IN THE SUPREME COURT OF FLORIDA

J.P.W., A Child, et. al.,	)	
	)	
Petitioners,	)	CASE NO. 63,981
	)	
v.	)	
	)	
STATE OF FLORIDA,	)	
	)	
Respondent.	)	
	)	
	)	

RESPONDENT'S ANSWER BRIEF

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OTHER AUTHORITIES:

STATEMENT OF THE CASE AND FACTS

Respondent accepts the statement of the case and facts as presented in Petitioner's Initial Brief and adopts his Preliminary Statement as well.

POINTS ON APPEAL

POINT I

WHETHER THE PROVISIONS OF ARTICLE V, SECTION 4(b)(1) OF THE FLORIDA CONSTITUTION (1980) ARE SELF-EXECUTING SO AS TO AFFORD THE STATE THE RIGHT TO APPEAL FROM A FINAL JUDGMENT IN A JUVENILE PROCEEDING THE SAME AS ANY OTHER PARTY LITIGANT EXCEPT WHERE AN APPEAL WOULD BE FUTILE UNDER APPLICABLE PRINCIPLES OF DOUBLE JEOPARDY?

POINT II

WHETHER THE DISTRICT COURT OF APPEAL MAY UTILIZE THE COMMON LAW WRIT OF CERTIORARI TO REVIEW THE FINAL JUDGMENT ASSUMING THE ELEMENTS OF THE WRIT ARE SATISFIED?

ARGUMENT

POINT I

THE PROVISIONS OF ARTICLE V, SECTION 4(b)(1) OF THE FLORIDA CONSTITUTION (1980) ARE SELF-EXECUTING SO AS TO AFFORD THE STATE THE RIGHT TO APPEAL FROM A FINAL JUDGMENT IN A JUVENILE PROCEEDING THE SAME AS ANY OTHER PARTY LITIGANT EXCEPT WHERE AN APPEAL WOULD BE FUTILE UNDER APPLICABLE PRINCIPLES OF DOUBLE JEOPARDY.

The State asserts that the Fourth District Court of Appeal sub judice was correct in following the opinion in State v. W.A.M., 412 So. 2d 49 (Fla. 5th DCA), Pet. For Review Denied, 419 So. 2d 1201 (Fla. 1982), holding that the State has a constitutional right of appeal from an order discharging the juvenile on speedy trial grounds. Article V, Section 4(b)(1), Florida Constitution (1972), provides in pertinent part:

> 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 the trial courts, including those entered on review of administrative action, not directly appealable to the Supreme Court or a circuit court. They may review interlocutory orders in such cases to the extent provided by rules adopted by the Supreme Court. (emphasis supplied)

In the view of the Fourth District Court of Appeal as well as Respondent, if the section emphasized above does not create a right of appeal, the language would then appear to be mere surplusage. Presumably those words however were chosen for the purpose of accomplishing some object. It is a fundamental rule of constitutional construction that a construction

of the constitution which renders superfluous, meaningless or inoperative any of its provisions should not be adopted by the courts. Construction of the constitution is favored which gives effect to every clause and every part thereof. Burnsed v. Seaboard Coastline Railroad Company, 290 So. 2d 13, 16 (Fla. 1974). Consequently, it is Respondent's position that the phrase emphasized above in Article V of the constitution is not mere surplusage but does create a right of appeal. Moreover, Respondent would point out that this Court has expressed its preference for interpreting such provisions of the constitution as self-executing where there is a choice, for such construction avoids the occasion by which the people's will may be frustrated. Gray v. Bryant, 125 So. 2d 846, 852 (Fla. 1960).

In W.A.M., the Fifth District cited Crownover v. Shannon, 170 So. 2d 299 (Fla. 1964) for the constitutional interpretation of the predecessor article to the one at issue. (i.e. Article V, §5 Fla. Const. 1956) The Fifth District reasoned that the new article as well as the old granted a right of appeal as a matter of course which was not dependent on legislation for implementation. In Crownover, it was said:

> The right to appeal from the final decisions of trial courts to the Supreme Court and to district courts of appeal has become a part of the constitution and is no longer dependent on statutory authority or subject to be impaired or abridged by statutory law.

In addition to the fact that Respondent maintains that the provisions of Article V, §4(b)(1) are self-executing, Respondent also maintains that there is statutory authority for the State to obtain review of a final order discharging an individual in a juvenile proceeding. Section 924.05, Florida Statutes defines "appeal as a matter of right" as "appeals provided for in this chapter are a matter of right." Section 924.07(1), Florida Statutes allows the State to appeal from an order dismissing an indictment or information any count thereof. Respondent submits that a petition for adjudication of delinquency is a charging document and is sufficiently analogous to an information for purposes of a state appeal. Respondent would ask the court to compare Fla. R. Juv. P. 8.110 and Fla. R. Crim. P. 3.140 to see that they are sufficiently analogous.

Section 925.08(2), Florida Statutes, confers jurisdiction on the courts of appeal to hear appeals from final judgments in all cases in which the circuit court has original jurisdiction except those which may be directly appealed to the Supreme Court Section 39.02 Florida Statutes confers exclusive original jurisdiction on the circuit courts in proceedings in which a child is alleged to have committed a delinquent act or violation of the law. By reading these statutes in pari materia, it seems clear that the district courts do have statutory authority to hear appeals from final orders in juvenile cases.

Petitioner has asserted that Section 39.14, Florida Statutes (1981), authorizes an appeal only if brought by any

child and any parent or legal custodian of any child. The Respondent submits that said section does not limit the right of the State to appeal "as a matter of right" but merely emphasizes and clearly sets forth to the juvenile, his parents or legal guardian what his rights of appeal are.

The assertion that Section 39.14(1), Florida Statutes, which provides for an appeal by the juvenile but which is silent with respect to an appeal by the State, implies that the State has no right to appeal is negated by this Court's decision in R.J.B. v. State, 408 So. 2d 1048 (Fla. 1982). In R.J.B. this Court held that chapter 39 does not govern the juvenile's right to appeal.

Respondent submits that to interpret the statutory provisions as Petitioner suggests is illogical and in disregard of the constitution itself. Respondent submits that to hold that the State has no right to appeal the dismissal of a juvenile petition for adjudication of delinquency would be counter to the checks and balances inherent in our system of jurisprudence. The ramifications of such a holding would lead to the result that trial judges could dismiss petitions for any reason thus denying the State its ability to prosecute juveniles. Interestingly, in all three cases now before the Court, the juveniles have conceded that their discharge was improper under the circumstances.

Petitioner relies on State v. C.C., et al., ___ So. 2d ___ (Fla. 3rd DCA, Case Nos. 81-2564, 82-666, 82-797, 82-

1825, op. filed March 24, 1983) (en banc rehearing held May 10, 1983, no opinion yet issued) and particularly on the special concurrence of Judge Schwartz in that case finding that Fla. R. App. P. 9.140(c) concerns only appeals from non-final orders in "criminal cases . . ." He further states, "as we have seen, however, 'criminal' cases do not include juvenile proceedings." However, while juvenile proceedings are neither completely civil nor criminal in nature, there has been recognition by this Court that Fla. R. App. P. 9.140 governs appeals in juvenile proceedings. In the Interest of R.J.B., et al., v. State, 408 So. 2d 1048 (Fla. 1982). Additionally, Respondent does not agree with Judge Schwartz that the logical extension of allowing the State to appeal a final order of discharge in a juvenile proceeding would grant the State the right to appeal a final judgment of acquital in a criminal case. Both Section 924.07, Florida Statutes and Rule 9.140(c) Fla. R. App. P. place specific limitations on the State's right to appeal and there could be no "logical extension" beyond what is constitutionally permissible and statutorily permissible.

Respondent would suggest that this Court affirm the opinion of the Fourth District Court of Appeal sub judice and the opinion of the Fifth District Court of Appeal in State v. W.A.M., 412 So. 2d 49 (Fla. 5th DCA 1982), holding that the State does have the right to obtain review of a final order discharging an individual in juvenile proceedings for a violation of his right to speedy trial.

Finally Respondent would note that this Court has already ruled against the contention that the State has no right to appeal in R.A. v. Gavin K. Letts, Case No. 62,380. In that case a defendant sought a prohibition against Judge Letts and the Fourth District Court of Appeal to prohibit that court from entertaining a State appeal in a juvenile case. Since the Respondent, Judge Letts, answered only on the merits, it is apparent that this Court ruled on the merits when it denied the suggestion for writ of prohibition.

POINT II

THE DISTRICT COURT OF APPEAL MAY UTILIZE THE COMMON LAW WRIT OF CERTIORARI TO REVIEW THE FINAL JUDGMENT ASSUMING THE ELEMENTS OF THE WRIT ARE SATISFIED.

Respondent urges the Court to affirm the holding of the Fourth District Court of Appeal sub judice finding that even if an appeal were not available to the State in the instant proceedings, the State would nonetheless have the ability to petition for certiorari. In so finding, the Fourth District recognized the contrary holding in State v. G.P., ___ So. 2d ___ (Fla. 3rd DCA, Case No. 82-1357, op. filed April 12, 1983, rev. granted, Case No. 63,613). However, the Fourth District Court of Appeal specifically pointed out where the G.P. court erred and finds authority for common law certiorari review in Rule 9.030(b)(3) Fla. R. App. P. which provides that:

> Original jurisdiction.
>
> District courts of appeal may issue writs of mandamus, prohibition. Quo warranto, common law certiorari and all writs necessary to the complete exercise of the court's jurisdiction; or any judge thereof may issue writs of habeas corpus returnable before the court or any judge thereof, or before any circuit judge within the territorial jurisdiction of the court. (emphasis added).

Respondent maintains that the opinion of the Fourth District Court of Appeal finding that certiorari does lie in the instant case is well reasoned and should be approved by this Court.

CONCLUSION

WHEREFORE, based on the foregoing arguments and authorities cited therein, Respondent respectfully requests that this Honorable Court AFFIRM the opinion of the lower court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Answer Brief has been furnished to ANTHONY CALVELLO, ESQUIRE, Assistant Public Defender, 224 Datura Street, 13th Floor, West Palm Beach, Florida 33401 by mail/courier this 30th day of August, 1983.

OF COUNSEL