

FILED
S'D J. WHITE
JUL 6 1984

IN THE SUPREME COURT OF FLORIDA

RICKY WALTER SPURLOCK,)
)
 Petitioner,)
)
 vs.)
)
 STATE OF FLORIDA,)
)
 Respondent.)
)
 _____)

CLERK, SUPREME COURT
By: *[Signature]*
Chief Deputy Clerk

CASE NO. 65,450

RESPONDENT'S BRIEF ON JURISDICTION

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QUESTION PRESENTED:

WHETHER THE DECISION OF THE DISTRICT COURT OF APPEAL, FIFTH DISTRICT, IN THE CASE SUB JUDICE IS IN DIRECT CONFLICT WITH THE DECISION IN CLEM V. STATE, 8 FLW 2135 (FLA. 4TH DCA, AUGUST 31, 1983), THEREBY INVOKING THE DISCRETIONARY REVIEW JURISDICTION OF THIS COURT PURSUANT TO ARTICLE V, SECTION 3(b)(3) OF THE CONSTITUTION OF FLORIDA AND FLORIDA RULE OF APPELLATE PROCEDURE 9.030(A)(IV)? ----- 1

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OTHER AUTHORITIES

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QUESTION PRESENTED

WHETHER THE DECISION OF THE DISTRICT COURT OF APPEAL, FIFTH DISTRICT, IN THE CASE SUB JUDICE IS IN DIRECT CONFLICT WITH THE DECISION IN CLEM V. STATE, 8 FLW 2135 (FLA. 4TH DCA, AUGUST 31, 1983), THEREBY INVOKING THE DISCRETIONARY REVIEW JURISDICTION OF THIS COURT PURSUANT TO ARTICLE V, SECTION 3(b)(3) OF THE CONSTITUTION OF FLORIDA AND FLORIDA RULE OF APPELLATE PROCEDURE 9.030(A)(IV)?

ARGUMENT

Pursuant to the 1980 amendment to Art. V, § 3(b)(3) of the Florida Constitution, this Court's discretionary conflicts jurisdiction is limited to those decisions of a district court of appeal which expressly and directly conflict with a decision of another district court of appeal or this Court on the same question of law. As this Court noted in Jenkins v. State, 385 So.2d 1356 (Fla. 1981):

The new article embodies throughout its terms the idea of a Supreme Court which functions as a supervisory body in the judicial system for the state, exercising appellate power in certain specified areas essential to the preservation of uniformity of principle and practice, with review by the district courts being in most instances final and absolute.

Id. at 1357, quoting from, Ansin v. Thurston, 101 So.2d 808, 810 (Fla. 1958).

In the instant case, Petitioner claims that the holding of the Fifth District Court of Appeal in the case sub judice is in express and direct conflict with the decision of the

Fourth District Court of Appeal in Clem v. State, 8 FLW 2135 (Fla. 4th DCA, August 31, 1983), inasmuch as the Fifth District "rejected" the holding of Clem v. State. Simply put, Respondent questions whether the actions of a district court in "rejecting" the holding of another district court are sufficient to constitute express and direct conflict. This is particularly so where avenues exist whereby Petitioner, if he so desired, could have requested the appellate court to certify the conflict which he claims exists.

Furthermore, the State would note that as of the filing of this brief, rehearing of the decision in Clem v. State, supra, is still pending before the Fourth District Court of Appeal, and thus that decision is not yet final.¹ Accordingly, Respondent submits that Petitioner's claims of conflict are not yet ripe and that accepting jurisdiction at this time would therefore be improvident. That is, until Clem v. State becomes a final decision of the Fourth District Court of Appeal, no conflict can exist between that decision and the case sub judice.

Furthermore, even assuming that Petitioner has succeeded in demonstrating express and direct conflict, Respondent nevertheless asserts that there is no compelling cause such as would justify exercising this Court's discretionary jurisdiction in

¹On July 2, 1984, the undersigned contacted the Office of the Clerk of the Fourth District Court of Appeal and was advised that the court conducted special oral argument on rehearing on June 19, 1984. The undersigned was further advised that as a result of that special oral argument, the court ordered supplemental briefs from the parties and established a briefing schedule to meet that goal.

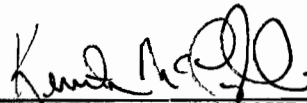
this regard. Indeed, Petitioner has failed to detail to this Court the importance of the issue he seeks to raise before it. The Respondent submits that in the absence of such a showing, resolution of the issue raised herein is a matter best left to the district courts of appeal. Unless and until conflict becomes so evident as to jeopardize the uniformity of principle and practice state-wide, Respondent would pray that this Court decline to exercise its discretionary jurisdiction in this cause.

CONCLUSION

WHEREFORE, based on the foregoing arguments and authorities, Respondent would pray this Court decline to exercise its discretionary jurisdiction in this cause.

Respectfully submitted,

JIM SMITH
ATTORNEY GENERAL

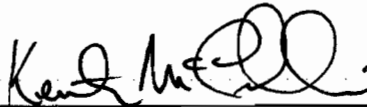


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing Respondent's Brief on Jurisdiction has been furnished, by delivery, to Michael S. Becker, Assistant Public Defender for Petitioner (1012 S. Ridgewood Ave., Daytona Beach, Florida 32014), this 5A day of July, 1984.



KENNETH McLAUGHLIN
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