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IN THE FLORIDA SUPREME COURT

STATE OF FLORIDA,

Petitioner,

vs.

CASE NO. 65,159

DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES, ex rel., M.H., a Juvenile,

Respondent.

_____/

PETITIONER'S BRIEF ON THE MERITS

JIM SMITH
ATTORNEY GENERAL

DAVID P. GAULDIN
ASSISTANT ATTORNEY GENERAL

DEPARTMENT OF LEGAL AFFAIRS
THE CAPITOL
TALLAHASSEE, FLORIDA 32301
(904) 488-0290

COUNSEL FOR RESPONDENT

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PRELIMINARY STATEMENT

The Record on Appeal in the Florida First District Court of Appeal consists of one consecutively paginated volume, which shall be referred to by the symbol "R" followed by the appropriate page number.

STATEMENT OF THE CASE AND FACTS

The facts are taken from the Florida First District Court of Appeal's opinion in this case, Department of Health and Rehabilitative Services, ex rel., M.H., a juvenile, v. State of Florida, ___ So.2d ___, 9 F.L.W. 533, opinion issued March 8, 1984. (Appendix).

The Department of Health and Rehabilitative Services (hereinafter referred to as "the Department") appealed to the Florida First District Court of Appeal a commitment order in which the juvenile court adjudicated M.H. delinquent for violating probationary terms of an earlier order under which M.H. had been found in contempt, but in which adjudication of delinquency had been withheld. On March 8, 1984, the Florida First District Court of Appeal issued its opinion, rejecting the rationale of A.O. v. State, 433 So.2d 23 (Fla. 3rd DCA 1983) (review pending in this Court, Case No. 63,974),

and holding that this Court's decision in R.M.P. v. Jones, 419 So.2d 618 (Fla. 1982) and the principle of stare decisis mandated "... that persistent runaway and truant behavior shall be treated as acts of dependency, rather than delinquent behavior based upon a finding of contempt for failure to abide by previous order prohibiting runaway and truant behavior."

Briefly, the juvenile court determined that M.H., because of her truancy and status as a runaway, was a dependent child, placed her under the supervision of the Department and required her to attend school and abide by a curfew. (R-3). Subsequently, M.H. ran away from home and missed several days of school. Upon motion by the State Attorney's Office, pursuant to §39.412, Fla. Stat. (1981), the juvenile court found M.H in contempt, withholding an adjudication of delinquency, and placing her in community control with the requirement that she attend school and abide by a curfew. (R-5-7).

Thereafter, M.H. failed to abide by a curfew and absconded. The trial court then entered a order revoking community control, adjudicating M.H. delinquent, and committing her to the department for an unspecified period of time. (R-11-13).

The court's order of September 14, 1983, merely adjudicated M.H. guilty on charges to which she had pled guilty earlier. (R-11;5). Subsequently, after M.H. appealed to

the Florida First District Court of Appeal and received relief, the state petitioned this Court, which in its order of July 19, 1984, agreed to review the lower court's decision on its merits.

The state's brief follows.

ISSUE ON APPEAL

WHETHER A JUVENILE MAY BE ADJUDICATED A DELINQUENT BASED UPON A FINDING OF CONTEMPT FOR VIOLATION OF A PREVIOUS ORDER ADJUDICATING HER A DEPENDENT.

This issue is presently before this Court in A.O., a juvenile, petitioner, v. State of Florida, respondent, Case No. 63,974. The state adopts in toto the argument made by Richard E. Doran, Assistant Attorney General, in his Brief of Respondent on the Merits in A.O. (Attached). The state would like to add the following comments that pertain particularly to M.H.

Although not argued in the First District Court of Appeal, the state notes that M.H. pled guilty to the order of May 25, 1983, in which M.H. was found in contempt but which withheld adjudication of that comtempt.

Except in certain specified circumstances, an individual may not appeal from a plea of guilty. Robinson v. State, 373 So.2d 898 (Fla. 1979) and cases cited therein. It is the state's contention that in this case, at least, by virture of M.H.'s plea of guilty, M.H. is not entitled to an appeal. Id. Because the Florida First District Court of Appeal lacked jurisdiction to hear this issue, this Court should vacate the Florida First District Court of Appeal's opinion. The fact that the state may not have raised this issue before the Florida First District Court of Appeal is

irrelevant because questions of jurisdiction may be raised at any time.

Moreover, the question of whether the juvenile court can hold a juvenile in contempt is not a question of jurisdiction. See R.M.P. v. Jones, 392 So.2d 301 (Fla. 1st DCA 1980), affirmed 419 So.2d 618 (Fla. 1982). The question before the Florida First District Court of Appeal was a question of statutory interpretation, not jurisdiction. Put another way, whether a juvenile may be adjudicated a delinquent based upon a finding of contempt for violation of a previos order adjudicating her a dependent depends upon interpretation of the relevant Florida statutes, but not upon the jurisdiction of the lower court to hold a juvenile in contempt.

Thus, because an appeal may not be taken from a guilty plea, this Court should quash the Florida First District Court of Appeal's opinion in this matter.

Finally, if this Court disagrees with the state's reasoning as to whether M.H. had a right to appeal to the Florida First District Court of Appeal, and reaches the merits, the state would request that this Court uphold the reasoning in A.O., a juvenile, v. State, and reject the reasoning of the Florida First District Court of Appeal in this matter.

CONCLUSION

Based on the foregoing arguments and authorities, the opinion of the Florida First District Court of Appeal should be quashed.

Respectfully submitted,

JIM SMITH
ATTORNEY GENERAL

DAVID P. GAULDIN
ASSISTANT ATTORNEY GENERAL

DEPARTMENT OF LEGAL AFFAIRS
THE CAPITOL
TALLAHASSEE, FLORIDA 32301
(904) 488-0290

COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief on the Merits has been forwarded to Ms. Maureen L. McGill, Post Office Box 12836, Pensacola, Florida 32536, by U.S. Mail, this 8th ~~day~~ of August, 1984.

DAVID P. GAULDIN
ASSISTANT ATTORNEY GENERAL