

IN THE
SUPREME COURT OF FLORIDA

FILED

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APR 23 1984

CLERK, SUPREME COURT

By [Signature]
Chief Deputy Clerk

STATE OF FLORIDA, by and
through the State Attorney
for the Twelfth Judicial
Circuit,

Plaintiff-Petitioner

vs

GENERAL DEVELOPMENT
CORPORATION, a Delaware
corporation authorized
to do business in Florida,

Defendant-Respondent.

APPEAL NO. 65,191

Appeal from the District Court of Appeal
of Florida, Second District

CORRECTED BRIEF ON JURISDICTION

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POINT ON APPEAL

THE SECOND DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA INCORRECTLY HELD THAT NEITHER THE STATE CONSTITUTION, NOR ANY STATUTE, NOR ANY CASE LAW GIVES A STATE ATTORNEY INDEPENDENT AUTHORITY TO COMMENCE, IN HIS APPROPRIATE JUDICIAL CIRCUIT AND ON BEHALF OF THE STATE, A CIVIL ACTION FOR DAMAGES AND PENALTIES UNDER CHAPTER 403, FLORIDA STATUTES.

STATEMENT OF FACTS

Petitioner is the State of Florida, by and through the State Attorney for the Twelfth Judicial Circuit of the State of Florida. In the late Spring of 1982, Petitioner became aware of the fact that Respondent, General Development Corporation, had constructed, expanded, or modified approximately 19.3 miles of waterways, canals, or impoundments, involving the removal of approximately 3 million cubic yards of earth, to provide drainage for some 35,500 acres of property located in the City of North Port for subsequent development for residential use by Respondent. Such dredging and filling activities were conducted in waters of the State without first obtaining permits required pursuant to Chapter 403, Florida Statutes, and Chapter 17-4, Florida Administrative Code.

In addition to the unpermitted activities described above, Respondent was found to have caused or contributed to violations of water quality standards established for waters of the State by Chapter 17-3, Florida Administrative Code.

The Respondent's unpermitted dredging and filling activities and water quality violations are prohibited by Chapter 403, Florida Statutes, and are actionable by civil, criminal and administrative remedies.

As the prosecuting attorney for the State of Florida in the Twelfth Judicial Circuit, the Petitioner sought enforcement action against Respondent for its violation of the State laws designed to protect the quality of the State's water resources. Such enforcement action was initiated by Petitioner's filing on September 27, 1982 of its Complaint for Damages and Civil Penalties Or Alternatively Petition for Enforcement.

On October 26, 1982, Respondent filed a Motion to Dismiss Petitioner's action.

On November 9, 1982, Respondent filed a Motion for Summary Judgment.

On December 1, 1982, a hearing on Respondent's Motions was held before Sarasota County Circuit Court Judge Paul E. Logan.

On December 22, 1982 the lower court entered its Order dismissing Petitioner's action on the grounds that Section 27.02, Florida Statutes does not authorize Petitioner to "bring an action of this type", and because "there is no authorization for such action in Chapter 120".

A Notice of Appeal from the final Order of the Sarasota County Circuit Court dismissing Petitioner's action was

filed January 5, 1983. Oral Argument before the Second District Court of Appeal was heard on September 7, 1983.

On March 23, 1984, the Second District Court of Appeal filed its Opinion affirming the Order of the Sarasota County Circuit Court. In its Opinion, the Second District Court of Appeal affirmed the trial court's ultimate rulings, holding:

[n]either the state constitution, nor any statute, nor any case law gives a state attorney independent authority to commence, in his appropriate judicial circuit and on behalf of the state, a civil action for damages and penalties under section 403.141(1) and/or institute an administrative action to enforce DER's related rules and regulations under section 120.69(1)(a). Appendix at page 3.

The Petitioner is requesting this Court to invoke its discretionary jurisdiction pursuant to Article V, Section 3(b)(3), Florida Constitution (1983) to review that portion of the Second District Court of Appeal's Opinion which holds that a State Attorney has no "independent authority to commence, in his appropriate judicial circuit and on behalf of the state, a civil action for damages and penalties under section 403.141(1)".

DISCUSSION

Pursuant to Article V, Section 3(b)(3), Florida Constitution (1983), and Rule 9.030(a)(2)(A)(iii), Fla. R. App. P., the Supreme Court may review any decision of a District Court of Appeal which expressly affects a class of constitutional officers.

A State Attorney derives his authority from Article V, Section 17, Florida Constitution (1983), and is thus, a constitutional officer. See, Smith v. State, 95 So.2d 525, 527 (Fla. 1957); Collier v. Baker, 20 So.2d 652, 653 (Fla. 1945); and State v. Coleman, 189 So. 691, 693 (Fla. 1939).

This Court has also held that State Attorneys constitute a "class of constitutional officers". Satz v. Perlmutter, 379 So.2d 359, 360 (Fla. 1980)

On page 16 of its Opinion (Appendix at page 16), the Second District Court of Appeal noted that it had been called upon to "interpret the powers of a state attorney with respect to Chapter 403". (Emphasis Added). It is clear that the Second District Court of Appeal intended its decision to determine the powers of all State Attorneys with respect to Chapter 403, Florida Statutes. Even assuming arguendo that such was not the intent of the Second District Court of Appeal, its decision will directly affect the duties, powers, or regulation of a particular class of constitutional officers.

This Court noted in Richardson v. State, 246 So.2d 771, 773 (Fla. 1971) that discretionary jurisdiction would lie "to review decisions which, in the ultimate, would affect all constitutional or state officers exercising the same powers, even though only one such officers might be involved in that particular litigation". See also, Florida State Board of Health v. Lewis, 149 So.2d 41 (Fla. 1963).

This Court therefore has jurisdiction to review the Opinion of the Second District Court of Appeal in this cause since that Opinion expressly affects a class of constitutional officers. See generally, Satz v. Perlmutter, 379 So.2d 359 (Fla. 1980); Taylor v. Tampa Electric Co., 356 So.2d 260 (Fla. 1978); Spradley v. State, 293 So.2d 697 (Fla. 1974); Richardson v. State, 246 So.2d 771 (Fla. 1971); Florida State Board of Health v. Lewis, 149 So.2d 41 (Fla. 1963); and, State v. Robinson, 132 So.2d 156 (Fla. 1961).

The discretionary jurisdiction of this Court should also be invoked to review the Opinion of the Second District Court of Appeal on the ground that the Opinion expressly construed a provision of the Florida Constitution. Article V, Section 3(b)(3), Florida Constitution (1983) and Rule 9.030(a)(2)(A)(ii), Fla. R. App. P. state that the Supreme Court may review any decision of a District Court of Appeal that expressly construes a provision of the Florida Constitution.

This Court has held that an opinion or judgment of a District Court "construes" a provision of the Constitution if it attempts to "explain, define or otherwise eliminate existing doubts arising from the language or terms of the constitutional provision". Ogle v. Pepin, 273 So.2d 391, 392 (Fla. 1973), and Armstrong v. City of Tampa, 106 So.2d 407, 409 (Fla. 1958). In Rojas v. State, 288 So.2d 234 (Fla. 1973), this Court refused to accept jurisdiction on the basis of the lower court's "construction of a constitu-

tional provision" where the judgment appealed from was not a ruling "which explains, defines or overtly expresses a view which eliminates some existing doubt as to a constitutional provision".

On page 11 and 12 of its Opinion (Appendix at pages 11-12), the Second District Court of Appeal expressly construed Article V, Section 17, Florida Constitution (1983). The Second District Court of Appeal presented its interpretation of the "plain meaning" of those portions of that Constitutional provision which defines the authority of the State Attorney. Referring to the powers of a State Attorney, the District Court stated:

Article V, section 17 creates the office of a state attorney for each judicial circuit and defines his authority to act on behalf of the state. The relevant part of section 17 provides: "[...] He shall be the prosecuting officer of all trial courts in that circuit and shall perform other duties prescribed by general law...." (Emphasis supplied). We believe that the plain meaning of the emphasized sentence directly empowers a state attorney to independently bring appropriate criminal proceedings, including related proceedings, in his circuit on the state's behalf without further legislative approval. However, the provision does not give a state attorney the authority to initiate a cause of action created by statute in favor of the state to recover civil damages and penalties for violations of section 403.161(1). Rather, only a specific general law can grant him the power to file such a suit. Such a construction of article V, section 17 is consistent with the scope of authority traditionally granted to and exercised by a state prosecuting attorney.

It is readily apparent the Opinion of the District Court explains, defines or overtly expresses a view which

attempts to eliminate some existing doubt as to the interpretation of Article V, Section 17, Florida Constitution (1983). Thus, this Court has jurisdiction to review the decision of the Second District Court of Appeal in this cause. See generally, Florida Commission On Ethics v. Plante, 369 So.2d 332 (Fla. 1979); and, Estate of Murphy, 340 So.2d 107 (Fla. 1976).

The Supreme Court should exercise its jurisdiction in this case since this cause involves a matter of great public interest. Article II, Section 7, Florida Constitution (1983) states, "It shall be the policy of the state to conserve and protect its natural resources and scenic beauty. Adequate provision shall be made by law for the abatement of air and water pollution...." In Section 403.021(5), Florida Statutes, the Florida Legislature stated, "It is hereby declared that the prevention, abatement, and control of the pollution of the air and waters of this state are affected with a public interest". It is obvious, that unless violations of the laws enacted to protect the State's natural resources from pollution are enforced, the public interests expressed in the Constitution, and by the Legislature, will not be served.

As the trial attorneys for the State of Florida, State Attorneys are best equipped to prosecute, on behalf of the State, either criminally or civilly, any violator of the State's environmental laws. Holding that State Attorneys may not so act because such has not been the "traditional"

role of the State Attorney, overlooks the historical roots of the Office of State Attorney, the legislative intent as expressed in the plain meaning of Section 27.02, Florida Statutes, and the need for flexibility by courts in dealing with modern problems. Furthermore, the Second District Court of Appeal's holding that a State Attorney requires no independent statutory authority to criminally prosecute violations of Chapter 403, Florida Statutes pursuant to Section 403.161(3), Florida Statutes, is inconsistent with its holding that the State Attorney requires independent statutory authority to civilly prosecute violations of Chapter 403, Florida Statutes pursuant to Section 403.161(2), Florida Statutes.

To effectuate the public interest of conserving and protecting the State's natural resources, all available enforcement mechanisms need to be employed by the State to counteract the numerous transgressions of State law which occur annually.

The Second District Court of Appeal's restriction of the authority of State Attorneys to assist in this effort by taking a narrow view of such authority based upon the "traditional" role of the State Attorney, is clearly contrary to the public policy of this State.

CONCLUSION

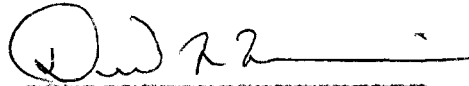
For the above-stated reasons, the Petitioner, State of

Florida, by and through the State Attorney for the Twelfth Judicial Circuit respectfully requests this Court to invoke its discretionary jurisdiction, applicable to this cause, and to review the Opinion of the Second District Court of Appeal, and ultimately to remand this cause to the Circuit Court in and for Sarasota County, Florida.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Petitioner's Corrected Brief On Jurisdiction has been furnished by mail to:


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