

IN THE SUPREME COURT OF FLORIDA

FILED

TERESA R. GROWDEN,)
A/K/A CHERYL LYNN POWELL,)
Defendant/Petitioner,)
v.)
STATE OF FLORIDA,)
Plaintiff/Respondent.)
_____)

CASE NO: 64,407

OCT 31 1983

SID J. WHITE
CLERK SUPREME COURT

By _____
Chief Deputy Clerk

PETITIONER'S BRIEF ON JURISDICTION

JERRY HILL
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

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STATEMENT OF THE CASE AND FACTS

On May 17, 1982 Petitioner Teresa R. Growden, also known as Cheryl Lynn Powell, was charged by information with sale of a counterfeit controlled substance in violation of section 817.563(1) of the Florida Statutes.

Growden filed a motion to dismiss the information on August 24, 1982, asserting the unconstitutionality of section 817.563. The motion was granted on September 1, 1982 (Appendix, pp. 1-5). The circuit court held section 817.563 to be unconstitutional because it directly conflicts with State v. Cohen, 409 So.2d 64 (Fla. 1st DCA 1982), and because the section does not require the State to prove scienter and mens rea, and therefore shifts the burden of proof to the accused to prove that he mistakenly sold an uncontrolled substance (Appendix, pp. 1-5).

The State appealed the dismissal order to the Second District Court of Appeal. On September 16, 1983 the Court reversed on the

authority of M.P. v. State, 430 So.2d 523 (Fla. 2d DCA 1983) (Appendix, pp. 6-7).

Growden timely filed her notice to invoke the discretionary jurisdiction of this Court on October 17, 1983.

ARGUMENT

THIS COURT HAS JURISDICTION TO REVIEW THE DECISION OF THE SECOND DISTRICT COURT OF APPEAL, WHICH EXPRESSLY DECLARES VALID SECTION 817.563 OF THE FLORIDA STATUTES.

This Court has discretionary jurisdiction, pursuant to Article V, Section 3.(b)(3) of the Florida Constitution and Florida Rule of Appellate Procedure 9.030(a)(2)(A)(i), to review a decision of a district court of appeal that expressly declares valid a state statute.

The decision rendered by the Second District Court of Appeal in the instant case reads as follows (Appendix, pp. 6-7):

The State has appealed from an order granting the appellee's motion to dismiss an information on the ground that section 817.563, Florida Statutes (1981), is unconstitutional. We reverse on the authority of our recent decision in M.P. v. State, 430 So.2d 523 (Fla. 2d DCA 1983), wherein we held that section 817.563 is constitutional. See also State v. King, No. 82-2235 (Fla. 2d DCA July 27, 1983), 8 FLW 1984.¹

REVERSED.

One can see from a reading of the opinion that the court did expressly find section 817.563 constitutional, and relied upon its earlier decision in M.P. to support this holding. This Court therefore has jurisdiction to review the district court's decision.

Growden respectfully suggests that this Court should exercise its discretionary jurisdiction to review this case, as the counterfeit

1) The Second District Court of Appeal also found section 817.563 not to be unconstitutionally vague and overbroad in Block v. State, _____ So.2d _____ (Fla. 2d DCA, Case No. 83-209, opinion filed September 16, 1983).

controlled substances law is a relatively new provision which has been frequently challenged in the lower courts, and this Court has not yet ruled on its constitutionality.²

2) None of the defendants in M.P., King, or Block has asked this Court to review his case.

CONCLUSION

Based upon the foregoing argument, reasoning, and citations of authority, this Court has jurisdiction to review the decision of the Second District Court of Appeal pursuant to Article V, Section 3.(b)(3) of the Florida Constitution and Florida Rule of Appellate Procedure 9.030(a)(2)(A)(i).

Respectfully submitted,

JERRY HILL
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

BY:

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by mail to the Office of the Attorney General, Park Trammell Building, 1313 Tampa Street, 8th Floor Tampa, Florida this 27th day of October, 1983.

Robert F. Moeller
Robert F. Moeller