

IN THE SUPREME COURT OF FLORIDA

TERESA R. GROWDEN,
A/K/A CHERYL LYNN POWELL,
Defendant/Petitioner,

v.

STATE OF FLORIDA,
Plaintiff/Respondent.

Case No. 64,407 NOV 14 1983

FILED
SID J. WHITE
CLERK SUPREME COURT
[Signature]

ON DISCRETIONARY REVIEW OF THE DISTRICT
COURT OF APPEAL OF FLORIDA IN AND FOR THE SECOND DISTRICT

BRIEF OF RESPONDENT ON JURISDICTION

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STATEMENT OF THE CASE AND FACTS

Respondent accepts Petitioner's statement of the case and facts.

ARGUMENT

ISSUE

WHETHER THIS COURT IS INCLINED
TO INVOKE ITS DISCRETIONARY
JURISDICTION TO REVIEW THE
DECISION OF THE SECOND DISTRICT
COURT OF APPEAL, WHICH EXPRESSLY
DECLARES VALID SECTION 817.563,
FLORIDA STATUTES (1981)

Florida Rules of Appellate Procedure 9.030(a)(2)(A), as amended in 1980, no longer provides for certiorari jurisdiction of this court. This Court has now discretionary jurisdiction to review decisions of district courts of appeal that

- (1) expressly declare valid a state statute;
- (2) expressly construe a provision of the state or federal constitution;
- (3) expressly affect a class of constitutional or state officers;
- (4) expressly and directly conflict with a decision of another district court of appeal or of the Supreme Court on the same point of law;
- (5) pass upon a question certified to be of great public importance; or
- (6) are certified to be in direct conflict with decisions of other district courts of appeal.

Respondent would argue that a petition for discretionary review must be denied. Under former Rule 9.030(a)(1)(A)(ii), invocation of this Court's mandatory jurisdiction if an inferior court declared a statute valid. See, Harrell's Candy Kitchen, Inc. v. Sarasota-Manatee Airport Authority, 111 So.2d 439 (Fla. 1959). Presently, a district court is required to "expressly declare" a state statute valid before the Supreme Court's discretionary jurisdiction may be invoked.

Thus, it is relevant to set forth definitional guides to the words: "expressly declaring". The word "expressly" is customarily defined as "directly and distinctly stated; expressed, not merely implied or left to inference." In re Estelle's Estate, 593 P.2d 663, 667 (Ariz. Sup. Ct. 1979). In the case at bar, there exists an opinion which impliedly declares a statute valid through incorporation by reference to a former opinion. Where the intention in regard to a subject is not manifested by explicit and direct words, it may under appropriate circumstances be "implied." Black's Law Dictionary, (de Luxe 4th ed.) p. 888.

The instant opinion of the Second District relies on M.P. v. State, 430 So.2d 523 (Fla. 2d DCA 1983) wherein Section 817.563, Florida Statutes (1981) was held constitutional. It is in M.P. that a formal proclamation made known and communicated by an explicit opinion was communicated expressly declaring the statute valid. This announcement was published; and, it is the M.P. opinion (not the instant one) which was

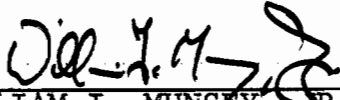
ripe for review. This Court therefore does not have jurisdiction to review the district court's decision.

CONCLUSION

WHEREFORE, based on the foregoing reasons, argument, and authority, Respondent would pray that this Court enter an Order denying discretionary review.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Robert F. Moeller, Assistant Public Defender, Courthouse Annex, 2nd Floor, Tampa, Florida 33602 on this 9th day of November, 1983.



OF COUNSEL FOR RESPONDENT