sound.

The petitioner's attempt to distinguish Whidden, see Brief of Petitioner ar 13-14, is unavailing. The suggestion that Whidden does not apply to the case at bar because it was decided in 1947 (before the district courts were in existence), and because the decision was rendered before the new (1972) and allegedly "self-executing" Article V was promulgated, assumes that the 1956 Article V amendment conferred upon the state the right to appeal juvenile

orders, despite the clear legislative intent to the contrary. But as noted, there is no support for the proposition that Article V sought to alter the bar against state juvenile appeal as promulgated by the Florida Legislature in 1951.

Even assuming, arguendo, that there is support for the contention that new state appellate rights in juvenile law independent of Chapter 39 were somehow intended as evidenced by the general language of the 1956 amendment, it is just as reasonable to assume that those rights were taken away by the substantial change in Article V in 1972. The 1956 amendment to Article V provided:

> Appeals from trial courts in each appellate district . . . may be taken to the court of appeal of such district, as a matter of right, from all final judgments or decrees except those from which appeals may be taken direct to the supreme court or to a circuit court.

Article V, Section 5(3), Florida Constitution (1956).

However, a substantial change in language was subsequently effected and Article V now provides as follows:

> District courts of appeal shall have jurisdiction to hear appeals, that may be taken as a matter of right, from final judgments or orders of trial courts . . . .

Article V, Section 4(b)(1), Florida Constitution (1972).

In W.A.M., supra, the Fifth District held that the change in language in Article V was of no consequence, although characterizing the change as "substantial":

> Notwithstanding the substantial difference in language between the former constitutional provision relating to the jurisdiction of district courts of appeal, we do not believe such changes were intended to eliminate the right to appeal from final judgments. Therefore, we hold that the State does have a constitutional right of appeal from final judgments in juvenile cases. [Footnote omitted; e.s.]

W.A.M., supra, 412 So.2d at 50.

The unsupported "belief" of the Fifth District does not square with fundamental principles of constitutional construction:

> [T]he rule [is] that the construction of an old Constitution still applies to a new Constitution if the wording is the same . . .

In re Advisory Opinion to the Governor, 112 So.2d 843, 847 (Fla.1959). More recently, the above rule was applied as follows:

> It is generally presumed that the construction of an old constitution continues to be applicable to a new one if the language is the same, but where a word in an amendment or re-enactment of a constitution is omitted, the omission should be presumed to have been intentional. (In re Advisory Opinion to the Governor, Sup.Ct.Fla.1959, 112 So.2d 843) The general principles applicable to statutory construction are also applicable to the construction that in making material changes in the language of a statute, the legislature is presumed to have intended some objective or alteration of the law, unless the contrary is clear from all the enactments on the subject. [citations omitted] Application of the foregoing principles to the constitutional provisions here under consideration gives rise to a presumption that the framers of our present Constitution intended to effect some change in meaning when they made the changes above mentioned.

Swartz v. State, 316 So.2d 618, 621 (Fla.1st DCA 1975).

Applying the above principles to the changes in Article V, it is clear that W.A.M. was incorrectly decided. The court in W.A.M. apparently chose an end without due regard to the means. The end chosen, namely, that the state should have the right to appeal a final order in juvenile cases, was achieved by the means of subjective belief, rather than application of sound axioms of constitutional construction, and without regard for the principle that the state's right to appeal is statutory. That end, if desirable, must have

the legislature as the means, unless the constitution expressly confers a new right upon the state never heretofore recognized.

The starting point for the analysis of the issue of constitutional construction presented here is ordinarily whether there is a difference in the language between the two provisions. Not only is there a difference, but W.A.M noted that the change in language was "substantial." Id. Because the wording is substantially changed, the construction of the older provision does not apply. In re Advisory Opinion to the Governor, supra; Swartz v. State, supra. Instead, the change in language must be presumed to have been intentional. Id.

One logical explanation for the change in language from: "appeals . . . may be taken . . . as a matter of right", to: the district courts of appeal shall hear "appeals, that may be taken as a matter of right", is that the latter new language requires a source for the appeals outside the constitutional provision. This change in language negates the petitioner's contention that the new language is "self-executing." The source outside the constitution can only be statutory. Therefore, the change in language can be interpreted as returning the law to its previous status -- appeals are to be provided by the legislature.

An equally (and perhaps more) plausible explanation for the wording of Article V in 1956 and its change in 1972 is that in neither case was there an intention to allow the state to appeal juvenile orders for the reasons, both

historical and practical, stated in the outset of this argument, and analyzed in the Waterman case.

R.J.B. v. State, 408 So.2d 1048 (Fla.1982), does not hold to the contrary. In that case, no authority was found for appellate review of juvenile waiver orders which, unlike the order sub judice, are interlocutory. R.J.B. noted that Article V, § 4(b)(1), provides that district courts of appeal "may review interlocutory orders in such cases to the extent provided by rules adopted by the supreme court." Because this Court has not adopted any such rules, no appellate review is allowed. Id., at 1050. R.J.B. does not hold, as the petitioner contends, that Chapter 39 does not govern appellate proceedings in juvenile cases. Brief of Petitioner at 17.

The change in language from 1956 to 1972 would also seem to answer the petitioner's interpretation of Crownover v. Shannon, 170 So.2d 299 (Fla.1964). Crownover was decided under the 1956 amendment, and is therefore distinguishable. Moreover, the state was not a party in the Crownover case, a civil case which in no way addressed or questioned the validity of the legislature's prohibition in Chapter 39 of the state's right to appeal juvenile court orders.

Crownover has been read by the petitioner and the W.A.M. court, without regard to the specific and distinguishing facts of the case, as allowing all parties the right to appeal by virtue of Article V. Although there is language in Crownover that is susceptible to that broad interpretation, post-Crownover decisions have retained the rule that the right to appeal is statutory. See Clement v.

Aztec Sales, Inc., 297 So.2d 1 (Fla.1974); State v. Brown, supra; Balikes v. Speleos, supra; State v. I.B., 366 So.2d 186 (Fla.1st DCA 1979). Even Crownover went to great lengths in its discussion of the applicable statutes (§924.10, in particular) and prior decisions, thereby recognizing the vitality of the statutes conferring appellate rights. Otherwise, Crownover would have simply invalidated the statutorty limitations on constitutional grounds. Thus, the reading given Crownover by the petitioner and W.A.M. is overly broad.

W.A.M. is an unprecedented break from settled Florida law. If the state has a constitutional right to appeal final orders in juvenile cases, then it would follow that it has a constitutional right to appeal criminal final orders because the source of authority would provide no basis for distinction. However, neither before nor after Crownover has this Court directly addressed the state's right to appeal a criminal case order in other than statutory terms. See e.g., State ex rel. Sebers v. McNulty, 326 So.2d 17, 18 n.2 (Fla.1975); Carroll v. State, 251 So.2d 866, 870 (Fla.1971); Jenkins v. Lyle, 223 So.2d 740 (Fla.1969); State v. Diamond, 188 So.2d 788 (Fla.1966); State v. Shouse, 177 So.2d 724, 728 (Fla.1965); State v. McInnes, 147 So.2d 519, 529 (Fla.1963); State v. Schroeder, 112 So.2d 257, 259 (Fla.1959); State v. Frear, 20 So.2d 481 (Fla.1945). See also, Commentary to Florida Rule of Appellate Procedure 9.140, providing that the provisions of the rule for state appeals track § 924.07, Florida Statutes (1975).

Under the then "broader" language of the 1956 amendment, this Court held in State v. Harris, 136 So.2d 633, 634 (Fla.1962):

> While the legislature cannot limit the constitutionally conferred authority of this Court to entertain petitions for certiorari, we have no doubt that it can restrict the state in seeking review by certiorari of adverse decisions in criminal cases just as it has limited its right to appeal through Sec. 924.07.

See also, State v. Matera, 378 So.2d 1283, 1286-87 (Fla.3d DCA 1980)(". . . those doors open to the State in initiating appellate review are limited to a specific set of circumstances, see Sections 924.07 and 924.071 Florida Statutes (1977), and Fla.R.App.P. 9.140(c) . . . ").

Florida courts have also recognized that the state has no right to appeal from a judgment of acquittal. Watson v. State, 410 So.2d 207, 208 n.2 (Fla.1st DCA 1982); State ex rel. Bludworth v. Kapner, 394 So.2d 541, 543 (Fla.2d DCA 1981); State v. Bale, 345 So.2d 862 (Fla.2d DCA 1977); State v. Budnick, 237 So.2d 825 (Fla.2d DCA 1970), cert. denied, 240 So.2d 638 (Fla.1970). Because there is no longer a per se federal constitutional double jeopardy bar to state appeals from judgments of acquittal, United States v. Scott, 437 U.S. 82, 98 S.Ct. 2187, 57 L.Ed.2d 65 (1978), the effect of W.A.M. would be the unprecedented right of the state to appeal a judgment of acquittal in Florida because such a judgment is final.

The juvenile/respondent urges this Court to follow the overwhelming weight of authority that the right of the state to appeal must be left to the legislature. Accord, State v.

C.C., ___ So.2d ___ (Fla.3d DCA Case No. 82-2564, opinion filed March 24, 1983)(Schwartz, C.J., concurring).

D. Common law certiorari. [Second Issue Presented for Review]

The Third District opined that common law certiorari is not available to the state for review of final orders in juvenile cases. As authority therefor, the court cited Nellen v. State, 226 So.2d 354 (Fla.1st DCA 1969), Lee v. State, 374 So.2d 1094 (Fla. 4th DCA 1979), and Florida Rule of Appellate Procedure 9.030(b)(2)(B), the latter of which provides:

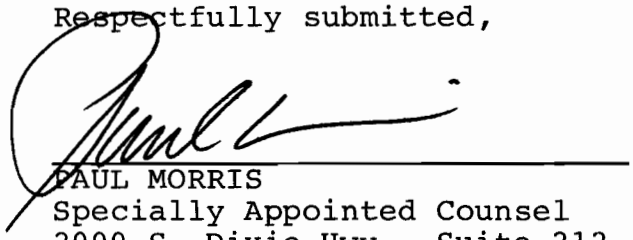
> (2) Certiorari Jurisdiction. The certiorari jurisdiction of district courts of appeal may be sought to review
> (A) non-final orders of lower tribunals other than as a prescribed by Rule 9.130;
> (B) final orders of circuit courts acting in their review capacity.

Finding that the district courts could not entertain state appeals in juvenile cases, the Third District, citing the proposition that "[w]here the court has a jurisdictional limitation to the consideration of the appeal from a final judgment . . . certiorari cannot be used to circumvent that limitation", State v. G.P., supra, 429 So.2d at 789 [citations omitted], the court concluded that common law certiorari is not available to the state for review of final orders entered in juvenile court. The respondent respectfully adopts the reasoning of the Third District.

CONCLUSION

Based upon the foregoing, the respondent requests that the decision of the Third District be approved.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed to Calianne P. Lantz, Office of the Attorney General, 401 N.W. 2nd Avenue, Suite 820, Miami, Florida 33128, this 24th day of August, 1983.

PAUL MORRIS