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 PETITION FOR DISCRETIONARY REVIEW

* *

BRIEF OF PETITIONER ON THE MERITS

JIM SMITH
Attorney General
Tallahassee, Florida

RICHARD E. DORAN
Assistant Attorney General
Department of Legal Affairs
401 N. W. 2nd Avenue (Suite 820)
Miami, Florida 33128
(305) 377-5441

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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 defendant's in the juvenile proceedings at trial and the appellees in the appellant proceedings below.

Citations to the record are abbreviated as follows:

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

(T) - Circuit Court Transcripts of Proceedings in Trial Court

(A) - Appendix attached hereto containing District Court opinions

STATEMENT OF JURISDICTION

Petitioner, the State of Florida, invokes the discretionary conflict jurisdiction of the Supreme Court of Florida to review the nine decisions of the Third District Court of Appeal, consolidated for discretionary review, which directly and expressly conflict with the decision in State v. W.A.M. 412 So.2d 49 (Fla. 5th DCA) review denied 419 So.2d 1201 (Fla. 1982) and State v. J.W.P., 433 So.2d 616 (Fla. 4th DCA) on the same question of law. These nine decisions are all based upon the decision of the Third

District Court of Appeal in State v. C.C., 3d DCA Case No. 81-2564, Supreme Court Case No. 64,345. Excepting the case of State v. R.B., Case No. 64, 401, the Petitioner additionally invokes the discretionary jurisdiction of this court on the following questions certified by the Third District Court of Appeal to be of great public importance:

> 1. Does the State have the authority to file interlocutory appeals in juvenile cases and, if not, may this court review by certiorari an order suppressing evidence in such a case? State v. J.M. and State v. J.H., supra.
>
> 2. Does the State have the authority to file plenary appeals in juvenile case and, if not, may this court review by certiorari an order dismissing a petition for delinquency? State v. V.V., State v. A.M. State v. J.W. State v. R.H. and State v. J.B., supra.
>
> 3. Does the State have the authority to file an interlocutory appeal from an order granting a motion to suppress in a juvenile case, and, if not, may this court review that order by certiorari? State v. S.L., supra.

STATEMENT OF THE CASE

The nine cases consolidated in this review are state appeals from juvenile cases. Each of the nine cases was dismissed upon the authority of State v. C.C., supra, in which the Third District Court of Appeal held the state

had no right to seek appellate review for final or interlocutory orders of the trial court in juvenile proceedings and that likewise, the state had no right to seek certiorari review of final or interlocutory orders from the trial court. The State sought appellate or certiorari review from final orders of the trial court in State v. R.B., State v. V.B., State v. A.M., State v. J.W., State v. R.H. and State v. J.B. The State sought appellate or certiorari review of interlocutory orders granting juvenile motions to suppress in the cases of State v. S.L., State v. J.M. and State v. J.H.. The Third District Court of Appeal refused to reach the merits in any of these nine cases, and instead granted motions to dismiss, based upon State v. C.C. in each case. All nine cases were brought in the Eleventh Judicial Circuit, Dade County, Florida. In State v. C.C., the opinion which controls resolution of these nine cases, the Third District Court of Appeal held that since the State's right to appeal is purely statutory and since Chapter 39 of the Florida Statutes contains no provision authorizing an appeal by the State, there was no statutory right for the State to appeal orders in juvenile cases.[1] 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, review denied, 419

[1]A copy of the decision in State v. C.C. is included in the appendix to this brief. (A-1).

So.2d 1201 (Fla. 1982) insofar as that decision found a constitutional right to appeal in the state. Additionally, the court found the state had no right to take interlocutory review because Article V Section 4(b)(1) of the Florida Constitution permits interlocutory review only in cases in which appeal may be taken as a matter of right. 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. 62,333), since the state appeals in juvenile case were unauthorized, a notice of appeal could not be treated as a petition for certiorari. Upon the authority of this decision, these nine case were dismissed.

SUMMARY OF THE ARGUMENT

The en banc decision of the Third District Court of Appeal is State v. C.C., supra 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 judgents 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 Florid Statutes giverning 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 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 fo juvenile orders by treating otherwise unauthorized notices of appeal as petitions for certiorari.

The state will limit its argument in this brief to two points. First, it contends the denial of the right to petition the court for a writ of certiorari is based upon a false premise and ignores the long established rule of law that certiorari applies to those situations in which a party has no recourse to appeal or writ of error. The court has also mistakenly assumed that certiorari is now limited to review of appellate decisions of lower courts. In doing so, it has ignored the provisions of Article V which vest orignial jurisdictional in the district courts of appeal for the purpose of issuing the writ and it has ignored the great weight of opinion recognizing the unique role of the writ.

The right to petition for writ of certiorari is a common law right not subject to any restraint absent specific statutory language abolishing or limiting the right. No such law exists and therefore the common law prevails.

Above and beyond this contention is the State's position on its right to appeal from final and select interlocutory orders and judgments of the circuit court. The Florida Constitution Article V, §4(B)(1) supercedes the authority of the legislature to control access to the courts. The constitution now vest control of access to the courts in the Supreme Court of Florida which is authorized to promulgate rules of procedure. Analysis of the evolution of Article V, the decisional progess of this court and the general rules of constitutional construction will prove that Florida's court system has evolved away from a system controlled by the legislature.

Because the only limit on the state's right to appeal is the limit on access it provides through its rules the only real issue is whether any court rules limit the state's right appeal. The state's final contention is that final and interlocutory orders are controlled by the provisions for Rule 9.140 of the Rules of Appellate Procedure and that this court has ratified this position in its previous review of juvenile-initiated appeals.

Concerning the disposition of these nine cases, the state contends that their final disposition should be based on this court's final decision in State v. C.C..

POINTS INVOLVED ON APPEAL

I

WHETHER 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 AND INTERLOCUTORY ORDERS BROUGHT BY THE STATE IN JUVENILE CASES FOR WHICH NO APPELLATE REVIEW IS POSSIBLE?

II

WHETHER THE STATE HAS THE CONSTITUTIONAL RIGHT TO APPEAL FINAL AND INTERLOCUTORY ORDERS ENTERED AGAINST IT IN JUVENILE CASES PURSUANT TO ARTICLE V, §4(B)(1) AND RULE 9.140(c) OF THE FLORIDA RULES OF APPELLATE PROCEDURE?

ARGUMENT

I

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 AND INTERLOCUTORY ORDERS BROUGHT BY THE STATE IN JUVENILE CASES FOR WHICH NO APPELLATE REVIEW IS POSSIBLE.

Two points need to be made concerning the jurisdiction of the district courts to hear state-initiated petitions for certiorari review of circuit court orders issued in juvenile delinquency cases. First, a review of the organic nature of the writ, case law interpreting the proper scope of the writ and the very clear constitutional and procedural provisions, makes it clear that the district courts have jurisdiction to issue writs of certiorari, regardless of any real or imagined limitation on the state's right to appeal in juvenile cases. Secondly, the handling of this issue within the Third District Court of Appeals has been marked by a lack of consistency in approaching the issue. This inconsistency in analysis of legal precedent and decision-making is indicative of the court's inability to justify its campaign to deprive the people of Florida of due process of law in all their legal proceedings. Rather than recognize the role of the writ in our jurisprudence, the district court has engaged in smoke screen tactics to justify its action.

Simply stated, the writ of common law certiorari issues from a court holding appellate jurisdiction to an inferior court and orders the lower court to send up the record in a case, where an appeal or writ of error is not available, for a determination of whether the lower court exceeded its jurisdiction or proceeded in a manner contrary to the essential requirements of law. Harrison v. Fink, 75 Fla. 22, 77 So. 663 (1918); Kilgore v. Bird, 149 Fla. 570, 6 So.2d 541 (1942); Malone v. Costin, 410 So.2d 569 (Fla. 1st DCA 1982). Examples of the use and scope of the writ in cases involving prosecution of the criminal law include State v. Wilcox, 351 So.2d 89 (Fla. 2d DCA 1977)(State could seek review by certiorari in situation where defendant was given unsupervised probation by the trial court in clear violation of statute. This was true even though State right to appeal was limited to situations involving illegal sentences as opposed to illegal probation term); State v. Smith, 260 So.2d 489 (Fla. 1972)(Supreme court held that the state had right to seek certiorari review from interlocutory order of trial court granting a defense motion to compel state's witness to submit to an eye examination. Such an option was available even in the face of a clear-cut limit on the State's right to appeal the order.); State v. I.B., 366 So.2d 186 (Fla. 1st DCA 1979)(District Court cited Smith in support of ruling that State could petition for writ of certiorari in situation wherein trial court freed an alleged juvenile

delinquent from secure detention because the prosecutor presented nothing but hearsay evidence at the juvenile's detention hearing.); and State v. Steinbrecher, 409 So.2d 510 (Fla. 3d DCA 1982)(Rule 9.140(c) F.R.App.P. is not a proscription on the power of the district court to review, by common law certiorari, pre-trial evidentiary rulings which otherwise confirm to the traditional requirements of this writ.).

These decisions drew their strength from the very clear provisions of our State constitution and the Rules of Appellate Procedure established by this court. Article V §4(b)(3) provides, "A district court of appeal may issue writs of. . .certiorari. . .and other writs necessary to the complete exercise of its jurisdiction." Rule 9.030(b)(2)(A) and (b)(3), F.R.App.P., likewise provide for certiorari review. The original jurisdiction of the courts is certainly appropriate for review purposes of final orders and judgments under Rule 9.030(b)(3). State v. J.P.W., 433 So.2d 616 (Fla. 1962); State v. Harris, 136 So.2d 633 (Fla. 1962)(Supreme Court held that passage of Chapter 924.07 Fla.Stat.[1], does not and was not intended to proscribe the

[1] §924.07 Appeal by State - The state may appeal from:

(1) An order dismissing an indictment or information or any count thereof;

(2) An order granting a new trial;

authority of the state to seek common law certiorari in the dsitrict court.). This is also true for the review of interlocutory orders which are otherwise appropriate for review. State v. Smith, supra, State v. Steinbrecher, supra. Contrary to the opinion of the Third District in State v. G.P., 429 So.2d 786 (Fla. 3d DCA 1983)(now on review in this court, Case No. 63,613), the application of certiorari review is not limited by Rule 9.030(b) or Rule 9.140(c) F.R.Cr.P. which established jurisdictional guidelines from final orders. In both G.P. and C.C. the Third District spoke of, "jurisdictional limitation", on the right to appeal which, could not be circumvented by resort to a writ of certiorari. The court also declared that historically, Florida courts could utilize the writ on for the

(3) An order arresting judgment;

(4) A ruling on a question of law when the defendant is convicted and appeals from the judgment;

(5) The sentence on the ground that it is illegal;

(6) A judgment discharging a prisoner on habeas corpus;

(7) An order adjudicating a defendant insane under the Florida Rules of Criminal Procedure;

(8) All other pre-trial orders, except that it may not take more than one appeal under this subsection in any case.

Such appeal shall embody all assignments or error in each pretrial order that the state seeks to have reviewed. The state shall pay all costs of such except for the defendant's attorney fee.

Section 924.07 and 071 are mirrored in Rule 9.140(c) F.R.App.P.

purpose of "supervisory review of a decision of a lower court sitting in its appellate capacity..." G.P., p. 6. Neither argument is correct. Twenty four years ago, the Third District knew the role of certiorari. As it explained in its opinion in State v. Katz, 108 So.2d 60, 61 (Fla. 3d DCA 1959):

> The common law writ of certiorari cannot be made to serve the purpose of an appellate proceeding in the nature of a writ of error. The writ involves a limited review of the proceedings of an inferior jurisdiction. It is original in the sense that the subject matter of the suit or proceeding which it brings before the court are not here reinvestigated tried and determined upo the merits generally as upon appeal at law.
>
> Basnet v. City of Jacksonville, 18 Fla. 523.

Again in 1982, the Third District revisited the same issue in State v. Steinbercher, supra, when it held that Rule 9.140(c) does limit appeal by the state but, "this limitation as to appeal is not a bar to this court's power of discretionary review" at 409 So.2d 511. Suddenly, with the challenge in G.P. and C.C. to the state's ability to appeal from the trial court, there arose, "jurisdictional limitations" based upon "historical underpinnings", which not only ignore Katz and Steinbrecher but, also, the definitions of certiorari provided by this court in Kilgore v. Bird,

supra; State v. Smith, supra; and Harrison v. Fink, supra. Factually, and in contrast to the historical underpinning analysis in G.P. , certiorari has been used by the District Courts on numerous occasions to review otherwise unreachable orders of trial courts. See State v. Steinbrecher; State v. Joseph, 419 So.2d 391 (Fla. 3d DCA 1982); State v. Matera, 378 So.2d 1288 (Fla. 3d DCA 1980); State v. Farmer, 384 So.2d 311 (Fla. 5th DCA 1980); State v. Horvatch, 413 So.2d 469 (Fla. 4th DCA 1982)(citing State v. Smith, supra); State v. Gillespie, 227 So.2d 550 (Fla. 2d DCA 1969); and State v. Ramos, 378 So.2d 894 (Fla. 1st DCA 1979).

Obviously concerned with this apparent conflict with its own prior decisions, the court changed direction in C.C. . Now, it's excuse for for refusing certiorari review is:

> Moreover, since, as I believe, the supreme court has not generally provided for review of any interlocutory orders in these cases, I think it unwise and perhaps impermissible for us to circumvent that decision by treating a thus-unauthorized notice of appeal as a petition for certiorari. The effect of this in the case, for example, of an order suppressing a confession, which is before us in case no. 81-22564, would be for this court to write a juvenile rule equivalent to criminal Fla.r.App.P. 9.140(c)(1)B. But we have not authority to and should not permit review in an instance in which the supreme court has deliberately declined to do so. In this respect,

> I thoroughly agree with Judge Cowart's dissenting view in State ex rel. Alton v. Conkling, 421 So.2d 1108 (Fla. 5th DCA 1982). But cf. State v. D.C.W., _So.2d_, n.1 (Fla. 4th DCA Case no. 81-1699, opinion filed, September 1, 1982)[7 FLW 1889].

This rationalization is no better than the one offered in G.P.. First, the whole purpose of certiorari is to review fundamentally tainted orders and judgments which would otherwise fustrate our system of justice because an appeal is not authorized. Second, allowing for certiorari review would not be the equivalent to writing a juvenile court version of Rule 9.140(c)(1)(B) because the scope of certiorari is not as broad as the scope of appeal. A narrow review, by certiorari, of the question of whether the lower court proceed in a manner contrary to the essential requirements of law, is not the same broad review described by Chapter 924.31, which allows for reversal of the lower court upon a showing, ".. That error was committed that injuriously affected the substantial rights of the appellant." Thirdly, Judge Cowart's dissenting view in State ex rel Alton v. Conkling, 421 So.2d 1108 (Fla. 5th DCA 1982) dealt with abuse of the writ of prohibition in a situation wherein the child could seek appellate review at a later period in time. 421 So.2d 1112-13.

In contrast to that factual situation the State of Florida lacks the option of going forward in a case where, for example, evidence has been suppressed or where a discharge has been granted for alleged violation of the speedy trial rule. The "tough luck" attitude now in vogue is a sharp contrast to the 1980 views of the Third District in State v. Matera:

> Accordingly, we note that although those doors open to the stte in initiating appellate review are limited to a specific set of circumstances, see Section 924.07 and 924.071, Florida Statutes (1977), and Fla.R.App.P. 9.140(c), nevertheless, in so far as such doors do exist, the appellate courts must be ever-watchful to assure that all of them remain open.
>
> * * *
>
> ...The concept of justice is a two-sided coin, demanding utilization of procedures that deprive neither the defendant nor the state of the full and timely employment of those rights and privileges extended to each of them under the law.
>
> * * *
>
> The occasions on which the state may appeal being strictly limited, it is our duty to protect these rights as carefully as we must protect those of the defendant.
>
> 378 So.2d 1287.

This court has never had the conceptual problem now

afflicting the Third District on this issue. The appellant realizes this and hopes that this Court will instruct the district as to the error of its ways. When all other remedies fall short of the goal of insuring the essential requirements of law are met, the writ of certiorari is available to face that task. Should this court decide that the State of Florida cannot appeal from final or interlocutory orders of the Juvenile Courts, this extraordinary writ would be the only way to insure the orderly and uniform process of law.

II

THE STATE HAS THE CONSTITUTIONAL RIGHT TO APPEAL FINAL AND INTERLOCUTORY ORDERS ENTERED AGAINST IT IN JUVENILE CASES PURSUANT TO ARTICLE V, §4(B)(1) AND RULE 9.140(c) OF THE FLORIDA RULES OF APPELLATE PROCEDURE.

It is the contention of the State of Florida that the ratification of Article V, §5(3) of the Florida Constitution, effective 1957, stripped the Florida legislature of its long recognized right to limit access to the Supreme Court of Florida and the newly created district courts of appeal. The plain language of the 1956 revision to Article V and the subsequent 1972 revision, have been previously interpreted by this court as an expression of the people's desire to vest not only jurisdiction to accept appeals in the higher courts but, also, the ability to promulgate rules of procedure which encompass the power to control the manner of access to appellate review. Review of the evolution of Article V and the current rule of the court in determing how access to review is determined should direct this court to the only rational conclusion possible in this case; the people of Florida want every party to trial court litigation to have the opportunity to appeal all final orders and judgments and those interlocutory orders and decrees authorized by this court. The peopel also desire that this court, not the legislature, control the procedural aspects of its own

jurisdiction and the jurisdiction of the lower courts. This plain language of the current constitution of the State of Florida, Article V, cannot be diluted by the language of long-outdated decisional law, regardless of the opinion of the Third Distric Court of Appeal.

A. The Evolution of the Law, 1871-Today

The year 1871 brought expanded language as to the jurisdiction of the supreme court. In that year, the 1868 constitution was revised and Article VI, §5 now declared:

> The supreme court shall have appellate jurisdiction in all cases at law and equity originating in the circuit courts and of appeals from circuit courts in cases arising before judges of the county courts in matters pertaining to their probate jurisdiction and in the management of the estates of infants and in cases of conviction of felony in the criminal courts and in all criminal casses originating in the circuit courts...

See Constitutions, 25 Fla.Stat.Ann. 528-29, historical notes. This provision was adopted as Article V, §5 of the 1885 Constitution. p. 529.

Such was the applicable law in 1881 when this court ruled against the state's right to apply for writ of error to reverse a judgment quashing an indictment. State v.

Burns, 18 Fla. 185 (1881). Burns, cited the strong historical weight of Anglo-American jurisprudence against state appeals unless provided for by specific legislation. 18 Fla. 187. At that time, the decision was absolutely correct. Under Article VI, the jurisdiction of this court was limited to criminal cases ending in conviction; an apparently unsatisfactory situation. This issue was addressed by the legislature in its 1939 session. The result was section 924.07 and .08, Fla.Stat., which provided a set of guidelines under which the prosecution could appeal its reversals. This court accepted §924.07 as controlling the scope of state appeals in Whidden v. State, 32 So.2d 577, 578 (Fla. 1947). The importance of Whidden is the recognition of the fact that the sovereign could provide the state equal access to the appellate courts.

It should be noted that at the time of the Whidden case, the legislature had the ability to limit access to the appellate courts in civil as well as criminal cases. Chapter 59.01(4), Fla.Stat. 1945, said:

> (4) Appeal as a matter of right. -- Appeals except where otherwise expressly provided by law, shall be as a matter of right.

The legislature's role as arbiter of the question of access to the appellate courts in criminal and civil matters

was rooted in the case law of the time. Burnett v. State, 198 So.2d 500 (Fla. 1940)(Florida Declaration of Rights, Section Four, provided for "open" court system; however, access to those courts is controlled by acts of legislature.); DeBowes v. DeBowes, 149 Fla. 545, 7 So.2d 1942)(statutes regulating the right to appeal should be construed liberally so as to preserve spirit of the constitution); and McJunkins v. Stevens, 88 Fla. 559, 102 So. 756 (1925). The McJunkins opinion clarifies much of the confusion which seemed to affect the Third District's analysis in State v. C.C. Keeping in mind that McJunkins was decided under the 1885 constitution, Article V, §5, the state directs attention to 102 So. 760:

> The constitution or Statute gives a court power to adjudicate litigated matters in classes of cause, an in appeal or writ of error or other authorized process duly taken gives a court jurisdiction to determine a particular case.
>
> While the constitution defines the appellate jurisdiction of the supreme court and the circuit courts, it does not prescribe the means by which such appellate jurisdiction is acquired in particular cases, therefore the legislature may prescribe such means...

This is the background upon which the Whidden opinion was issued. Review of the trial court was justified by resort to common law (writs of mandamus, certiorari and

other original writs) or the sovereign, (appeals), through the Constitution or, in its silence, the legislature. Accordingly, in its time, Whidden was a proper reflection of the law.

All this changed with the people's ratification of a new constitutional provision, revised Article V, in 1956. Now, the sovereign vested both jurisdiction of the various courts and the method of access to those courts in the supreme court. The revision limited appellate jurisdiction of the Supreme Court under Article V, §4(2):

> Appeals from trial courts may be taken directly to the supre court, as a matter of right, only from judgments imposing the death penalty, from final judgments or degrees directly passing upon the validity of a state statute or a federal statute or treaty, or construing a controlling provision of the Florida of federal constitution, and from final judgments or degrees in proceedings for the validation of bonds and certificates of indebtedness.

Second, newly-formed district courts of appeal were established:

> Jurisdiction. Appeals from trial courts in each appellate district, and from final orders or decrees of county judge's courts pertaining to probate matters or to estates and interests of minors and incompetents, 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.

This new provision also declared:

> The Supreme Court shall provide for expeditions and inexpensive procedure in appeals to the District Courts of Appeal and may provide for review by such courts of interlocutory orders or decrees in matters reviewable by the District Courts of Appeal.

These new provisions swept away all notions of who should have access to the courts. Now, "all final judgments and decrees" as a matter of right, and "interlocutory orders and decrees in matters reviewable by the district courts of appeal", when allowed by the supreme court, were appealable in the district courts of appeal. The old legislative control of access, §§59.01 and 924.07 was a thing of the past. This Court agreed with this analysis of the new Article V in Crownover v. State, 170 So.2d 299 (1964). In Crownover, it was held that the time limits on appeals imposed by statute, i.e. §59.01(4) and §924.07, were invalid. Access to the courts was now the province of the supreme court. The court was very clear on this point:

> The right to appeal from the final decisions of the trial courts to the Supreme Court and the district courts of appeal has become a part of the constitution and is no longer dependent on statutory authority or subject to be impaired or abridged by statutory law, but of course subject to rules promulgated by the supreme court regulating the practice and procedure.

This made sense. Pre-revision, pursuant to §59.01(4) litigants were granted blanket appeal rights subject only to express limitation. Under §924.07 the State was subjected to certain of those express limitations. Crownover opined that things had changed, ". . .there are no conditions specified in the constitution to the right to appeal. The exception clause in Section 59.01(4), supra, is omitted from Section 5 of Article V of the constitution as amended." at 170 So. 302.

This court reasserted this position in State v. Smith, 260 So.2d 489 (Fla. 1972). The State sought to appeal an interlocutory order of the trial which commanded a state witness to submit to an eye examination. The District Court of Appeal dismissed for lack of jurisdiction, in the process finding §924.07(8), Fla.Stat., authorizing appeals by the state, violated Article V. On direct appeal this court agreed with that decision. The court found that in its rules of appellate procedure, Rule 6.3(b), was the sole

authority, under Article V. On direct appeal this court agreed with that decision. The court found that in its rules of appellate procedure, Rule 6.3(b), was the sole authority, under Article V §3, for interlocutory state appeals. Although Rule 6.3(b) did "breath life" into §924.071 Fla.Stat., and therefore authorized appeals form orders quashing search warrants, suppressing evidence or suppressing confessions of the accused, the rule did not go so far as to implement the "polky" set forth in §924.07(8) which allowed for appeal of, "all other pre-trial orders..." at 260 So.2d 490. The court adopted this language from the opinion of the district court:

> Appellate 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 mattaer of right appellant review of a final judgment. The sovereign has decreed that, "the Supreme Court. . .<u>may</u> provide for review by such courts of interlocutory orders . . ." (court's emphasis). This explicit provision is clearly substantive and not procedural. (footnote omitted). The constitution does not authorize the legislature to provide for interlocutory review. Any statute purporting to grant interlocutory appeals is clearly a declaration of legislature policy and no more. Until and unless the Supreme Court of Florida adopts such statute as its own. . . the purported enactment is void.
>
> 260 So.2d 490-91.

The important thing to note about State v. Smith, is that in a case of State appeal, this court adopted an opinion to the effect that the State's right to appeal was equal to that of any other litigant. If any vestige of the Whidden decision lingered on after 1956[4], State v. Smith, ended it.

In the same year Smith was decided, the people revised Article V for yet a third time. The language in Article V, §4(b)(1) as to the jurisdiction of the district courts of appeal was slightly altered so as to read:

> 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 administration, 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.

The impact of this alteration was discussed recently in State v. J.P.W., 433 So.2d 616 (Fla. 4th DCA 1983), pending review, case no. 63,981. There, the court gave an excellent analysis of the revised section which is now quoted in full:

[4]e.g. State v. Harris, 136 So.2d 633 (Fla. 1962)(§924.07 was authoritative guide to state's access to appellate courts). But contra, Warren v. State, 174 So.2d 429 (Fla. 1st DCA 1965).

If this section does not create a right of appeal, the language "that may be taken as a matter of right" would appear to be surplusage. There either is a right to appeal or there is not. To treat the quoted language as limiting the appeal jurisdiction of the district courts to those situations in which there is a "right" to appeal would be meaningless. This is somewhat 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. The possibility that such an unreasonable construction was intended in so wording the constitution cannot be presumed.

Alternately the emphasized phrase could be interpreted to mean "where a right of appeal exists under the general law." It seems rather obvious, however, that if this was meant, it would have been said. Additionally, the presence of a comma between the words "appeals" and "that" belies such a construction. While the absence of a comma would lend itself to the interpretation that the clause was merely descriptive of the word "appeals," the use of the comma sets off the clause and emphasizes that "such appeals may be taken as a matter of right." Lastly, we have difficulty with the contention that while case law interprets the predecessor to this section of the constitution as conferring a right of appeal in civil cases, Crownover v. Shannon, 170 So.2d 299 (Fla. 1964), the identical language means something else in criminal cases. (We do not mean to imply, however, that juvenile proceedings are criminal in nature.)

at 433 So.2d 619.

This view of the new revision is supported by the holding of this court in Burnsed v. Seaboard Coastline Railroad Co., 290 So.2d 13, 16 (Fla. 1974), that an interpretation which renders a constitutional-provision superfluous, meaningless or useless should never be adopted as the correct interpretation of the law.

The Third District ignored all of this in deciding State v. C.C.. However, in it's opinion in State v. G.P., the District Court recognized the plain language of the section as granting a right to appeal to all litigants. Unfortunately, the G.P. court believed the rule of Hoffman v. Jones, 280 So.2d 431 (Fla. 1973), commanded adherence to the decision in Whidden. Why the G.P. court ignored State v. Smith, is unclear.

B. Appeals From Juvenile Delinquency Cases

The opinion of the lower court in C.C. was that the State's right to appeal was purely statutory and because §39.14 was limited to appeals by the child, the State was without recourse. In support of this position the court cited Whidden and the cryptic decision in State v. Brown, 330 So.2d 535 (Fla. 1st DCA 1976). It has been shown that Whidden has been superseded by the revised Article V - even the G.P. court admits to that! Brown is even less persuasive. Initially, it states the correct rule that the right

to appeal is given by the sovereign. State v. Smith, is cited in support of that rule. Then, without rhyme or reason, Brown declares that the State may not appeal, from a trial court judgment of acquittal, and cites State v. Whidden, as its sole authority. Conveniently ignoring the fact that Smith took the wind out of §924.07[5], the court concludes, without further clarification, that no review is available to the state; not even certiorari!

This type of presentation is nothing more than a bootstrapping tactic designed to take the legal community back to 1947. The State may take appeals from final orders and judgments of the trial courts to the district court of appeals unless the appeal belongs in the appellate division of the circuit court or in the Supreme Court. Rule 9.030(b)(1)(A) Fla.R.App.P. (1980). By rule of court, juvenile delinquency cases are heard in the circuit court regardless of the status of the alleged violation of law as a felony or a misdemeanor. Rule 8.010 F.R.Juv.P. This rule breathes life into Chapter 39, the Florida Juvenile Justice Act. The circuit courts being "trial courts", not subject to appellate review by their own appeal division, Rule 9.030(a)(1)

[5]Or should we say, it failed to breath wind into those sails?

(a), or the Supreme Court [6], the final orders in juvenile cases must be appealed to the district courts. This has been the rule ever since the 1956 revision of Article V. State v. J.K., 104 So.2d 113, 116 (Fla. 2d DCA 1958); In Re C.E.S., 106 So.2d 610, 611 (Fla. 1st DCA 1958).

Once the question of jurisdiction has been resolved, the only remaining problem is the issue of access. Should the parties proceed with their appeal by way of the general appellate rules or the criminal rule, 9.140? Unfortunately, the rules of juvenile procedure and appellate procedure are silent on this point. The accepted view among the cours is to treat these cases under the criminal appeals rule. In re D.J., 330 So.2d 34 (Fla. 4th DCA 1975); In Re D.S.K., 396 So.2d 730 (Fla. 5th DCA 1981). Such an approach makes sense in light of the nature of the substantive law involved in the case, the similarities in the juvenile and criminal rules of procedure, the potential for state control over the child's liberty and the impact of recent United States Supreme Court decisions, such as In Re Gault, 387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967)(Guaranteed right to counsel in juvenile proceeding), all of which have formulized the approach to attempts at juvenile "justice" in Florida. Processing juvenile appeals under Rule 9.140 would also

[6]Excepting cases imposing the death penalty 9.030(a)(1)(A).

allay the fear of attempts to re-try a child who was previously placed in jeopardy and acquitted. Rule 9.140 F.R.App.P.; see also Rule 3.190(c)(2), F.R.Cr.P. and Rule 8.130(b)(2), F.R.Juv.P.

Section 39.14, Fla.Stat., is of no importance to this issue. The portions of the act which speak to procedural matters within the courts are merely policy statements which can be adopted by the court in its rules of procedure. Absent such adoption the law is of no effect. State v. Smith; Warren v. State, supra.

Control of appeals from both final and interlocutory orders by means of Rule 9.140 makes a lot of sense. Excepting the subject's of punishment and jury trial, the issues litigated in juvenile cases shadow the issues litigated in criminal cases. Review of the committee notes to the Rules of Juvenile Procedure points up the clear intent to pattern the procedure in juvenile court after the procedure in criminal court. The fact that a child is charged by petition as opposed to information does not justify ignorance of the true concerns of the case. Even the Whidden decision saw that substance must win out over form if justice is to be served. That is why the Whidden court decided an affidavit alleging a crime could be appealed under the then-controlling subsection of §924.07 on state appeal of orders

quashing informations. The Whidden court recognized that to act otherwise would fragment the process of uniform appeals in criminal law:

> The result would be that in counties having no county court or criminal court of record or court of crimes the prosecution of all misdemeanors. . .could be ambused at the courthouse door by the county judge holding the statute, on which the prosecution is based to be unconstitutional. We do not think the legislature intended this result.
>
> 32 So.2d 579.

The only argument against use of Rule 9.140 in all final and certain interlocutory orders is that juvenile cases are not "criminal". While the purpose behind the Juvenile Justice Act is to treat the child as a delinquent and not criminal, i.e. rehabilitate him instead of punishing him, nothing else about the juvenile system is anything but criminal in substance.

For these reasons the appeal of interlocutory orders should be treated under Rule 9.140. See, R.J.B. v. State, 408 So.2d 1048 (Fla. 1982)(Rule 9.140 (b)(1) covered access of defendant to district court in situation where juvenile sought interlocutory appeal from circuit court order waiving juvenile jurisdiction, citing State v. Smith); D.S.K. v. State, supra. The State believes the decision in R.J.B. is

controlling in this case because under the constitution the State is no different than any other party to an appeal. If Rule 9.140 controls the child's access to the court it surely controls state access. This is the only limit on the state's right to appeal, outside recognized federal constitutional restrictions.[7]

[7]Even the absence of a jury trial is recognized in misdemeanor actions which do not call for extended imprisonment. See Dyke v. Taylor Implement, Mfg., 391 U.S. 216 (1968). That doesn't necessarily mean the state cannot appeal those cases under Rule 9.140.

CONCLUSION

For the foregoing reasons, the State respectfully submits the controlling decision of the Third District Court of Appeal State v. C.C., is in error, and the state urges this Court to find that the state has a constitutional right to appeal final orders in juvenile cases pursuant to Article V, §4(b)(1) of the Florida Constitution, 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 select cases. The state submits the nine decisions of the Third District now before this court should be reversed with directions to hear the state's appeals.

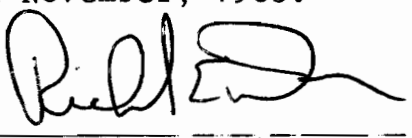
Respectfully submitted,

JIM SMITH
Attorney General

RICHARD E. DORAN
Assistant Attorney General
Department of Legal Affairs
401 N. W. 2nd Avenue (Suite 820)
Miami, Florida 33128
(305) 377-5441

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing BRIEF OF PETITIONER ON THE MERITS was furnished by mail to ELLIOT H. SCHERKER, Assistant Public Defender, 1351 N. W. 12th Street, Miami, Florida 33125, Attorney for J.M.; BETH WEITZNER, Assistant Public Defender, 1351 N.W 12th Street, Miami, FL 33125, Attorney for V.V., and R.B.; RORY S. STEIN, Assistant Public Defender, 1351 N .W 12th Street, Miami, FL 33125, Attorney for J.H.; KIRK MUNROE, Esq., 717 Ponce De Leon Drive, Suite 331, Coral Gables, FL 33134, Attorney for A.M.; ARTHUR ROTHENBERG, 2400 South Dixie Highway, Suite 100, Coconut Grove, Florida 33133, Attorney for J.W.; BRUCE ROSENTHAL, Assistant Public Defender, 1351 N.W 12th Street, Miami, FL 33125; Attorney for S.L., R.H. and J.B., on this 21st day of November, 1983.



RICHARD E. DORAN
Assistant Attorney General

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