IN THE SUPREME COURT OF FLORIDA

CASE NO. 64,395-403

THE STATE OF FLORIDA,

Petitioner,

vs.

J.M., V.V., J.H., A.M., J.W.
S.L., R.B., R.H., and J.B., juveniles,

Respondents.

ON CERTIFIED QUESTION FROM THE
DISTRICT COURT OF APPEAL OF FLORIDA,
THIRD DISTRICT

BRIEF OF RESPONDENTS ON MERITS

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TABLE OF CONTENTS

TABLE OF CITATIONS

PAGE

OTHER AUTHORITIES

FLORIDA CONSTITUTION

FLORIDA STATUTES

FLORIDA RULES OF APPELLATE PROCEDURE

FLORIDA RULES OF CRIMINAL PROCEDURE

FLORIDA RULES OF JUVENILE PROCEDURE

FLORIDA JUDICIAL COUNCIL PUBLICATIONS

STATEMENT OF THE CASE & FACTS

The Respondents accept the Petitioner's Statement of the Case and Facts as true and correct.

ARGUMENT

I

THE STATE IS NOT AUTHORIZED TO APPEAL JUVENILE COURT ORDERS IN DELINQUENCY CASES.

A. THERE IS NO STATUTORY OR RULE AUTHORITY FOR SUCH APPEALS.

1. There Is No Statutory Authority For State Appeals From Final Juvenile Court Orders.

The right to appeal a final order is a substantive one, which must be authorized either by statute or constitution. See, State v. Furen, 118 So.2d 6 (Fla. 1960). It has been held, where the question has arisen in criminal cases, that the State's right to appeal is purely statutory. Whidden v. State, 159 Fla. 691, 32 So.2d 577 (1947); Balikes v. Speleos, 173 So.2d 735 (Fla. 3d DCA 1965); cert. dismissed, 193 So.2d 434 (Fla. 1967); State v. Brown, 330 So.2d 535 (Fla. 1st DCA 1976).

As statutory authority for appeals in juvenile delinquency cases, the State relies upon Chapters 39 and 924, Florida Statutes (1982). Neither chapter supports the State's position.

Chapter 39, the Florida Juvenile Justice Act, pursuant to which adjudicatory hearings are held, clearly provides a juvenile with the right to appeal a final order thereunder, and just as clearly does not provide the State with such a right:

> (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.
>
> (2) The Department of Legal Affairs shall represent the state upon appeal. The

> Department of Legal Affairs shall be notified of the appeal by the clerk when the notice of appeal is filed in the circuit court.

§ 39.14, Florida Statutes, (1982).

Chapter 924, which provides for appeals as of right by the defendant or the State in criminal cases,[1] must be read in pari materia[2] with the pertinent provisions of the Florida Criminal Code. Section 775.08(4) of the Criminal Code provides: "The term 'crime' shall mean a felony or misdemeanor." Sections 775.08(1) and 775.08(2) in turn respectively define the term "felony" as any criminal offense punishable by death or imprisonment in a state penitentiary, and the term "misdemeanor" as any criminal offense punishable by imprisonment in a county correctional facility not in excess of one year.

Chapter 39, the Juvenile Justice Act, clearly does not authorize imprisonment for a juvenile who is adjudicated delinquent. See, § 39.11, Fla. Stat. (1982). Moreover, Section 39.10(4) expressly provides that "an adjudication by a court that

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1 Section 924.02, Fla. Stat. (1982) provides: "The defendant or the state may appeal in criminal cases." (Emphasis supplied).

Section 924.05 provides: "Appeals provided for in this chapter are a matter of right."

Section 924.07 specifies the final criminal case orders which the State may appeal. Sections 924.07(8) and 924.071(1), which purport to provide a right to appeal interlocutory orders, have been held an unconstitutional infringement of this Court's rulemaking authority. State v. Smith, 260 So.2d 489 (1972).

2 Statutory provisions relating to the same subject matter are to be construed harmoniously. See, Garner v. Ward, 251 So.2d 252 (Fla. 1971); Goldstein v. Acme Concrete Corporation, 103 So.2d 202 (Fla. 1958).

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(.)" As stated in State v. D. H., 340 So.2d 1163 (Fla. 1976):

> The authority for Chapter 39, Florida Statutes, emanates from Article I, Section 15(b), Florida Constitution, which provides:
>
> > "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. Any child so charged shall, upon demand made as provided by law before a trial in a juvenile proceeding, be tried in an appropriate court as an adult. A child found delinquent shall be disciplined as provided by law."
>
> 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.

Id. at 1165. (Emphasis the Court's).

Thus, since juvenile cases are not criminal cases within the meaning of Chapter 924, without question the latter chapter is not authority for State appeals from adverse rulings under Chapter 39. And, of course, 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 material and controlling. Thayer v. State, 335 So.2d 815 (Fla. 1976); Baeza v. Pan American/National Airlines, Inc., 392 So.2d 920 (Fla. 3d DCA

1981); Devin v. City of Hollywood, 351 So.2d 1022 (Fla. 4th DCA 1976). See, Whidden v. State, 159 Fla. 691, 32 So.2d 577 (1947).

Accord, State v. Waterman, 212 Kan. 826, 512 P.2d 466 (1973):

> 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 its 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 patriae; 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. (K.S.A. 38-801.) In furtherance of this laudable design the legislature has seen fit in K.S.A. 1972 Supp. 38-834(b) to provide for an appeal by any child, or by certain designated parties acting on its behalf, from any final order of the juvenile court. ... 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.

Id., 512 P.2d at 570.

The legislative restriction rests on a sound policy foundation. There are several means by which the state can remove cases deemed serious enough from juvenile to criminal court and thereby avail itself of the additional appellate protections from adverse rulings in the latter court under Chapter 924 and Florida Rule of Appellate Procedure 9.140(c)(1)(B). In addition to waiver procedures for juveniles

at least fourteen years old, Section 39.02(5)(a), the State can direct file an information against sixteen or seventeen year olds, Section 39.02(2)(e)(4), and may seek a grand jury indictment for any crime punishable by death or life imprisonment, Section 39.02(5)(c). See, State v. King, 426 So.2d 12 (Fla. 1982). The legislature could (and did) more than reasonably conclude that for the cases remaining in juvenile court, in accordance with the salutary purposes of the Chapter (see Section 39.001) and the availability of extraordinary review by common-law certiorari,[3] the relative interests of the juvenile and the State did not require that the State categorically have a right to appeal.

2. An Interlocutory Right Of Appeal Is Dependent Upon A Right To Appeal Final Orders And Upon Authorization By Rule.

Article V, Section 4(b)(1) of the Florida Constitution (1972) provides:

> JURISDICTION - 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.

Under this provision, the juveniles submit that there are two requirements for an interlocutory order to be appealable:

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3 See, State v. Harris, 136 So.2d 633 (Fla. 1962), and Respondents' Argument II, infra, at 24.

(1) the "such cases" requirement, that is, that the category of case is such that a final order would be appealable, by an adversely affected party, as of right to the District Court of Appeal; and (2) the "provided by rules" requirement, that is, that an interlocutory appeal be authorized by Florida Supreme Court rule. The State can meet neither requirement here.

As to the first requirement, the juveniles would submit that, as the District Court concluded, a party's right to appeal a ruling on an interlocutory basis contemplates and is dependent upon a right to appeal a final judgment in the case. See generally, State v. Preston, 376 So.2d 3 (Fla. 1979); Ray Lein Construction, Inc. v. Wainwright, 346 So.2d 1029 (Fla. 1977); Burnsed v. Seaboard Coastline Railroad Company, 290 So.2d 13, 16-17 (Fla. 1974); Gulf Fertilizer Company v. Walden, 163 So.2d 269 (Fla. 1964). The provision was not intended to authorize this Court to create, by declaring it interlocutory, a right of appeal where none would otherwise exist at all; such a conclusion would be contrary to the fundamental separation of powers principle that rules promulgated by this Court may not enlarge the substantive rights of a litigant. See, State v. Furen, 118 So.2d 6, 11-12 (Fla. 1960); Vic Potamkin Chevrolet, Inc. v. Bloom, 386 So.2d 286 (Fla. 3d DCA 1980) (Hubbart, J., concurring). Rather, consistent with the historic framework of respective concerns of the branches of government, it is apparent that the intent was to allow temporal advancement of a right of appeal otherwise existing where, in this Court's view, the interests of justice and efficient judicial administration indicate this to be

appropriate.

As to the second requirement, this Court has not provided in the Florida Rules of Appellate Procedure for interlocutory appeals in juvenile cases. Rule 9.140, entitled "Appeal Proceedings in Criminal Cases" (emphasis supplied) does not, for the same reason that Chapter 924 does not, apply to delinquency proceedings under Chapter 39. See Respondents' Argument at 3-4, supra.

This conclusion is further compelled by the terms of the rule itself. Paragraph (c), Appeals by the State, provides as follows:

> (1) Appeals Permitted. The State may appeal an order:
>
> (A) Dismissing an indictment or information or any count thereof;
>
> (B) Suppressing before trial confessions, admissions or evidence obtained by search and seizure;
>
> (C) Granting a new trial;
>
> (D) Arresting judgment;
>
> (E) Discharging a defendant pursuant to Fla.R.Crim.P. 3.191;
>
> (F) Discharging a prisoner on habeas corpus;
>
> (G) Adjudicating a defendant incompetent or insane;
>
> (H) Ruling on a question of law when a convicted defendant appeals his judgment of conviction;

and may appeal

(I) An illegal sentence.

It is readily apparent that every provision speaks of criminal defendants, not juvenile respondents. Criminal defendants are charged by indictment or information; juvenile respondents are charged by petition for delinquency. Criminal defendants are brought to trial; juvenile respondents are brought to adjudicatory hearing. Only criminal defendants may be discharged pursuant to Fla.R.Crim.P. 3.191; the authority for discharge of juvenile respondents is Fla.R.Juv.P. 8.180. Criminal defendants, if found guilty, may be convicted or adjudicated guilty; an adjudication of delinquency of a juvenile expressly does not operate as a conviction nor even as a finding of criminal guilt. Section 39.10(4), Fla. Stat. (1982). An adjudication of incompetence or insanity is authorized for a criminal defendant, but not for a juvenile respondent. Compare §§ 916.13, 916.15, Fla. Stat. (1982); Fla.R.Crim.P. 3.212, 3.214, 3.217, 3.218, with Fla.R.Juv.P. 8.170. Finally, criminal defendants may be sentenced, whereas juvenile respondents may, at most, be committed (to the Department of Health and Rehabilitative Services).

Thus, from a straightforward reading of both its title and provisions, as well as the principle expressio unius est exclusio alterius, it is clear that Rule 9.140 does not authorize State appeals of juvenile interlocutory orders.

As noted by Chief Judge Schwartz in the opinion below, slip opinion at page 4, n. 6, the decisions of D.S.K. v. State, 396

So.2d 730 (Fla. 5th DCA 1981) and In the Interest of D.J., 330 So.2d 34 (Fla. 4th DCA 1975) holding that under the appellate rules preparation of records on appeal in juvenile cases should be treated as in criminal rather than civil cases, are not to the contrary, since they deal properly and only with the procedural aspects of otherwise (statutorily) authorized juvenile appeals.

Nor, as cryptically indicated by the dissent below and by the Petitioner in its brief, does the decision of R.J.B. v. State, 408 So.2d 1048 (Fla. 1982) in any way support a construction of Rule 9.140 as authorizing interlocutory appeals in juvenile cases. In R.J.B., a juvenile sought to appeal a court order waiving juvenile jurisdiction and certifying him for trial as an adult. This Court, agreeing with the Fifth District, held that a waiver order is interlocutory, that no statute could be effective to provide appellate review because the constitution vests sole authority in this Court to determine when interlocutory appeals may be taken, and that no appeal of the order was authorized by Rule 9.140 or other court rule. R.J.B. did not in the least purport to hold that Rule 9.140(c) constitutes authority for State interlocutory appeals in juvenile cases; paragraph (c) of Rule 9.140 was not even referred to in that case. Indeed, far from supporting the Petitioner's position, R.J.B. underscores the requirement that an interlocutory appeal must be specifically authorized by court rule. The State can point to no such authorizing rule in the case herein.

Lastly on this point, the State further intimates, again

based on its untenable reading of R.J.B., that Rule 9.140 governs not only interlocutory criminal appeals, but appeals from final orders as well. Other than as to procedural aspects such as time periods, this assertion is patently incorrect. The right to appeal final orders is a substantive matter. State v. Furen, 118 So.2d 6 (Fla. 1960); Clement v. Aztec Sales, 297 So.2d 1 (Fla. 1974); Vic Potamkin Chevrolet Inc. v. Bloom, 386 So.2d 286 (Fla. 3d DCA 1980) (Hubbart, J., concurring).

B. THE RIGHT TO APPEAL PROVIDED IN THE FLORIDA CONSTITUTION DOES NOT INCLUDE A STATE RIGHT TO APPEAL FROM FINAL JUDGMENTS ENTERED AGAINST IT IN THE EXERCISE OF LAW ENFORCEMENT FUNCTIONS.

Although the decision in State v. W.A.M., 412 So.2d 49 (Fla. 5th DCA 1982), review denied (Fla. 1982)[4] is correct in its basic premise that Article V reflects a general right of appeal from final judgments, its summary one-sentence conclusion that the State has a constitutional right of appeal does not follow.

Preliminarily, a careful reading of Crownover v. Shannon, 170 So.2d 299 (Fla. 1964), relied upon by the W.A.M. court, refutes the asserted conclusion. Importantly, the State was not

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4 As this Court's records will reflect, the W.A.M. holding regarding a State right to appeal was not before this Court in W.A.M.'s petition for discretionary review. The juvenile W.A.M. sought review only of the holding on the merits that a continuance obtained by him waived the benefits of the juvenile speedy trial rule, Fla.R.Juv.P. 8.180.

a party in Crownover, which involved a defendant seeking prohibition to prevent a district court from entertaining an appeal by a prison superintendent 32 days after the grant of habeas corpus relief, on the basis that the then controlling statute (§ 924.10) limited the state to appealing within 30 days after "the order or sentence . . . is entered." This Court carefully reviewed its prior decisions which had held that appeals from orders granting habeas corpus relief were governed by the cited statute controlling State appeals, and only after noting that in none of those cases was the State a party, then concluded that habeas corpus was a collateral attack, was civil in nature, and that the statute did not control. In thereby receding from its prior cases, and although stating in broad language that the right to appeal from final judgments of trial courts was no longer dependent upon statutory authority, this Court did not in the slightest respect question the validity of the statute governing the State's right to appeal. If the Crownover court had intended what W.A.M. presumably construed it to say, it would not have gone to such length to discuss and recede from the prior cases, but would simply have invalidated the statutory limitations on constitutional grounds.[5]

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5 Further, the presumed reading of Crownover in W.A.M., if correct, renders inexplicable the post-Crownover decisions of State v. Brown and Balikes v. Speleos, supra, as well as State v. I.B., 366 So.2d 186 (Fla. 1st DCA 1979), and Clement v. Aztec Sales, Inc., 297 So.2d 1 (Fla. 1974).

In State v. I.B., the court held that there was no authority for a State appeal from an order releasing a juvenile from detention. In a footnote, the court noted that review by a (Cont.)

W.A.M. is a complete departure from well-established Florida law. Legislative authority over the Attorney General, as the chief law enforcement officer of the State, is unquestionable. Ervin v. Collins, 85 So.2d 852 (Fla. 1956); State ex rel. Landis v. S. H. Kress & Co., 115 Fla. 189, 155 So. 823 (1934); State of Florida ex rel. Chevron v. Exxon Corporation, 526 F.2d 266 (Fla. 5th Cir. 1976). If the State had a constitutional right to appeal final orders in juvenile cases, then it would similarly have a constitutional right to appeal final orders in criminal cases. This follows not because juvenile cases are statutorily equivalent to criminal cases (which they are not - see Respondents' Argument at pp. 3-4, supra), but because the source of authority would provide no basis for distinction. In the only criminal appellate decision expressly reaching this issue since W.A.M. was decided, the First District recognized the doctrinal conflict and properly treated State v. Whidden, supra, as controlling. State v. Creighton, 438 So.2d 1042 (Fla. 1st DCA 1983) (dismissing state appeal under Whidden and certifying conflict).

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juvenile would be authorized under then § 39.03(7)(a), Fla. Stat. (1977). (The present provision is § 39.032(6)(a)). If a detention order were an interlocutory order, the statutory provision for appeal by a juvenile would be constitutionally invalid under Article V, § 4(b)(1). See, R.J.B. v. State, 408 So.2d 1048 (Fla. 1982). If, on the other hand, such an order were a final order (which, unlike its predecessor which was silent, § 39.032(6)(a) now so specifies), under the reading of Crownover given by W.A.M. the I.B. conclusion that there was no authority for a state appeal from a release order would be incorrect.

Similarly, the decision in Clement v. Aztec Sales, supra, which reversed a district court and held that an order granting a new trial is a substantive right, not interlocutory, so that the legislature could provide an appeal therefrom, would be unexplainable.

The error of W.A.M. and its progeny, and of the Petitioner, is the critical failure to recognize either the strong historic policy disfavoring appeals by the sovereign, the explicit history of the 1956 Article V revision, or this Court's controlling view of the matter.

As stated in Arizona v. Manypenny, 451 U.S. 232, 101 S.Ct. 1657, 68 L.Ed.2d 58 (1981),

> Under 28 U.S.C. § 1291, any litigant armed with a final judgment from a lower federal court is entitled to take an appeal. By its terms, the statute addresses neither the identity of particular parties nor the nature of the prior legal proceedings. But while it is settled that a civil appeal, or an appeal by the defendant in a criminal case, may be taken from any final decision of a District Court, this Court has observed on prior occasions that, "'in the federal jurisprudence, at least, appeals by the Government in criminal cases, are something unusual, exceptional, not favored.'" Will v. United States, 389 U.S. 90, 96, 88 S.Ct. 269, 274, 19 L.Ed.2d 305 (1967), quoting from Carroll v. United States, 354 U.S. 394, 400, 77 S.Ct. 1332, 1336, 1 L.Ed.2d 1442 (1957). This federal policy has deep roots in the common law, for it was generally understood, at least in this country, that the sovereign had no right to appeal an adverse criminal judgment unless expressly authorized by statute to do so. Accordingly, from the early days of the Republic, most state courts refused to consider appeals by prosecutors who lacked the requisite statutory authority.

Id., 451 U.S. at 245, 101 S.Ct. at 1666; (holding that, in state prosecution removed to federal court, appeal by state prosecutor of adverse decision in latter court is permitted if authorized by state statute).

One of the leading decisions referred to in Manypenny was United States v. Sanges, 144 U.S. 310, 12 S.Ct. 609 (1892),

which, in holding that the federal government possessed no appellate right in the absence of express enabling legislation, and, that a general grant of appellate jurisdiction did not suffice, noted:

> [I]t is settled by an overwhelming weight of American authority that the state has no right to sue out a writ of 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 turn, among the state decisions relied upon by Sanges was State v. Burns, 18 Fla. 185 (1881), in which this Court held:

> 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.

Id., 18 Fla. at 187.

Of additional pertinence is the fundamental principle that unlike the federal constitution, which is a document of delegated powers bestowing power only in specific grants, the state constitution is regarded primarily as a limitation on power as distinguished from a grant of power. Peters v. Meeks, 163 So.2d 753 (Fla. 1964); 16 Am.Jur. 2d, Constitutional Law, § 58. Its major function is to limit governmental power as against the rights of individuals. Tibbetts v. Olson, 19 Fla. 824, 108 So.

679 (1926).

Consistent with this historical perspective, the intent of the framers in drafting, and the voters in adopting, the 1956 constitutional revision, may be readily understood. This intent, which is paramount, see, e.g., Gallant v. Stephens, 358 So.2d 536 (Fla. 1978), may be illuminated by the materials made available to the voters as the predicate for their collective decision. Williams v. Smith, 360 So.2d 417 (Fla. 1978).

The moving force behind the 1956 revision of Article V was the Judicial Council of Florida, created by the Legislature for the purpose of making "a continuous study of the organization, procedure, practice and work of the courts of Florida, including all matters concerning the more efficient administration of justice." Ch. 28062, Laws of Fla. (1953).

In preparation for submission to the voters, at the general election on November 6, 1956, of the revised Article V which it developed, the Judicial Council prepared a series of materials for speakers and for the public in order to build support for passage. A primary reason for the revision, as stated in the First Annual Report of the Judicial Council in 1954, was to create "district courts of appeal to hear cases at various places in the State not only for the purpose of decreasing the volume of work of the Supreme Court but also to make those courts more easily available to the litigants near the source." (Id., p. 14, Fla.Sup.Ct. Library, Revision of Article V (1957), File No. 2).

In none of the Council's materials disseminated to encourage passage can there be found the remotest suggestion of a novel

intent to provide the state itself, as distinct from an ordinary party litigant, with a right to appeal. To the contrary, the materials make it eminently clear that only the rights of ordinary litigants were being addressed, and no change from the previous constitutional guarantees and protections was intended.

For instance, in a suggested speech prepared by Allen Morris, then Executive Secretary of the Judicial Council, the hypothetical situation was presented of a head of a family, Mr. Jones, left totally incapacitated due to the carelessness of a truck driver. (What Amendment No. 1 Means to You, June 26, 1956, p.1, Fla.Sup.Ct. Library, Revision of Article V (1957), File No. 12). Although Mrs. Jones was wise enough to retain an attorney, the attorney unfortunately had to advise her that the trucking company had decided to contest the case, and because of the backlog in the Supreme Court's docket, it would be at least two years before a final judgment could be obtained. (Id. at 2-3). The speech continued,

> Now, to understand what it meant to Mr. and Mrs. Jones to have to wait two years without any income, let's each of us put ourselves in their places. Just suppose that one of us, after leaving this meeting, had the same kind of accident Mr. Jones had. How many of us is so wealthy he could lie on his back unworried and say, oh, well, there's plenty of money in the bank to take care of us for two years.
>
> But we have it in our power to reduce the misery of situations like this. We can go to the polls in the November general election and approve Amendment No. 1. This amendment will have the effect of modernizing our court system so that a litigant, like Mr. Jones and like yourself if you find yourself in the same or a similar unhappy situation, can get reasonably prompt justice instead of having to wait two or more years. (Id. at 3) (Emphasis

supplied).

And, further, it stated unequivocally:

> The Amendment does not change any of the guarantees and protections provided in the present Constitution. Instead, it strengthens the rights of every citizen by assuring him that any grievance he may have will be fairly and promptly presented to a court of competent jurisdiction and brought to a speedy conclusion.

Id. at 9. (Emphasis supplied).

Similarly, in the publication Improving Florida's Court System, A Study Guide to Proposed Constitutional Amendment No. 1, (July 1, 1956),[5] the Judicial Council provided the following questions and answers:

> SECOND SUGGESTED APPROACH: Answer the question: What will the Court Amendment do for me?
>
> A. If you are an attorney, practicing before the courts of the State, it will:
>
> 1. Permit you to catch up on your business (shorter dockets for the courts means fewer cases "hanging fire" for you).
>
> 2. Permit you to reduce fees charged your clients without loss of income to you (less travel time; fewer cases pending).
>
> 3. Other advantages to attorneys that may occur to the speaker.
>
> B. If you are a litigant, taking an appeal from a judgment of a trial

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5 Fla.Sup.Ct. Library, Revision of Article V (1957), File No. 10.

court, it will:

1. Benefit you as it benefits the attorney who represents you, for his savings should be passed along to you in reduced fees.

2. Free your attention and property from being tied up because of crowded court dockets.

3. Save you the cost of preparing copies of the record in the trial court, since the new appellate courts will hear appeals on the original record.

C. If you are an ordinary citizen who has never even been in traffic court and who certainly does not expect to take any appeals to the new district courts of appeal, it will:

1. Benefit you along with the rest of the people of the state through the increased public confidence that the courts will deserve.

2. Benefit you financially, though indirectly, since the heavy costs of an inefficient judicial system are, to the extent that they involve commercial and manufacturing establishments, passed along to you, the consumer, in the form of higher prices. Furthermore, it is a fair assumption that an inefficient judicial system places a heavier burden upon you as a taxpayer.

3. Perhaps benefit you directly, for we can never be absolutely certain that each of us may not one day "have our day in court."

4. Even if a citizen is never a party in a legal case, he may

still be vitally affected by decisions of the Florida courts. This is especially true in cases involving questions of public policy such as court tests of the powers and acts of the Florida Milk Commission or the constitutionality of a state tax. The acts of the Milk Commission, and court decisions concerning these acts, affect citizens throughout the state, although those citizens are not directly involved in the court action. This is also true of cases involving wills, contracts, insurance policies, etc.

Id. at 4-5.

QUESTION: What is the purpose of the requirement of holding a session of the district appellate court in each circuit at least once each year?

ANSWER: The main purpose is to maximize one of the advantages that the creation of the intermediate appellate court is expected to bring: that of making the taking of appeals less expensive and more convenient to the litigant by bringing the appellate court to the litigant.

It should be made clear that this provision does not require the litigant to await the arrival of the District Court in his circuit to present his case. If his case may be more timely presented at the home office of the District Court or when the District Court is sitting in a neighboring circuit, such procedure is permissible under this provision and the mechanics for this method of presentation may be provided for by supreme court rule.

Id. at 35.

QUESTION: Can the expense involved in

> providing for the new district courts of appeal be justified in terms of benefit to the ordinary citizen who probably has never been in traffic court and who is certainly not very likely to take an appeal to the new court?
>
> ANSWER: It certainly can. All of the people of the state will benefit from such a vast improvement in the state's judicial system. The average citizen shares in the cost of an outmoded judicial system, both through increased prices of the commodities that he buys and through taxes. And it should not be forgotten that no man can ever be sure that he will not one day become involved in litigation and benefit directly from the reforms now being effected.

Id. at 36.

Finally, and in ironic juxtaposition to the Petitioner Attorney General's present position before this Court, was the opinion issued by then Attorney General Richard W. Ervin, also a member of the Judicial Council, to Governor LeRoy Collins just three weeks before the amendment was submitted to the voters:

> An appeal "as a matter of right" is simply an appeal in which the court must take jurisdiction, as distinguished from certiorari, where the assertion of jurisdiction by the court is discretionary.
>
> Litigants now can appeal as a matter of right, and this has been our practice in Florida for generations... .

1956 Op. Att'y Gen. Fla. 056-306 (October 16, 1956) (Proposed Amendment to Art. V, State Const. - Construction of Words Appeal "As a Matter of Right").

Thus, the practice in Florida for generations, which conclusively distinguished the State's right to appeal from that of an ordinary litigant and treated the former as restricted, State v. Burns, 18 Fla. 185 (1881), State v. Frear, 155 Fla. 479,

20 So.2d 481 (1945); Whidden. v State, 159 Fla. 691, 32 So.2d 577 (1947), was unaltered by the 1956 revision.

With a clear view of the foregoing circumstances attendant to the 1956 revision, the Court, in State v. Harris, 136 So.2d 633 (Fla. 1962), made this controlling observation:

> 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.

Id. at 634. (Emphasis supplied).

It is of particular significance that joining in the Court's unanimous Harris opinion was Justice Thomas, who had been the Chairman of the Judicial Council.

Accordingly, neither before nor after the decision of Crownover v. Shannon, 170 So.2d 299 (Fla. 1964), upon which W.A.M. based its reasoning, and neither before nor after the 1956 revision, has this Court ever discussed the State's right to appeal a final criminal case order in other than statutory terms. See, e.g., State ex rel. Sebers v. McNulty, 326 So.2d 17, n. 2 at 18 (Fla. 1975); Carroll v. State, 251 So.2d 866, 870 (Fla. 1971); Jenkins v. Lyles, 223 So.2d 740 (Fla. 1969); State v. Schroeder, 112 So.2d 257, 259 (Fla. 1959); State v. Frear, 155 Fla. 479, 20 So.2d 481 (Fla. 1945). See also, Commentary to Florida Rule of Appellate Procedure 9.140, stating that the rule's provisions for State appeals track Section 924.07, Fla. Stat. (1975).

See also, State v. Matera, 378 So.2d 1283 (Fla. 3d DCA

1980), cert. denied, 386 So.2d 639 (Fla. 1980):

> ". . . [T]hose 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). . . ."

Id. at 1286-1287.

See also, the following cases which recognize as binding the absence of statutory authority for an appeal from a judgment of acquittal: Watson v. State, 410 So.2d 207, n. 2 at 208 (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). It might be noted that since there is no longer a per se federal constitutional double jeopardy bar to state appeal from a judgment of acquittal, see 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 State right to appeal a judgment of acquittal in Florida, as such a judgment is unquestionably a final order.

At common law, the right of appellate review was not regarded as unqualified or absolute, but rather as one created by law. Hines v. Noel, 110 Fla. 457, 149 So. 17 (1933). The juveniles submit that a proper construction of Article V, § 4(b)(1) must recognize the power of the sovereign, through the legislature as law-making body, to restrict the sovereign's own right to appeal, particularly as it has done in criminal and juvenile delinquency cases. The provisions of Section 39.14 and Chapter 924 are, within their respective and exclusive scopes, controlling.

II

COMMON-LAW CERTIORARI IS AVAILABLE WHERE REVIEW IS OTHERWISE UNAUTHORIZED.

Certiorari is available to review orders where appeal is otherwise unauthorized. State v. Harris, 136 So.2d 633 (Fla. 1962). It is to be granted within the discretion of the district courts of appeal, in accordance with the standards set by this Court in Combs v. State, 436 So.2d 93 (Fla. 1983):

> In granting writs of common-law certiorari, the district courts of appeal should not be as concerned with the mere existence of legal error as much as with the seriousness of the error. Since it is impossible to list all possible legal errors serious enough to constitute a departure from the essential requirements of law, the district courts must be allowed a large degree of discretion so that they may judge each case individually. The district courts should exercise this discretion only when there has been a violation of a clearly established principle of law resulting in a miscarriage of justice.
>
> It is this discretion which is the essential distinction between review by appeal and review by common-law certiorari. See Scholastic Systems, Inc. v. LeLoup, 307 So.2d 166 (Fla. 1974). A district court may refuse to grant a petition for common-law certiorari even though there may have been a departure from the essential requirements of law. See Mystan Marine, Inc. v. Harrington, 339 So.2d 200 (Fla. 1976). The district courts should use this discretion cautiously so as to avert the possibility of common-law certiorari being used as a vehicle to obtain a second appeal.

Id. at 95-96.

CONCLUSION

Based on the foregoing arguments and authorities cited, the Respondents respectfully request this Court to reaffirm the principle that the State's right to appeal adverse final orders entered against it in the exercise of law enforcement functions is purely statutory; that there is no such authorizing statute in juvenile delinquency cases; that an interlocutory right of appeal is dependent upon a right to appeal final orders and upon authorizing court rule, which requirements are not met herein; and that common-law certiorari is available not to supplement and render moot the absence of a right to appeal, but rather, consistent with the standards set by this Court, to be granted in the sound discretion of the district courts of appeal for errors rising to the requisite level of seriousness.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed to Kirk Munroe, Esq. 717 Ponce De Leon Drive, Suite 331, Coral Gables, Florida 33134, Attorney for A.M., Arthur Rothenberg, 2400 South Dixie Highway, Suite 100, Coconut Grove, Florida 33133, Attorney for J.W., and Richard Doran, Office of the Attorney General, 401 Northwest 2nd Avenue, Miami, Florida, this 20th day of December, 1983.

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