

IN THE SUPREME COURT OF FLORIDA

CASE NO. 64,639

THE STATE OF FLORIDA,

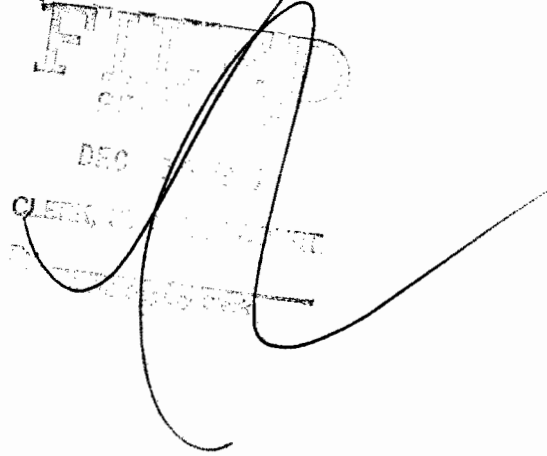
Petitioner,

vs.

K.H., a juvenile,

Respondent,

FILED
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 CLERK OF THE SUPREME COURT
 TALLAHASSEE, FLORIDA



ON CONFLICT JURISDICTION FROM THE DISTRICT COURT OF APPEAL

REPLY BRIEF OF PETITIONER ON THE MERITS

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INTRODUCTION

The State of Florida, was the Petitioner in the trial court. K.H., a juvenile, was the Respondent in the trial court. In this brief, the parties will be referred to as they appear before this Court. The symbol "R" will be used to designate the Record on Appeal. The symbol "SR" will be used to designate the Supplemental Record on Appeal which consists of the three (3) pages of the transcript of the proceedings below. All emphasis has been supplied unless the contrary is indicated.

STATEMENT OF THE CASE

On May 9, 1983, the Petitioner filed its Petition for Delinquency against the Respondent alleging that the Respondent unlawfully, feloniously, wantonly or maliciously threw a rock at or into a occupied vehicle contrary to the provisions of §790.19 Florida Statutes. The act as alleged in the Petition for Delinquency constitutes a second degree felony. (See.R-1).

On June 20, 1983, the instant cause was called up for hearing before the Honorable Seymour Gelbert, a Judge of the Circuit Court of the Eleventh Judicial Circuit, Family Division. After a brief inquiry and colloquy between the Judge and the State Attorney, the Judge dismissed the petition. (See SR 2-4).

The State of Florida sought appellate or certiorari review of this case in the District Court of Appeal. Review was denied solely upon authority of State v. C.C., 449 So.2d 280 (Fla. 3d DCA 1983) En Banc, approved __ So.2d __ (Fla. Case No. 64,354). This court then granted review on grounds of express and direct decisional conflict. The briefing schedule in the case was stayed pending resolution of State v. C.C., supra. On October 21, 1985, the court ordered a brief on the merits of the case.

SUMMARY OF ARGUMENT

On authority of State v. Smith, 260 So.2d 489 (Fla. 1972), the Petitioner seeks a reversal of the District Court's order of dismissal and an instruction to grant the writ of certiorari. The trial court lacked jurisdiction to dismiss the State's case prior to any hearing and his action constitutes a departure from the essential requirements of law.

ISSUE

WHETHER THE TRIAL COURT HAD THE LAW-
FUL AUTHORITY TO SUMMARILY DISMISS
THE STATE'S PETITION FOR DELINQUENCY?

ARGUMENT

THE TRIAL COURT WAS WITHOUT AUTHORITY
TO SUMMARILY DISMISS THE STATE'S
PETITION FOR DELINQUENCY IN THE INSTANT
CAUSE.

Respondent argues that Petitioner has ignored a quartet of controlling cases on the issue of availability of certiorari review. (Brief of Respondent, Page 5, Footnote 1). Had the respondent reviewed the case of Jones v. State, ___ So.2d ___ (Fla. Case No. 64,042)[10 FLW 565]¹ and in particular the special concurrence of the Chief Justice, the Respondent would have found the following passage:

I write this separate opinion to caution against a possible erroneous interpretation of the court's decision: it could be read as holding that when there is no appeal available, certiorari is never available. I simply do not believe that by its recent decision in State v. G.P., No. 63,613 (Fla. Aug. 30, 1985), this Court intended to overturn many decades of well-established common-law doctrine on the subject of the writ of certiorari.

The principal issue presented by this case is whether a district court of appeal, when it finds that a party seeking to appeal a circuit court judgment or order is not entitled to appeal the judgment or order in question, may simply treat the appeal as a petition

¹Cited on page six of Petitioner's initial brief.

for certiorari and, in its discretion, provide appellate review of the judgment or order by means of the writ of certiorari. By its decisions in State v. G.P., and in the present case, this Court correctly answers that question in the negative. But it would be an erroneous misinterpretation of the court's holding to conclude that when there is no entitlement to an appeal, certiorari is ipso facto not available as a remedy. To the contrary, the lack of an available remedy by appeal is one of the prerequisites to the issuance of the common-law writ of certiorari. The absence of a right to appeal does not preclude resort to certiorari, in fact it is one of the required elements making the aggrieved litigant eligible to seek issuance of the writ.

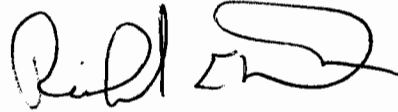
Since Petitioner is not entitled to appeal in the context of juvenile delinquency cases certiorari can be granted if the Petitioner proves the lower court acted beyond its jurisdiction or departed from the essential requirements of law. As argued in Petitioner's initial brief, unchallenged by respondent's brief, the trial court had no authority to summarily dismiss this case pre-hearing. The writ should therefore be granted and this court should instruct the district court to so act. See, State v. Smith, 260 So.2d 489 (Fla. 1972).

CONCLUSION

Based upon the foregoing reasons and citations of authority, the Petitioner, the State of Florida, prays that this Honorable Court enter an order vacating the District Court's order of dismissal of Petitioner's Petition for Delinquency with instructions to grant a writ of certiorari to Petitioner.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **REPLY BRIEF OF PETITIONER ON THE MERITS** was furnished by mail to **BETH WEITZNER**, Assistant Public Defender, 1351 N.W. 12th Street, Miami, Florida 33125 on this 12th day of December, 1985.



RICHARD E. DORAN
Assistant Attorney General

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