

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,)
Petitioner,)
v.)
PAUL LOWELL,)
Respondent.)
_____)


CASE NO. 65,140

FILED

SID J. WHITE

APR 23 1984

CLERK, SUPREME COURT

By: 
Chief Deputy Clerk

RESPONDENT'S BRIEF ON JURISDICTION

RICHARD L. JORANDBY
Public Defender
15th Judicial Circuit of Florida
224 Datura Street
West Palm Beach, Florida 33401
(305) 837-2150

THOMAS F. BALL, III
Assistant Public Defender

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,)
 Petitioner,)
v.)
PAUL LOWELL,)
 Respondent.)
_____)

CASE NO. 65,140

RESPONDENT'S BRIEF ON JURISDICTION

RICHARD L. JORANDBY
Public Defender
15th Judicial Circuit of Florida
224 Datura Street
West Palm Beach, Florida 33401
(305) 837-2150

THOMAS F. BALL, III
Assistant Public Defender

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
PRELIMINARY STATEMENT	1
STATEMENT OF THE CASE AND FACTS	2
POINT INVOLVED/ARGUMENT	3
WHETHER THIS COURT SHOULD DECLINE TO REVIEW THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL.	
CONCLUSION	5
CERTIFICATE OF SERVICE	5

AUTHORITIES CITED

<u>CASE</u>	<u>PAGE</u>
<u>M.P. v. Bussey, 430 So.2d 523</u> (Fla. 1st DCA 1983)	3
<u>State v. Bussey, 444 So.2d 63</u> (Fla. 4th DCA 1984)	3
<u>State v. Thomas, 428 So.2d 327</u> (Fla. 1st DCA 1983)	3
 <u>OTHER AUTHORITIES:</u>	
<u>Section 817.563, Florida Statutes</u>	3,4

Preliminary Statement

Respondent was the Appellant in the Fourth District Court of Appeal and the Defendant in the Circuit Court. Petitioner was the Appellee in the Fourth District Court of Appeal and the Prosecution in the Circuit Court. In the brief, the parties will be referred to as they appear before this Court.

The following symbol will be used:

"P" Petitioner's Brief on Jurisdiction.

Statement of the Case and Of the Facts

Respondent accepts Petitioner's Statement of the Case and of the Facts insofar as it is not argumentative, with one addition:

On April 12, 1984 the Fourth District Court of Appeal granted Petitioner's Motion for Stay of Mandate.

POINT INVOLVED/ARGUMENT

WHETHER THIS COURT SHOULD DECLINE TO REVIEW THE
DECISION OF THE FOURTH DISTRICT COURT OF
APPEAL.

This case involves an appeal by the State of the Fourth District Court of Appeal's decision reversing Respondent's conviction under Section 817.563, Florida Statutes (1981). The district court reversed Respondent's conviction on authority of State v. Bussey, 444 So.2d 63 (Fla. 4th DCA 1984), which held Section 817.563 unconstitutional.

Despite being able to invoke this Court's appellate jurisdiction under Rule 9.030(a)(1)(A)(ii), Florida Rules of Appellate Procedure (1981). Petitioner has embarked on an arduous and confusing path to seek this Court's review. Petitioner has sought to invoke this Court's discretionary conflict jurisdiction under Rule 9.030(a)(2)(A)(iv), Florida Rules of Appellate Procedure (1981)(P2).

In support of this request Petitioner offers the brief on the merits submitted by the State in Bussey. That brief is wholly insufficient to support Petitioner's request for discretionary review. The argument in Petitioner's adopted brief claims only that the statute is constitutional and only advances principles of law from a myriad of cases in support thereof. Petitioner's brief is remarkable only in its lack of any analysis of the two relevant decisions, State v. Thomas, 428 So.2d 327 (Fla. 1st DCA 1983), and M.P. v. State, 430 So.2d 523 (Fla. 1st DCA 1983), which uphold the constitutionality of Section 817.563. Throughout Petitioner's Brief on Jurisdiction there is no mention of any specific case(s) that conflict with the decision below.

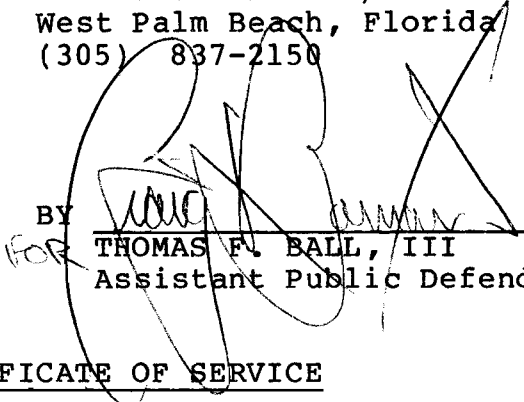
Moreover, Petitioner persisted in its misguided approach in its conclusion by requesting not that this Court invoke its discretionary jurisdiction, but rather "that the decisions of the Fourth District Court of Appeal as holding Fla. Stat. 817.563 unconstitutional be reversed and remanded with appropriate directions" (P10).

Conclusion

While Petitioner could have invoked this Court's appellate jurisdiction, it did not. Instead, the State has sought discretionary review by this Court. The jurisdictional brief submitted in support of Petitioner's request is wholly inadequate and Petitioner's request should be denied.

Respectfully submitted,

RICHARD L. JORANDBY
Public Defender
15th Judicial Circuit of Florida
224 Datura Street/13th Floor
West Palm Beach, Florida 33401
(305) 837-2150

BY 
FOR THOMAS F. BALL, III
Assistant Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof was furnished by courier/mail to MARLYN J. ALTMAN, Assistant Attorney General, Elisha Newton Dimick Building, Room 204, 111 Georgia Avenue, West Palm Beach, Florida 33401, this 19th day of April, 1984.


Of Counsel