IN THE SUPREME COURT OF FLORIDA

D.K.D., A Child,

Petitioner,

v.

CASE NO. 64,603

STATE OF FLORIDA,

Respondent.

RESPONDENT'S BRIEF ON THE MERITS

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TABLE OF CONTENTS

TABLE OF CITATIONS

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PRELIMINARY STATEMENT

D.K.D., the juvenile defendant and appellant below and the petitioner here, will be referred to as "petitioner." The State of Florida, the prosecuting authority and appellee below and the respondent here, will be referred to as "respondent."

STATEMENT OF THE CASE AND FACTS

For the purpose of resolving the narrow legal issue presented by the First District's certified question, respondent accepts petitioner's statement of the case and facts as a reasonably accurate portrayal of the events below.

ISSUE

THE PROCEDURAL REMEDY PROVIDED FOR BY FLA.R.CRIM.P. 3.190(c)(4) IS NOT AVAILABLE IN JUVENILE PROCEEDINGS.

ARGUMENT

This case is before the Court upon the First District's certification of the following question of great importance:

> IS THE PROCEDURAL REMEDY PROVIDED FOR BY FLA.R.CRIM.P. 3.190(c)(4) AVAILABLE IN JUVENILE PROCEEDINGS?

For the following reasons, respondent agrees with the First District that a juvenile court may not grant a pretrial motion to dismiss charges which alleges that there are no material disputed facts and the undisputed material facts do not establish a prima facie case of guilt.

Petitioner accurately summarizes the history of the relationship between the Florida Rules of Juvenile Procedure and the Florida Rules of Criminal Procedure as follows:

> Under the transition rules promulgated by this Court in 1973 to govern juvenile proceedings, Rule of Juvenile Procedure 8.180(a) provided:
>
> > In all cases involving delinquency and/or child in need of supervision, the Florida Rules of Criminal Procedure shall apply, when not in conflict with these rules.
>
> In Re Transition Rule 11, 270 So.2d 715 (Fla. 1972).

> Rule 8.180(a) provided explicit authority for the application of the criminal procedural rules in juvenile proceedings. When the rules of juvenile procedure were revised by this Court in 1977, In Re Florida Rules of Juvenile Procedure, 345 So.2d 655 (Fla. 1977), Rule 8.180(a) was deleted. See also, In Re Florida Rules of Juvenile Procedure, 393 So.2d 1077 (Fla. 1980).

(Petitioner's Brief on the Merits, page 5). Thus, the Florida Rules of Criminal Procedure are not applicable to the Florida Rules of Juvenile Procedure absent precise language to the contrary, and then only to the extent indicated.

Fla. R.Juv.P. 8.130 (b) (2) provides as follows:

> Rule 8.130. Responsive Pleadings and Motions
> (b) Pre-Hearing Motions.
>
> (2) Motion to Dismiss. All defenses not raised by a plea of not guilty or denial of the allegations of the petition shall be made by a motion to dismiss the petition.

The Committee Note thereto states that Rule 8.130(b)(2) is a:

> [g]eneral provision for all defenses not raised by a guilty plea to be made by a motion to dismiss. [See Fla.R.Crim.P. 3.190(b),(c), and (d).]

By virtue of this Committee Note, petitioner seeks to equate Fla. R.Juv.P. 8.130(b)(2) with Fla.R.Crim.P. 3.190(c)(4), which reads:

> Rule 3.190. Pre-Trial Motions
> (c) Time for Moving to Dismiss. Unless the court grants him further time, the defendant shall move to dismiss the indictment or information either before or upon arraignment. The court in its discretion may permit the defendant to plead and thereafter to file a motion to dismiss at a time to be set by the court. Except for objections based upon fundamental grounds, every ground for motion to dismiss which is not presented by a motion to dismiss within the time hereinabove provided for shall be taken to have been waived. However, the court may at any time entertain a motion to dismiss on any of the following grounds.
> (4) There are no material disputed facts and the undisputed facts do not establish a prima facie case of guilt against the defendant. The facts on which such motion is based should be specifically alleged and the motion sworn to.

This is fanciful. Under the aforedescribed axiom that any applicability of the Florida Rules of Criminal Procedure upon the Florida Rules of Juvenile Procedure must be strictly construed, it is clear that the criminal counterpart of Fla.R. Juv.P. 8.130(b)(2) is not Fla.R.Crim.P. 3.190(c)(4), but rather is the virtually identical Fla.R.Crim.P. 3.190(b), which reads as follows:

> Rule 3.190. Pre-Trial Motions
> (b) Motion to Dismiss.
> Grounds. All defense available to a defendant by plea, other than not guilty, shall be made only by motion to dismiss the indictment or information whether the same shall relate to matters of form, substance, former acquittal, former jeopardy, or any other defense.

If this Court had intended for the Florida Rules of Juvenile Procedure to contain a counterpart to Fla.R.Crim.P. 3.190(c)(4), it would have followed the extant Fla.R.Juv.P. 8.130(b)(2) with a "Fla.R.Juv.P. 8.130 (c)(4)." The Court would also have created a juvenile equivalent for Fla.R.Crim.P. 3.190(d),[1] allowing respondent to traverse any Fla.R.Crim.P. 3.190(c)(4) --type motion to dismiss. It would be ludicrous to hold that Fla.R.Juv.P. 8.130(b)(2) authorizes a Fla.R.Crim.P. 3.190(c)(4)

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[1] Fla.R.Crim.P. 3.190(d) reads as follows:

> 3.190(d) Traverse or Demurrer. The State may traverse or demur to a motion to dismiss which alleges factual matters. Factual matters alleged in a motion to dismiss shall be deemed admitted unless specifically denied by the State in shuch traverse. The court may receive evidence on any issue of fact necessary to the decision on the motion. A motion to dismiss under (c) (4) of this rule shall be denied if the State files a traverse which with specificity denies under oath the material fact or facts alleged in the motion to dismiss. Such demurrer or traverse shall be filed a reasonable time before the hearing on the motion to dismiss.

--type motion to dismiss when the Florida Rules of Juvenile Procedure do not even authorize respondent to traverse any such motion.

State v. J.T.S., 373 So.2d 418 (Fla. 2nd DCA 1979) to the contrary, it is clear that a juvenile defendant who has a Fla. R.Crim.P. 3.190 (c)(4)-- type claim cannot gain a prehearing dismissal, but must instead pursue a Fla.R.Juv.P. 8.190(m) motion to dismiss at the conclusion of his or her adjudicatory hearing. See also Fla.R.Juv.P. 8.190(h). This is in keeping with the axioms that juveniles who are charged with delinquency do not enjoy all of the procedural and constitutional protections which are afforded to adults who are charged with crimes, see State v. Boatman, 329 So.2d 309 (Fla. 1976); §39.02-§39.337, Fla. Stat., and that the discretion afforded to a lower court's decision regarding the legal fate of a juvenile is broad and is not assailable upon appeal absent a clear legal irregularity, see Pendarvis v. State, 104 So.2d 651 (Fla. 1st DCA 1958); J.Y. v. State, 332 So.2d 643 (Fla. 3rd DCA 1976); In Re Adoption of Cox, 327 So.2d 776 (Fla. 1976).

Respondent would thus urge that the certified question be answered in the negative. In closing, respondent would note that because the First District found that a dismissal here would be inappropriate under the Florida Rules of Criminal Procedure as well as under the Florida Juvenile Procedure, D.K.D. can reap no benefit from this proceeding even if the Court answers the certified question in the affirmative.

CONCLUSION

WHEREFORE, respondent submits that the certified question must be answered in the negative.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief has been forwarded to Paula S. Saunders, Assistant Public Defender, Post Office Box 671, Tallahassee, FL 32302; and to petitioner, D.K.D., 531 S.W. 80th Drive, Gainesville, Florida, this 11th day of January, 1984.

John W. Tiedemann

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