

FILED

IN THE SUPREME COURT OF FLORIDA

NOV 14 1983

STATE OF FLORIDA,
Petitioner,

SID J. WHITE
CLERK SUPREME COURT
[Signature]
Chief Deputy Clerk

-v-

CASE NO. 64,471

CHAPMAN LEVI CREIGHTON,
Respondent.

PETITIONER'S BRIEF ON THE MERITS

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PETITIONER'S BRIEF ON THE MERITS

PRELIMINARY STATEMENT

In the lower court, petitioner State of Florida was the appellant, and Chapman Levi Creighton was the appellee.

STATEMENT OF THE CASE AND STATEMENT OF THE FACTS

Respondent, Chapman Levi Creighton, was charged in a two-count information with (1) arson, (2) failure to give a prompt fire alarm or take reasonable measures to put out or control a fire, on November 5, 1982. The jury found respondent not guilty of count one and guilty of count two. On December 22, 1982, respondent moved for arrest of judgment, renewal of the defendant's motion for judgment of acquittal, and for new trial. After a hearing, the court stated:

THE COURT: . . . I really think the evidence is just not sufficient to sustain a conviction on the second count. I believe I am going to grant the motion for arrest of judgment and, I can't recall if I had taken under advisement the motion for judgment of acquittal renewed at the close of all the evidence or not. Is that what I did, Mr. Van Cavage?

MR. VAN CAVAGE: You had indicated that tentatively you would deny it.

THE COURT: I believe I'm going to grant the motion for acquittal as to the second count.

The evidence which was presented by the state is not related by petitioner here, because the issue is limited to whether an appeal by the state can be taken from the trial court's order.

The state filed its notice of appeal on January 4, 1983, and the state provided its initial brief to the First District Court of Appeal on March 31, 1983.

On August 11, 1983, Chapman Levi Creighton moved to quash the state appeal on the grounds that the state was appealing a

nonappealable order. The state responded to that motion, but the District Court of Appeal dismissed the state appeal by opinion dated October 14, 1983. The decision certified that the opinion directly conflicted with State v. W.A.M., 412 So.2d 49 (Fla.5th DCA), review denied, 419 So.2d 1201 (Fla. 1982). Timely notice to take discretionary review was filed by the state and this petition follows.

ARGUMENT

ISSUE

WHETHER THE DECISION BELOW DIRECTLY AND EXPRESSLY CONFLICTS WITH A DECISION OF ANOTHER DISTRICT COURT OF APPEAL.

The petitioner seeks to demonstrate, pursuant to Article V, § 3(b)(3), that this court may review the decision of the District Court of Appeal below, as it directly and expressly conflicts with a decision of another District Court of Appeal: State v. W.A.M., 412 So.2d 49 (Fla.5th DCA), review denied, 419 So.2d 1201 (Fla. 1982).

In W.A.M., the Fifth District Court of Appeal decided that the state may appeal the trial court's discharge of a defendant grounded upon the juvenile speedy trial rule. No statute or rule provided for such an appeal, but the Fifth District Court of Appeal held that the self-executing portion of the Florida Constitution allows the state to appeal final judgments as a matter of right. The court concluded that the discharge was a final order and that the state has a constitutional right of appeal from this final judgment.

By certifying direct and express conflict with W.A.M., the First District Court of Appeal necessarily has determined that the order below was a final judgment. By granting the motion for judgment of acquittal after the jury returned a guilty verdict, the judge has discharged the defendant. The courts and the legislature are powerless to restrict the constitutional right of the state to appeal a final judgment. The only question would be one concerning double jeopardy, and that would not apply here since respondent has already been found guilty. Reversal of the trial court's order granting the motion for judgment of acquittal, would necessitate only a sentencing proceeding.

By its decision dated October 14, 1983, the First District Court of Appeal held that the "instant decision directly conflicts with State v. W.A.M., (citation omitted)." The state agrees, and requests this court to grant review of the opinion rendered below.

CONCLUSION

For the above and foregoing reasons petitioner would respectfully request this honorable court grant review of the opinion rendered below.

JIM SMITH
Attorney General

By: 

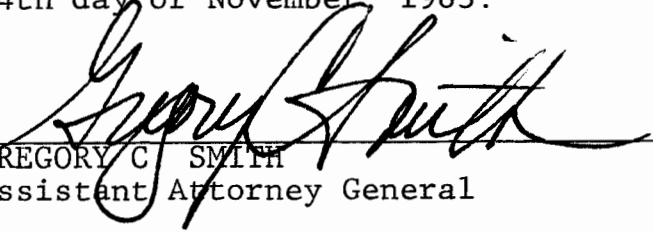
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have furnished a copy of the foregoing Motion to Consolidate to Mr. P. Douglas Brinkmeyer, Assistant Public Defender, P. O. Box 671, Tallahassee, Florida 32302, by hand-delivery, this 14th day of November, 1983.



GREGORY C SMITH
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