

IN THE SUPREME COURT OF FLORIDA

FILED

SID J. WHITE

FEB 24 1984

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

H. D., a child,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

CASE NO. 64,796

RESPONDENT'S BRIEF ON JURISDICTION

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PRELIMINARY STATEMENT

The Petitioner herein was the Appellant and the Respondent, the Appellee in the Fourth District Court of Appeal. In this brief, the parties will be referred to as the "Petitioner" and the "Respondent."

"A" means Petitioner's Appendix to the Jurisdictional Brief, and "e.a." means emphasis added.

STATEMENT OF THE CASE AND FACTS

Respondent accepts Petitioner's Statement of the Case to its limited extent, and makes the following additions and corrections:

Petitioner was adjudicated guilty, in two consolidated cases, of burglary and petit theft.

On Appeal to the Fourth District Court of Appeal, State of Florida, the District Court affirmed the judgment of Adjudication and sentence, on the stated basis that Rule 8.290(d)(4) of the Florida Rules of Juvenile Procedure was the same, in statutory language, to the provisions of Rule 3.111(d)(4) of the Florida Rules of Criminal Procedure.

(A, 1).

Petitioner's alleged basis for his Motion to Suppress, since not a part of the Appendix, is irrelevant to this Court's determination of jurisdiction.

ARGUMENT

DECISION OF FOURTH DISTRICT COURT OF APPEAL DOES NOT PRESENT "DIRECT AND EXPRESS CONFLICT," UNDER MEANING OF ARTICLE V OF FLORIDA CONSTITUTION; THEREFORE, SUPREME COURT'S JURISDICTION CAN NOT BE PROPERLY EXERCISED.

In reviewing Petitioner's allegation of conflict so as to invoke this Court's discretionary certiorari jurisdiction, it is crucial to note that Article V, Section 3(b) (3) of the Florida Constitution requires a showing by Petitioner that there is "express and direct conflict" herein with the holding of another state District Court of Appeal, based upon the opinion, sub judice, on its face. Dodi Publishing Company v. Editorial America, S.A., 385 S.2d 1369 (Fla. 1980); Jenkins v. State, 385 S.2d 1356 (Fla. 1980). Furthermore, such conflict certiorari may properly be established only by demonstrating that any present rule of law announced in the present case expressly conflicts with a rule of law from a prior appellate decision. Mancini v. State, 312 S.2d 732 (Fla. 1975); Hollywood, Inc. v. Broward County, 108 S.2d 752 (Fla. 1959).

Petitioner claims that the following opinion has created express conflict:

Finding that Rule 8.290(d)(4) of the Florida Rules of Juvenile Procedure tracks Rule 3.111(d)(4) of the Florida Rules of Criminal Procedure, we affirm on the authority of Jordan v. State, 334 S.2d 589 (Fla. 1976).

AFFIRMED.

(A, 1). However, the decisions rendered in S.L.W. v. State, #AS-175 (8 FLV 2814)[1st DCA, December 2, 1983], and M.L.H. v. State, 399 S 2d 13 (Fla. 1st DCA 1981) did not rule upon or enunciate any similar basis for the decision therein. Neither of the aforesaid decisions examined or discussed the similarity or distinction between the two separate rules of procedure evidently considered and compared in the case sub judice. Petitioner actually is attempting to demonstrate conflict between the aforementioned First District cases and the case cited for authority by the Fourth District herein (Petitioner's Brief, at 5); this is clearly an improper basis for invoking conflict jurisdiction:

"The issue to be decided from a petition for conflict review is whether there is express and direct conflict in the decision of the district court before us for review, not whether there is conflict in a prior written opinion which is now cited for authority.

Dodi Publishing, supra, at 1369. (e.a.)

Additionally, Petitioner's argument is speculative and improperly seeks to go behind the face of the Fourth District opinion to assert conflict. Statements in Petitioner's Brief concerning the facts of the case sub judice, and other assertions to the effect that the Fourth District necessarily rejected the decisions cited by Petitioner, are not expressly reflected in the opinion sub judice, and cannot be appropriately considered by this Court

in determining the propriety of jurisdiction on a "conflict" basis. Kincaid v. World Insurance Company, 57 S. 2d 517 (Fla. 1963). Furthermore, attempted reliance on such purported facts and bases for the District Court opinion, without any substantiation or reference to same in the express opinion under review herein (Petitioner's Appendix, at 1), is merely a de facto second attempt to reargue and reassert Petitioner's position by means of a second direct appeal. Sanchez v. Wimpy, 409 S.2d 20 (Fla. 1982). Clearly, the 1980 Amendment to the Florida Constitution on this point was designed to prevent such attempts to invoke this Court's certiorari jurisdiction. Jenkins, supra, at 1360.

Since Petitioner has completely failed to make any showing of direct conflict between the cases cited and the present decision, the petition for discretionary review must be denied.

CONCLUSION

Based on the argument and authorities cited herein, Respondent respectfully requests that this Honorable Court DENY jurisdiction and certiorari review of this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished this 20th day of February, 1984 by mail/courier to CATHLEEN BRADY, ESQUIRE, Assistant Public Defender, 224 Datura Street, Harvey Building, West Palm Beach, Florida 33401.

Richard G. Bartmon

Of Counsel