IN THE SUPREME COURT OF FLORIDA

CASE NO. 64,354

THE STATE OF FLORIDA,

Petitioner,

vs.

C.C., E.V., C.A.Q., A.M.E.
and S.E., juveniles,

Respondents.

* *

ON PETITION FOR DISCRETIONARY REVIEW

* *

BRIEF OF PETITIONER ON THE MERITS

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INTRODUCTION

Petitioner was the prosecution in the juvenile proceedings at trial and the appellant in the appellate proceedings below. Respondents were the defendants in the juvenile proceedings at trial and the appellees in the appellate proceedings below.

Citations to the record are abbreviated as follows:

(R) - Circuit Court Clerk's Records on Appeal

(T) - Circuit Court Transcripts of Proceedings in trial court

(A) - Appendix attached hereto containing district court's opinions.

STATEMENT OF JURISDICTION

Petitioner, the State of Florida, invokes the discretionary jurisdiction of the Supreme Court of Florida on the following question certified by the Third District Court of Appeal to be of great public importance (A:1):

> "Whether the state has the authority to file plenary or interlocutory appeals in juvenile cases?"

In addition, petitioner invokes the discretionary conflict jurisdiction of the Supreme Court of Florida to review the en banc decision of the Third District Court of Appeal rendered September 27, 1983, which expressly and directly conflicts with the following decisions of several other courts of appeal on the same questions of law:

State v. W.A.M., 412 So.2d 49 (Fla. 5th DCA 1982), rev. denied 419 So.2d 1201 (Fla. 1982)[right of state to appeal in juvenile cases]

State v. J.P.W., 433 So.2d 616 (Fla. 4th DCA 1983)[petition for review pending in Supreme Court of Florida, Case No: 63,981)[right of state to appeal juvenile cases and right of state to petition for certiorari in juvenile cases]

State v. Horvatch, 413 So.2d 469 (Fla. 4th DCA 1982) [right of state to petition for certiorari to review pretrial rulings]

State v. Steinbrecher, 409 So.2d 510 (Fla. 3d DCA 1982) [right of state to petition for certiorari to review pretrial evidentiary ruling]

State v. Farmer, 384 So.2d 311 (Fla. 5th DCA 1980) [right of state to petition for certiorari to review nonappealable order]

State v. I.B., 366 So.2d 186 (Fla. 1st DCA 1979)[right of state to petition for certiorari to review non-appealable pretrial order]

State v. Gibson, 353 So.2d 670 (Fla. 2d DCA 1978)[right of state to petition for certiorari to review non-appealable order]

STATEMENT OF THE CASE AND FACTS

This case involves four separate state appeals from juvenile cases. Two of these cases, C.C. and C.A.Q., involve state appeals from interlocutory orders; C.C. involves an order suppressing the juvenile's confession and C.A.Q. involves an order granting the juvenile's motion to suppress physical evidence. The remaining two cases, E.V. and A.M.E. & S.E., involve state appeals from final orders; E.V. concerns an order dismissing the juvenile case on double jeopardy grounds and A.M.E. & S.E. concern an order granting the juvenile's motion to dismiss the petition for delinquency for failure to allege all the essential elements of the crime charged. All four of these juvenile cases were brought in the Eleventh Judicial Circuit, Dade County, Florida.

A statement of the pertinent facts and procedural history of each of the four juvenile cases is as follows:

(1) State v. C.C., 3d DCA Case No. 81-2564
Cir. Ct. Case No: 81-05616

A petition for delinquency was filed on September 9, 1981, charging the juvenile with burglary of a structure and grand theft. (R:2) The juvenile filed a motion to suppress his confession on the grounds that it was involuntary and the trial court granted the motion. (R:3-5, 9) The state then appealed the trial court's order to the Third District Court of Appeal. (R:13) The state filed its initial brief and the juvenile then filed a motion to dismiss the appeal

claiming there was no constitutional or statutory authority for the state to appeal orders granting motions to suppress in juvenile cases.

(2) State v. E.V., 3d DCA Case No. 82-666
Cir. Ct. Case No: 81-06813

A petition for delinquency charging the juvenile with the commission of a battery was filed on November 23, 1981. (R:2` During the adjudicatory hearing held on this charge the trial judge declared a mistrial due to bias on the part of the trial judge and ordered the case transferred to another judge. (T:17-18; R:11) The juvenile then moved to bar the new adjudicatory hearing before the new judge on double jeopardy grounds and the new trial judge granted the motion. (T:25; R;18) The state then appealed this order to the Third District Court of Appeal and filed its initial brief. The juvenile filed an answer brief on the merits, then filed a motion to dismiss the state's appeal on the grounds there was no authority for the state to appeal an order dismissing a juvenile case.

(3) State v. C.A.Q., 3d DCA Case No: 82-797
Cir. Ct. Case No: 82-00146

A petition for delinquency was filed on January 8, 1982, charging the juvenile with possession of methaqualone. (R:1) The juvenile filed a motion to suppress the methaqualone on the grounds that the investigatory stop of the juvenile was illegal and the seizure of the methaqualone was illegal. (R:3-4, 13-16) The trial court granted the motion

and suppressed the evidence. (T:31) The state then appealed the order to the Third District Court of Appeal and filed its initial brief. The juvenile filed an answer brief on the merits, then filed a motion to dismiss on the grounds that there was no authority for the state to appeal an order granting a motion to suppress in a juvenile case.

(4) State v. A.M.E. & S.E., 3d DCA Case No: 82-1825
Cir. Ct. Case No: 82-04095

On July 19, 1982, the state filed petitions for delinquency charging two juveniles with the crime of resisting an officer without violence. (R:7, 16) The juveniles filed a motion to dismiss the petitions for failing to allege all the essential elements of the crime charged. (R:5-6) The trial judge granted the motion and dismissed the petitions. (R:7) The state then appealed the order to the Third District Court of Appeal and filed its initial brief. The juveniles filed a motion to dismiss the appeal claiming there was no constitutional or statutory authority for the state to appeal orders dismissing petitions for delinquency in juvenile cases.

As noted in each of the four state appeals the juvenile defendants filed a motion to dismiss in the Third District claiming the state had no constitutional or statutory right to appeal final orders or interlocutory orders from juvenile cases. Although there is no formal order consolidating these cases, the Third District considered all four cases

together for purposes of the motions to dismiss. The Third District issued an opinion on the motions to dismiss on March 24, 1983. The court held that since the state's right to appeal is purely statutory and since Chapter 39 of the Florida Statutes, the Florida Juvenile Justice Act, contains no provision authorizing an appeal by the state, there was no statutory right for the state to appeal orders in juvenile cases. (A:2) The court also expressly disagreed with the decision of the Fifth District Court of Appeal in State v. W.A.M., 412 So.2d 49 (Fla. 1982), review denied 419 So.2d 1201 (Fla. 1982) insofar as that decision found a constitutional right of appeal in the state. (A:2) And finally, the court found that the state had no right to take interlocutory review because Article V, §4(b)(1) of the Florida Constitution permits interlocutory review only in cases in which appeal may be taken as a matter of right. (A:2) The concurring opinion elaborated on the reasoning behind the majority opinion and also stated that, contrary to the suggestion in State v. D.C.W., 426 So.2d 971, n.1 (Fla. 4th DCA, 1982)[petition pending in Supreme Court of Florida, Case No: 62,633], since the state appeals in juvenile cases were unauthorized, the notices of appeal could not be treated as petitions for certiorari. (A:3) The Third District then granted all four motions to dismiss. (A:2)

The state then filed a timely motion for rehearing and motion for rehearing en banc. The Third District granted rehearing en banc and heard oral argument en banc on June 14, 1983. On September 27, 1983, the Third District issued its opinion en banc. (A:4-6) The en banc panel split five to four with five judges adhering to the original majority and concurring panel opinion as the en banc opinion, and with four judges dissenting. (A:4-6) The dissenting opinion adopted the holding and reasoning of State v. W.A.M., 412 So.2d 49 (Fla. 5th DCA 1982) review denied 419 So.2d 1202 (Fla. 1982) and State v. J.P.W. 433 So.2d 616 (Fla. 4th DCA 1983), which hold that the state has a constitutional right to appeal final orders in juvenile cases. (A:6) In addition, the dissenting opinion found that this Court's decision in R.J.B. v. State, 408 So.2d 1048 (Fla. 1982) made it clear that Rule 9.140, Fla.R.App.P. is applicable to juvenile proceedings, permitting such interlocutory appeals by the state. (A:6)

SUMMARY OF ARGUMENT

The en banc decision of the Third District Court of Appeal in the instant case[1] held that since the state's right to appeal is purely statutory and because no legislative authorization for review of final orders in juvenile cases exists, the state has no right to appeal final judgments or orders in juvenile cases. The decision specifically found that neither the Florida Juvenile Justice Act, chapter 39 of the Florida Statutes, nor chapter 924 of the Florida Statutes governing appeals in criminal cases contain any provisions authorizing an appeal by the state in juvenile cases. The decision also expressly rejected the contention that Article V, §4(b)(1) of the Florida Constitution provided the state a constitutional right to appeal final orders entered against it.

In addition, the Third District's decision held that the state also has no right to appeal interlocutory orders in juvenile cases because pursuant to Article V, §4(b)(1) of the Florida Constitution, interlocutory review may be had only in those cases in which an appeal may be taken as a matter of right. Since the state may not take an appeal of a juvenile final order as a matter of right (but only when statutorily authorized), the state likewise may not appeal interlocutory orders in juvenile cases. The court further noted that the Florida Supreme Court has not yet adopted

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[1]The en banc decision of the Third District adopts the majority and concurring opinions of the three-judge panel as the en banc opinion. (A:5-7)

any rules pursuant to Article V, §4(b)(1) for state review of interlocutory orders in juvenile cases. According to the Third District, the state cannot turn to Rule 9.140(c), Fla.R.App.P., for the right to appeal interlocutory orders because Rule 9.140 concerns only appeals in non-final orders in criminal cases, and juvenile cases are not criminal.

And finally, the Third District determined that since the state cannot avail itself of appellate review of juvenile orders, the state also may not seek certiorari review of juvenile orders by treating otherwise unauthorized notices of appeal as petitions for certiorari.

The state's position is that the state has both a constitutional right to appeal final orders in juvenile cases pursuant to Article V, §4(b)(1) of the Florida Constitution and a statutory right to appeal final orders pursuant to §924.07 and §924.071, Fla.Stat. (1981), and that the state has a constitutional right to appeal interlocutory orders through Rule 9.140(c) promulgated by the Florida Supreme Court pursuant to Article V, §4(b)(1) of the Florida Constitution. Furthermore, even if this Court were to decide that no constitutional or statutory right exists to allow the state to appeal either final orders or interlocutory orders in juvenile cases, the state submits the district court has certiorari jurisdiction and may issue writs of common law certiorari to review these orders. The state will address each of these issues separately.

ARGUMENT

I

THE STATE HAS THE CONSTITUTIONAL RIGHT TO APPEAL FINAL ORDERS ENTERED AGAINST IT IN JUVENILE CASES PURSUANT TO ARTICLE V, §4(b)(1) OF THE FLORIDA CONSTITUTION, AND THE STATUTORY RIGHT TO APPEAL FINAL ORDERS IN JUVENILE CASES PURSUANT TO CHAPTER 924 OF THE FLORIDA STATUTES.

A. CONSTITUTIONAL RIGHT TO APPEAL FINAL ORDERS

The state first submits it has a constitutional right to appeal final orders and judgments entered against it in juvenile cases pursuant to Article V, §4(b)(1) of the Florida Constitution.[2] Article V, §4(b)(1) provides in pertinent part:

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

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[2]In addition to this current provision of the Florida Constitution, the predecessor provision, Article V, §3, of the 1956 Constitution also provided the state with the same right:

> 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. (emphasis supplied)

It is the emphasized language "that may be taken as a matter of right" on which the juvenile defendants base their argument that the right to appeal is a substantive right which is determined by the legislature, not a constitutional right. In C.C., the Third District suggested that while this clause arguably conferred a constitutional right of appeal from final jdugments and orders in civil cases, the clause did not grant such a right to appeal to the state in the exercise of its law enforcement functions in criminal cases.

The basic issue is whether this provision is self-executing or whether a statute enumerating the appeals that may be taken as a matter of right is necessary to "breathe life" into the provision. The test to determine whether a constitutional provision is to be construed as self-executing is whether the provision "lays down a sufficient rule by means of which the right or purpose which it gives or is intended to accomplish may be determined, enjoyed, or protected without the aid of legislative enactment." Gray v. Bryant, 125 So.2d 846, 851 (Fla. 1960); If the provision lays down a sufficient rule, it speaks for the entire people and is self-executing. Id., at 851. See e.g., State ex rel. Citizens Proposition for Tax Relief v. Firestone, 386 So.2d 561, 566 (Fla. 1980); Plante v. Smathers, 362 So.2d 933, 937 (Fla. 1979); Williams v. Smith, 360 So.2d 417, 420 (Fla. 1978); Alsdorf v. Broward County, 333 So.2d 457, 459 (Fla.

1976); Schreiner v. McKenzie Tank Lines & Risk Management Services, Inc., 408 So.2d 711, 714 (Fla. 1st DCA 1982). In Gray v. Bryant, this Court noted that the will of the people is paramount in determining whether a constitutional provision is self-executing and the modern doctrine favors the presumption that constitutional provisions are intended to be self-operating. 125 So.2d at 851. As this Court explained, in the absence of such presumption the legislature would then have the power to statutorily nullify the will of the people expressed in their constitution, "the most sacrosanct of all expressions of the people." Id., at 851.

Recent cases from the Third, Fourth and Fifth Districts have addressed this issue and concluded that the questioned constitutional provision is self-executing so that no enabling or implementing clause or statutory authority is necessary to breathe life into it. State v. G.P., 429 So.2d 786, 787 (Fla. 3d DCA 1983); State v. J.P.W., 433 So.2d 616, 619 (Fla. 4th DCA 1983); State v. W.A.M., 412 So.2d 49 (Fla. 5th DCA 1982), rev. denied 419 So.2d 1201 (Fla. 1982). The first case to address this issue was State v. W.A.M. wherein the court concluded that the state had a constitutional right to appeal from final orders in juvenile cases.

In W.A.M., the Fifth District examined the disputed language of the constitution, "that may be taken as a matter of right," and observed, as did the Fourth District a year later in State v. J.P.W., that the language could be read

to imply that the authority to take appeals as a matter of right must be found in statutory law. However, the court in W.A.M. then examined the history of the constitutional provision and determined that the language did not mean the right to appeal final decisions must be found in statutory law so that absent such a statutory enactment there was no right to appeal final judgments or orders. Instead, the court pointed out that the predecessor constitutional section to the current provision in the Florida Constitution clearly described the jurisdiction of the district courts of appeal as a corollory of a grant of the right to appeal final judgments and orders. The court further noted that the Florida Supreme Court in Crownover v. Shannon, 170 So.2d 299 (Fla. 1964), held that the former constitutional provision granted a right to appeal from final decisions as a matter of course. In Crownover, the Supreme Court stated:

> "The right to appeal from the final decisions of trial courts to the Supreme Court and to the District Courts of Appeal has become a part of the Constitution and is no longer dependent on statutory authority of subject to be impaired or abridged by statutory law, but of course subject to rules promulgated by the Supreme Court regulating the practice and procedure." Id., at 301.

The Fifth District then held that despite the difference in language between the two constitutional provisions, there was no intent to eliminate the right to appeal final judgments and orders in juvenile cases. Accord, State v. A.N.F., 413 So.2d 146, 147 (Fla. 5th DCA 1982).

The same conclusion was reached by two other recent cases, State v. G.P., 429 So.2d 786 (Fla. 3d DCA 1983) and State v. J.P.W., 433 So.2d 616 (Fla. 4th DCA 1983), both of which are now pending review by this Court. In G.P., the Third District found that the constitutional provision, "that may be taken as a matter of right," was self-executing and agreed with the Supreme Court's statement in Crownover v. Shannon, 170 So.2d 299 (Fla. 1964) that the state had a constitutional right to appeal final orders. Id., at 787.[3]

In J.P.W., the Fourth District noted that to treat the instant constitutional provision, "that may be taken as a matter of right," as limiting the appeal jurisdiction of the district courts to those situations in which there is a right of appeal under general or statutory law would be meaningless and superfluous since it would be "the

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[3]Although the court in G.P. agreed the constitutional provision afforded the state a constitutional right of appeal of adverse final orders, the court ultimately reached a decision contrary to W.A.M. on the grounds that it was compelled by Hoffman v. Jones, 280 So.2d 431 (Fla. 1973), to follow the Supreme Court's earlier decision in Whidden v. State, 159 Fla. 691, 32 So.2d 577 (Fla. 1947), holding the right of the state to appeal from final judgments in criminal cases was entirely statutory.

The State submits that the court in G.P. misapplied Whidden. Whidden is not applicable to the current self-executing provisions of Article V, §4(b)(1) of the Florida Constitution as Whidden was decided in 1947, prior to the establishment of district courts of appeal and prior to the 1956 and 1980 Florida Constitutions affording a party litigant the constitutional right of appeal from adverse final orders. Furthermore, the state submits that insofar as Whidden and State v. Brown, 330 So.2d 535 (Fla. 1st DCA 1976), also cited in C.C. and G.P., stand for the proposition that, unlike any other party litigant's, the State's right to appeal final orders is purely statutory, the two cases are in error.

equivalent to saying the court shall have jurisdiction to hear an appeal where there is a right to appeal but shall not have jurisdiction where there is no right to appeal." Id., at 619. The court continued that if it was indeed intended by the provision to limit the right of appeal to those circumstances authorized by statute, then the provision would have said so clearly. Id., at 619.

The State submits the court's reasoning in J.P.W. is directly supported by the very language of the second portion of the same constitutional provision which is not self-executing and which specifically states that the district courts of appeal may review interlocutory orders in such cases "to the extent provided by rules adopted by the supreme court." Article V, §4(b)(1). The instant clause stands in such direct contrast to the second clause concerning interlocutory orders that the only reasonable conclusion is that the clear difference was intended to be meaningful. Since it is a fundamental rule of constitutional construction that an interpretation which renders a provision superfluous, meaningless or inoperative should not be adopted by the courts, Burnsed v. Seaboard Coastline Railroad Co., 290 So.2d 13, 16 (Fla. 1974), construing the instant provision as a self-executing grant of the right of appeal of adverse final orders is a meaningful and reasonable construction fulfilling the intent of the framers.

Moreover, as the Third District pointed out in G.P.,

since the constitutional provision makes no distinction between the state's right to appeal and any other party litigant's, the state should enjoy the same rights as all others to appeal adverse final orders (with the obvious exception of the double jeopardy bar). 429 So.2d at 787. The Fourth District concurred with this view in J.P.W. and stated that it had "difficulty" with the view espoused in State v. C.C. that while this provision arguably confers a right of appeal in civil cases, the identical language means something else in criminal cases and does not confer such a right. 433 So.2d at 619. Simply stated, once the provision is construed so as to afford a party litigant the constitutional right to appeal final orders, the state must enjoy the same appellate rights as all other party litigants since the provision makes no distinction between plaintiff or defendant, civil or criminal.

The state's position that Article V, §4(b)(1) enumerates a constitutional right of appeal is supported by considerable case authority decided after the 1956 amendment to the Florida Constitution. In State v. Smith, 260 So.2d 489 (Fla. 1972), a first degree murder criminal case, this Court noted the distinction in the Florida Constitution between the right of appeal from final orders and from interlocutory orders and specifically stated that while the instant clause granted appellate review of final orders as a matter of right, the second clause requires promulgation of rules by

the Supreme Court providing for appellate review of interlocutory orders.[4] In so holding this Court stated:

> "Apellate review of any order or judgment entered by a trial court is not a right derived from the common law. The right of appellate review is derived from the sovereign ; i.e., the citizens of this State. By means of Article V of the Florida Constitution, the citizens have granted to a litigant as a matter of right appellate review of a final judgment." Id., at 490. (emphasis supplied).

Likewise, in Robbins v. Cipes, 181 So.2d 521 (Fla. 1966), a proceeding by certiorari to review an order of the district court which dismissed a petitioner's appeal for erroneously reciting that the order appealed from was recorded in the minute book instead of the chancery book, this Court quashed the district court's decision and reinstated the lower appeal, stating that under Article V, §5(3) and §4(2) of the Florida Constitution:

> "Appeals to the Supreme Court and the District Courts of Appeal are constitutionally guaranteed rights in this State. This being true, it is fundamental that statutes or rules regulating the exercise of such rights should be liberally construed in favor of the appealing party and in the interest of manifest justice." Id., at 522. (Emphasis supplied).

See also, City of Miami v. Murphy, 137 So.2d 825, 827 (Fla. 1962)(while Article V, §5(3) of the constitution provides

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[4]The constitutional provision referred to in Smith is the 1956 constitution, Article V, §3,the predecessor to the present Article V, §4(b)(1).

for a right of appeal as a matter of right, it does not thereby preclude provision for reasonable procedural requirements setting forth the manner and method by which the right may be exercised); Marshall v. State, 344 So.2d 646, 648 (Fla. 2d DCA 1977)(Florida Constitution guarantees convicted persons of the right of appeal); Carr v. State, 180 So.2d 381, 382 (Fla. 2d DCA 1965)(appeal by criminal defendant from judgment and sentence is a mater of right under Article V, §5(3) of the Florida Constitution); State v. Mims, 267 So.2d 52, 53 (Fla. 1st DCA 1972)(state has right to appeal final order granting discharge under speedy trial rule and such right to appeal is found in Article V, §5(3) of the Florida Constitution); Helker v. Gouldy, 181 So.2d 536 (Fla. 3d DCA 1966)(appeals to the supreme court and the district courts of appeal are constitutionally guaranteed rights in this state).

For the foregoing reasons, the state submits that Article V, §4(b)(1) is a self-executing provision providing party litigants, including the state in criminal and juvenile cases, with the right to appellate review of final orders and judgments of trial courts.[5] The state submits the

[5]The concern expressed in State v. C.C. that construing the constitutional provision to authorize state appeals of final orders in criminal and juvenile cases would afford the state the right to appeal from a final judgment of acquittal in a criminal case should be no bar to the state's position. See State v. J.P.W. 433 So.2d 616, 619 (Fla. 4th DCA 1983). Although Article V, §4(b)(1) would theoretically afford the state the right to appeal final judgments of acquittal, it is a fundamental rule of constitutional construction that

decisions of the Fourth District in J.P.W. and the Fifth District in W.A.M. are correct and urges this Court to adopt their sound reasoning and holdings.

B. STATUTORY RIGHT TO APPEAL FINAL ORDERS

Furthermore, even assuming the en banc decision of the Third District is correct and the right to appeal final judgments and orders in juvenile cases is not found in the constitution and can only be created by statutory enactment, such statutory authority does exist. Chapter 924 of the Florida Statutes governs appeals in all criminal cases and §925.05 provides that chapter 924 appeals are as a matter of right. Section 924.07(1) provides that the state may appeal final orders dismissing an indictment or information. Section 924.08(2) provides that appeals from final judgments in criminal cases which are not appealable to the Florida Supreme Court shall be to the district courts of appeal.[6]

in construing and applying provisions of the constitution the provisions must be considered in coordination with all other provisions, Burnsed v. Seaboard Coastline Railroad Co., 290 So.2d 13, 16 (Fla. 1974), here in conjunction with Article I, §9, providing that an accused shall not be twice put in jeopardy for the same offense.

[6]It should be noted that these statutory provisions do not prevent the provisions of Article V, §4(b)(1) from being self-executing. See Gray v. Bryant, 125 So.2d 846, 851 (Fla. 1960); Schreiner v. McKenzie Tank Lines & Risk Management Services, Inc. 408 So.2d 711 (Fla. 1st DCA 1982).

Although juvenile proceedings involve the filing of a petition for delinquency, as opposed to an indictment or information, the provisions concerning the juvenile charging document are sufficiently analogous to the provisions concerning adult charging documents for purposes of appeal under chapter 924. Compare, Rule 8.110, Fla.R.Juv.P. with Rule 3.140, Fla.R.Crim.P. A number of Florida cases have found that juvenile cases are to be treated as criminal appeals by virtue of the nature of the juvenile proceedings and the fact that orders of adjudication and commitment are analogous to orders of conviction and sentence. See, D.S.K. v. State, 396 So.2d 730 (Fla. 5th DCA 1981); In the Interest of D.J., 330 So.2d 34 (Fla. 4th DCA 1975).

Furthermore, it is a fundamental rule of statutory construction that a statute should be construed to give effect to the legislative intent, even if the result seems contradictory to the strict letter of the statute: the spirit of the law prevails over the letter. Garner v. Ward, 251 So.2d 252, 255 (Fla. 1971). In Whidden v. State, 32 So.2d 577 (Fla. 1947), this Court held that although affidavits charging petty offenses are not informations or indictments as described in §924.07(1), the statute was not to be read narrowly so as to thwart the intent of the legislature that the state be afforded a means to seek relief from an adverse

ruling dismissing a charging document. This Court then held that the state's right to appeal the dismissal of an affidavit charging a petty offense was within the purview of §924.07(1). Under this reasoning, then, it follows that there is no logical basis for strictly and literally construing the reference to "indictment or information" to exclude petitions for delinquency in juvenile cases, thereby foreclosing the state's statutory right of appeal in juvenile cases.

Moreover, although the Third District in C.C. correctly noted that §39.14 of the Florida Juvenile Justice Act, Fla.Stat (1981), does not specifically provide the state with the right to appeal in juvenile cases, this absence is irrelevant because chapter 39 of the Florida Statutes and §39.14 simply do not constitute the statutory authority governing the right to appeal in juvenile cases - either for the juvenile defendant or the state. Several decisions from this Court support the state's position that the right to appeal final orders in juvenile cases, whether appeals by the juvenile defendant or by the state, is found in chapter 924 of the Florida Statutes, not chapter 39.[7]

In R.J.B. v. State, 408 So.2d 1048 (Fla. 1982), this

[7]As a corollory, these decisions also support the state's position that the right to appeal interlocutory orders in juvenile cases, whether by the juvenile defendant or the state, is found in Rule 9.140 of the Florida Rules of Appellate Procedure. (see next section on right to appeal interlocutory orders).

Court considered whether a juvenile could appeal an interlocutory order of the juvenile court waiving juvenile jurisdiction and certifying the case to adult court. This Court found that the legislature did not intend that chapter 39 govern appellate proceedings in juvenile cases but merely provided that appeals by the juvenile defendant may be had within the time and manner prescribed by the appellate rules. This Court further noted that since the order was an interlocutory order, only the supreme court is authorized to provide for review. This Court then looked to the appellate rules governing a criminal defendant's right to appeal in criminal cases, Rule 9.140(b), to determine whether the juvenile defendant had the right to appeal the order. Rule 9.140 is entitled "Appeal Proceedings in Criminal Cases" and subsection (b) is entitled "Appeals by Defendant". Thus, even though this Court was dealing with a juvenile, as opposed to an adult criminal defendant, this Court looked to the appellate rules governing appeals by a defendant in a criminal case in order to determine whether a juvenile had the right to appeal an order from the juvenile court. Since the order was an interlocutory order and Rule 9.140(b) does not provide a defendant with the right to appeal interlocutory orders, the juvenile could not appeal the order waiving jurisdiction. The clear import of R.J.B. is that this Court determined that the rules governing a criminal defendant's right to appeal in criminal cases applied to juvenile cases as well.

Even though the order in R.J.B. is an interlocutory order, it is clear from the decision that Rule 9.140(b) would also govern the right of the juvenile defendant to appeal final judgments and illegal sentences. Otherwise it would mean that juveniles are to be considered criminal defendants for purposes of ascertaining the propriety of appealing interlocutory orders but not for purposes of appealing final orders, an unreasonable and nonsensical interpretation. And moreover, the logical extension of R.J.B. is that the state's right to appeal juvenile cases is governed by Rule 9.140(c), the companion to rule 9.140(b). The use of the title "criminal cases" should be no more of a bar to appeals by the state in juvenile cases than it is to appeals by the juvenile himself.[8]

Furthermore, there is no logical reason why the right of a juvenile defendant to appeal final judgments and orders and illegal sentences is not also governed by the identical legislative enactment in §924.06, Florida Statutes. Both Rule 9.140 and §924.06 are entitled "Appeals by Defendant" and both condition and restrict the manner in which appeals

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[8]The contention that §39.14(1) provides for an appeal by the juvenile but that the silence with respect to an appeal by the state implies the state has no right to appeal is directly negated by the supreme court's determination in R.J.B. that chapter 39 does not govern the juvenile's right to appeal. Furthermore, subsection (2) of §39.14 also does not limit the state's right to appeal in juvenile cases, but merely provides that the Department of Legal Affairs, as opposed to the Department of Health and Rehabilitative Services, the state agency involved in chapter 39, shall represent the state upon appeal.

may be taken by a criminal defendant as a matter of right to the district court. Likewise, the right of the state to appeal juvenile cases in 9.140(c) is found in a nearly identical legislative enactment, §924.07 of the Florida Statutes. Although §924.07 states that the defendant or the state may appeal in "criminal" cases, it is evident from this Court's decision in R.J.B. that the use of the term "criminal" is to distinguish the provisions from appeals in civil cases and not, as suggested by the Third District in C.C. to limit the right to appeal to only those cases that meet the criteria of "crime" set forth in §775.08, Florida Statutes.[9]

Section 775.08 only defines the term "crime" for purposes of classifying offenses for penalty purposes. Although violations of the law by juveniles are not treated as "crimes" but as acts of delinquency, State v. D.H., 340 So.2d 1163 (Fla. 1976), nothing in chapter 924 even suggests that its provisions are limited to the statutory classification of crimes pursuant to the penalty provisions of §775.08. For example, habeas corpus proceedings are not crimes within the framework of §775.08, yet there is no question the state may appeal a judgment discharging a prisoner on habeas corpus pursuant to §924.07(6). As previously noted, affidavits charging petty offenses are not

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[9]In fact, the original wording of §924.02 did not even use the word criminal and stated only that: "An appeal may be taken by the defendant or by the state." Laws, ch. 19554, §281 (1939).

informations or indictments as described in §924.07(1), yet this Court in Whidden v. State, 32 So.2d 577 (Fla. 1947) refused to read the statute narrowly and held that the state's right to appeal the dismissal of an affidavit charging a petty offense was within the purview of the statute.

The real question is not whether juvenile cases are "criminal", but whether the legislature intended that juvenile appeals, both by the juvenile defendant and by the state, be covered by chapter 924. The state submits that the legislature did so intend. The inclusion of juveniles within the ambit of chapter 924 does not in any way thwart the intent of the legislature in enacting the Juvenile Justice Act as a remedial measure since the provisions of chapter 924 concern appellate rights, not punishment. Construing "criminal" in chapter 924 to apply to the classification scheme of §775.08 would, however, thwart the intent of the legislature because it would prevent the state from appealing final orders which erroneously dismiss charging documents (as well as interlocutory orders which erroneously suppress evidence) and would prevent the state from returning the child to the juvenile system for the purpose intended by the legislature: rehabilitation and correction. See §39.001(1), Florida Statutes; State v. D.H. 340 So.2d 1163 (Fla. 1976). In the words of this Court in State v. D.H. the child will "slip through the cracks" with both the

child and society being the resultant losers.[10]

For the foregoing reasons, the State submits that chapter 924 entitles the state, as it does the criminal juvenile defendant, to appeal final orders entered against it in juvenile cases.

[10]In State v. D.H., 340 So.2d 1163 (Fla. 1976), this Court held that the common law presumption that a child between the ages of 7 and 14 is incapable of committing a crime had no place in Florida juvenile proceedings because its application would frustrate the remedial purposes of reformation intended by the legislature in passing chapter 39.

II

THE STATE HAS THE RIGHT TO APPEAL INTERLOCUTORY ORDERS IN JUVENILE CASES TO THE DISTRICT COURTS OF APPEAL PURSUANT TO RULE 9.140(c), FLA.R.APP.P., AS AUTHORIZED BY ARTICLE V, §4(b)(1) OF THE FLORIDA CONSTITUTION.

The Third District's decision in C.C. held that the that the state has no right to appeal interlocutory orders in juvenile cases because pursuant to Article V, §4(b)(1) of the Florida Constitution, interlocutory review may be had only in those cases in which an appeal may be taken as a matter of right. The court further noted that the supreme court had not yet adopted any rules pursuant to Article V, §4(b)(1) for state review of interlocutory orders in juvenile cases, and the state cannot avail itself of Rule 9.140(c), Fla.R.App.P., because that rule concerns only appeals in criminal cases, and juvenile cases are not criminal cases.

The state submits the Third District's decision is incorrect on all three points. With respect to the first holding, that interlocutory review may be had only in those cases in which an appeal may be taken as a matter of right, the state submits the Third District has misinterpreted the pertinent provision of the Florida Constitution. The provision of the constitution in question is contained in Article V, §4(b)(1), which provides in full 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, 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).

Since under this section the grant of the right to review interlocutory orders is provided as a corollory to the jurisdiction of the district courts of appeal, it is plain from the emphasized provision that the phrase "in such cases" refers not to those appeals that may be taken as a matter of right, but instead to appeals over which the district court - as opposed to the supreme court or circuit court - has jurisdiction. See, 3 Fla.Jur.2d, Appellate Review, §49. Since only district courts of appeal have jurisdiction to hear appeals from juvenile cases,[11] they may review interlocutory orders rendered in juvenile cases to the extent provided by rules adopted by the supreme court.

In this regard, the supreme court has adopted a rule pursuant to Article V, §4(b)(1) for state review of interlocutory orders in juvenile cases. Rule 9.140(c) of the

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[11]The supreme court does not have jurisdiction because juvenile cases may not involve the death penalty and the circuit courts do not have appellate jurisdiction because juvenile cases arise in the circuit courts. §39.02(1) and (5), Fla.Stat. (1981); §39.10, Fla.Stat. (1981); Rule 8.010, Fla.R.Juv.P.; Rule 9.030(a) and (c), Fla.R.App.P.

Florida Rules of Appellate Procedure. As discussed earlier in this brief with respect to the statutory right of the state to appeal final orders in juvenile cases (see pages 20-27 of this brief), several decisions from this Court support the state's position that the right to appeal final orders and interlocutory orders in juvenile cases, whether appeals by the juvenile defendant or by the state, is found in chapter 924 of the Florida Statutes and in Rule 9.140 of the Florida Rules of Appellate Procedure respectively. The state refers this court to its argument on pages 20-27 of this brief and incorporates that argument into this section in support of its position that the state may appeal interlocutory orders in juvenile cases to the district courts of appeal pursuant to Rule 9.140, Fla.R.App.P.

In sum, since this Court in R.J.B. v. State, 408 So.2d 1048 (Fla. 1982) looked to appellate Rule 9.140(b) governing appeals by a defendant in a criminal case in order to determine whether a juvenile had the right to appeal an interlocutory order from the juvenile court, Rule 9.140(c) should also be looked to in order to determine whether the state has the right to appeal an interlocutory order from the juvenile court. Contrary to the Third District's opinion in C.C., the use of the title "criminal cases" should be no more of a bar to appeals by the state in juvenile cases than

to appeals by the juvenile himself.[12] For these reasons the state submits it has a right to appeal interlocutory orders in juvenile cases pursuant to Rule 9.140(c), Fla.R.App.P., as authorized by Article V, §4(b)(1) of the Florida Constitution.

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[12]It should also be noted that R.J.B. v. State, 408 So.2d 1048 (Fla. 1982) directly disposes of any claim that chapter 39 of the Florida Statutes governs the juvenile defendant's or state's right to appeal interlocutory orders in juvenile cases. Id. at 1050. The Florida Constitution simply does not authorize the legislature to provide for such interlocutory review. Id. at 1050.

III

WELL-ESTABLISHED FLORIDA DECISIONAL LAW AND THE CLEAR PROVISIONS OF THE FLORIDA RULES OF APPELLATE PROCEDURE AND THE FLORIDA CONSTITUTION PROVIDE THE DISTRICT COURTS OF APPEAL WITH CERTIORARI JURISDICTION TO REVIEW FINAL ORDERS AND INTERLOCUTORY ORDERS BROUGHT BY THE STATE IN JUVENILE CASES FOR WHICH NO APPELLATE REVIEW IS POSSIBLE.

The state next submits that even if this Court were to decide that no constitutional or statutory right exists to allow the state to appeal either final orders or interlocutory orders in juvenile cases, the district court of appeal nevertheless has certiorari jurisdiction and may issue writs of common law certiorari to review these orders.

In C.C. the Third District concluded that since the state cannot avail itself of appellate review of either final or interlocutory juvenile orders, the state also may not circumvent this limitation and seek certiorari review of juvenile orders by treating otherwise unauthorized notices of appeal as petitions for certiorari. In another recent Third District opinion, State v. G.P., 429 So.2d 786 (Fla. 3d DCA 1983), now on review in this Court, the Third District reached the same conclusion but employed different reasoning. In G.P. the court concluded that a district court's review of final judgments and orders by certiorari is limited to the supervisory review of a decision of a lower court sitting in its appellate capacity where the

lower court has departed from the essential requirements of the law. The state submits the Third District's conclusions in C.C. and G.P. are not only erroneous but represent a serious erosion of "The Great Writ" contrary to common law and the provisions of the Florida Constitution and the Florida Rules of Appellate Procedure.

Article V, §4(b)(3) of the Florida Constitution provides in pertinent part:

> "A district court of appeal 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. A district court of appeal may issue writs of mandamus, certiorari, prohibition, quo warranto, and other writs necessary to the complete exercise of its jurisdiction." (Emphasis supplied).

Rule 9.030(b) of the Florida Rules of Appellate Procedure provides as follows with respect to the jurisdiction of the district courts to issue writs of certiorari:

> (2) CERTIORARI JURSIDICTION. The certiorari jurisdiction of district courts of appeal may be sought to review:
>
> (A) non-final orders of lower tribunals other than as prescribed by Rule 9.130.
>
> (B) final orders of circuit courts acting in their review capacity.
>
> (3) ORIGINAL JURISDICTION. District courts of appeal may issue writs of mandamus, prohibition, quo warranto, common law certiorari and

> all other writs necessary to the complete exercise of the court's jurisdiction;....

It is plain from the foregoing provisions that the Florida Constitution and the Florida Rules of Appellate Procedure provide for a more expansive view of certiorari than held by the Third District in C.C. and G.P.

With respect to non-final or interlocutory orders, Rule 9.030(b)(2)(A) provides for certiorari jurisdiction of non-final orders not contained in Rule 9.130. Rule 9.130 concerns non-final orders in civil cases and provides that review of non-final orders in criminal cases is prescribed in Rule 9.140. Although Rule 9.140(c) affords appellate review of certain non-final orders, such as orders suppressing confessions or evidence or adjudicating a defendant incompetent, the plain language of Rule 9.030(b)(2)(A) vests the district courts with jurisdiction to review by certiorari other non-final orders in criminal cases not covered by the appellate jurisdiction of Rule 9.140(c). Furthermore, Rule 9.030(b)(3) provides the district courts with original jurisdiction to issue writs of common law certiorari which may also be employed to review such interlocutory orders in criminal cases.

The Rules of Appellate Procedure also provide for certiorari jurisdiction of final orders. Rule 9.030(b)(2)(B) provides for certiorari jurisdiction in the district courts to review final orders of circuit courts sitting in their

appellate capacity. This is the form of certiorari jurisdiction envisioned by the Third District in G.P. However, as the Fourth District in State v. J.P.W. 433 So.2d 616, 619 (Fla. 4th DCA 1983), noted, the conclusion of the court in G.P. that this is the exclusive form of certiorari jurisdiction for final orders is misplaced as it neglects to consider Rule 9.030(b(3) which affords a much broader basis for certiorari jurisdiction encompassing review of final orders rendered by a lower tribunal not sitting in an apellate capacity.

Contrary to the holding in C.C., none of the foregoing rules limit the right of the district court to review interlocutory and final orders by certiorari to only those situations where appellate review is possible. Indeed, it is precisely because no appellate review exists that certiorari is proper. The basic flaw in the Third District's reasoning is its interpretation of the rule that where there is a "jurisdictional limitation" on the authority of a court to hear a direct appeal from a judgment or order, certiorari may not be used to circumvent that limitation. State v. C.C. supra, 8 FLW at 939, n.4; State v. G.P., supra, 429 So.2d at 789. The Third District has incorrectly interpreted "jurisdictional limitation" to mean authority to hear a specific issue on appeal; under this reasoning, if there is no authority for the district court to hear a specific issue on appeal, i.e. an appeal on a matter not enumerated in Rule 9.140 or chapter 924, then there is no certiorari

jurisdiction either. However, as pointed out in State v. J.P.W., 433 So.2d 616, 618 (Fla. 4th DCA 1983), the cases relied upon by the Third District in support of its interpretation[13] actually use the concept of "jurisdictional limitation" to mean something entirely different. "Jurisdictional limitation" means that if the district court is not vested by law with supervisory appellate jurisdiction over the decisions of the court whose order is challenged and for which certiorari review is sought, then the district court also has no jurisdiction by law to review the questions by certiorari. Nellen v. State, 226 So.2d 354, 355 (Fla. 1st DCA 1969); 3 Fla.Jur.2d, Appellate Review §459. The basic question is which level of court supervises the lower level on review. Thus, for example, when under the former constitutional provision, Article V, §3(b)(1), the district court possessed no appellate jurisdiction to review final decrees passing upon the validity of state statutes, (which jurisdiction was vested only in the supreme court), the district court likewise had no jurisdiction to pass upon that issue in interlocutory review by certiorari. Couse v. Canal Authority, 197 So.2d 841 (Fla. 1st DCA 1967); 3 Fla.Jur.2d, Appellate Review, §459; Cf. State v. Preston, 376 So.2d 3 (Fla. 1979). Similarly, when the district court

[13]Nellen v. State, 226 So.2d 354 (Fla. 1st DCA 1969); Lee v. State, 374 So.2d 1094 (Fla. 4th DCA 1979); State v. Brown, 330 So.2d 525 (Fla. 1st DCA 1976); Couse v. Canal Authority, 197 So.2d 841 (Fla. 1st DCA 1967).

possessed no appellate jurisdiction to review decisions of a county judge, (which jurisdiction was vested only in the circuit court), then only the circuit court had jurisdiction to review by writ of certiorari an order from the county judge. Nellen v. State, 226 So.2d 354 (Fla. 1st DCA 1969). In the present case, therefore, since the district courts (not the supreme court or the circuit courts) have appellate jurisdiction to review final orders from circuit courts (with the exceptions listed in Rule 9.030(a)(1)), the district courts likewise have certiorari jurisdiction "in such cases".

The state's position that the district court possess certiorari jurisdiction to review interlocutory orders of circuit courts where no appellate review is possible is supported by longstanding decisional law from this Court and from the district courts of appeal. In State v. Smith, 260 So.2d 489 (Fla. 1972), this Court determined that the district court did not have jurisdiction to entertain an interlocutory appeal by the state from a trial court's order requiring state's witnesses to be examined by a doctor for visual acuity prior to their testimony at trial. This Court held that under Article V, §5(3) of the Florida Constitution (the predecessor provision to Article V, §4(b)(3)) district courts are empowered to hear such interlocutory appeals only when the supeme court has promulgated a rule affording such review. Even though the legislature had passed §924.07(8)

providing for district court review of all pretrial interlocutory orders, this legislative enactment was unconstitutional unless the supreme court "breathed life" into the provision by a rule pursuant to the constitution. Since no such rule by the supreme court existed, the state could not avail itself of §924.07(8) and could not appeal the interlocutory order. However, this Court noted that the district court treated the interlocutory appeal as a petition for a writ of common law certiorari, reaching the merits of the claim and ultimately denying the writ. This Court then reversed the district court on the merits and ordered it to grant the writ of certiorari, impliedly approving and sanctioning the use of certiorari jurisdiction in the district court to review such interlocutory orders in criminal cases where no right to appeal existed.

In State v. Steinbrecher, 409 So.2d 510 (Fla. 3d DCA 1982), the Third District stated that even though Rule 9.140(c), Fla.R.App.P., limited matters which may be appealed by the state before trial as a matter of right, Rule 9.140(c) was no bar to the district court's power of discretionary review under Article V, §4(b)(3) and Rule 9.030(b)(2)(A) to review by certiorari pretrial orders brought by the state excluding or admitting evidence at trial.[14] Accord, State v. Joseph, 419 So.2d 391, 392 (Fla. 3d DCA 1982); State v. Horvatch, 413 So.2d 469 (Fla. 4th DCA

[14]In C.C. the court recognized that its decision may well be in conflict with this decision in State v. Steinbrecher, 409 So.2d 510 (Fla. 3d DCA 1982). 8 FLW at 939, n.7.

1982); State v. Love, 393 So.2d 66 (Fla. 3d DCA 1981); Briggs v. Salcines, 392 So.2d 263, 265 (Fla. 2d DCA 1980); State v. Hughes, 212 So.2d 65 (Fla. 3d DCA 1968); State v. Coyle, 181 So.2d 671 (Fla. 2d DCA 1966): State v. Shouse, 177 So.2d 724, 728 (Fla. 2d DCA 1965). Other Florida cases also hold that certiorari is an appropriate remedy when Rule 9.140(c) does not provide for appellate review of a variety of other interlocutory orders in criminal cases. See State v. Farmer, 384 So.2d 311 (Fla. 5th DCA 1980)(certiorari is proper remedy for state to obtain interlocutory review of order of trial court granting defendant's motion for reconsideration of degree of guilt); State v. Ramos, 378 So.2d 894 (Fla. 1st DCA 1979)(certiorari is appropriate remedy to review non-final order admitting defendant to bail pending appeal); State v. Gillespie, 227 So.2d 550, 552 (Fla. 2d DCA 1969)(common-law certiorari was appropriate means for state to obtain interlocutory review of pretrial order of trial court compelling in camera inspection of records relative to pending criminal case). Likewise, this Court has interpreted §924.07, Fla.Stat., to deal only with direct appeals and to have no effect proscribing the authority of the state to seek common law certiorari or constitutional certiorari to review interlocutory criminal orders. State v. Harris, 136 So.2d 633, 634 (Fla. 1962); see also State v. Williams, 227 So.2d 253, 257 (Fla. 2d DCA 1969)(section 924.071, Fla.Stat., did not enumerate the

exclusive instances in which the state could appeal from interlocutory orders and thus did not limit the state's right to certiorari review of such orders).

In addition, ample authority exists to support the state's position that the district court has certiorari jurisdiction to review final orders of circuit courts not sitting in their appellate capacity so long as the orders are not directly reviewable by the supreme court. See State ex rel. Bludworth v. Kapner, 394 So.2d 541 (Fla. 4th DCA 1981)(certiorari is proper remedy to review nonappealable final order of trial court finding defendant not guilty by reason of insanity); State v. I.B., 366 So.2d 186 (Fla. 1st DCA 1979)(certiorari available to review non-appealable final order releasing juveniles from custody following detention hearing); State v. Gibson, 353 So.2d 670 (Fla. 2d DCA 1978)(certiorari proper remedy to review nonappealable final order of trial court withholding adjudication and placing defendant on probation); State v. Wilcox, 351 So.2d 89 (Fla. 2d DCA 1977)(certiorari may be used to review non-appealable final order of trial court placing defendant on unsupervised probation); see also State v. D.C.W. 426 So.2d 970, n.1 (Fla. 4th DCA 1982)(on review in this Court)(certiorari would be appropriate way for district court to review nonappealable final order dismissing petition for delinquency in juvenile case); and State v. Williams, 237 So.2d 69, 71 (Fla. 2d DCA 1970)(certiorari would be proper

remedy to review non-appealable final order placing defendant on probation).

In summary, the state submits the Third District has misinterpreted the general rule that the right to certiorari review is limited to those where "appellate jurisdiction" is found. Well-established Florida decisional law and the clear provisions of the Florida Rules of Appellate Procedure and the Florida Constitution afford certiorari review in the district courts of final orders and interlocutory orders in juvenile cases (not appealable to the supreme court or the circuit court) brought by the state for which no appellate review is possible. The Third District's opinion impermissibly restricts the use of "The Great Writ" and forecloses review so important to the proper administration of justice.

CONCLUSION

For the foregoing reasons, the state respectfully submits the en banc decision of the Third District Court of Appeal is in error on all three issues, and the state urges this Court to find that the state has a constitutional and a statutory right to appeal final orders in juvenile cases pursuant to Article V, §4(b)(1) of the Florida Constitution and chapter 924 of the Florida Statutes, that the state has the constitutional right to appeal interlocutory orders through Rule 9.140(c) of the Florida Rules of Appellate Procedure pursuant to Article V, §4(b)(1) of the Florida Constitution, and that the district courts also have certiorari jurisdiction pursuant to Article V, §4(b)(3) of the Florida Constitution and Rule 9.030(b) of the Florida Rules of Appellate Procedure to issue writs of common-law certiorari to review both final and interlocutory orders brought by the state in juvenile cases. The state submits the en banc decision of the Third District should be reversed with directions to hear the state's appeals in these four juvenile cases.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the BRIEF OF PETITIONER ON MERITS was furnished by mail to BRUCE ROSENTHAL, Esq., Officer of the Public Defender, 1351 N.W. 12th Street, Miami, Florida 33125 on this 7th day of November, 1983.

Marti Rothenberg
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/vbm