

IN THE SUPREME COURT OF FLORIDA

FILED

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CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

STEPHEN LOUIS HOUSER,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

CASE NO: 65,793

DCA-2 No. 84-199

DISCRETIONARY REVIEW FROM THE
SECOND DISTRICT COURT OF APPEAL

BRIEF ON JURISDICTION

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STATEMENT OF THE CASE AND FACTS

On July 16, 1983, the Appellant was arrested on charges of selling a controlled substance. After the laboratory results were obtained, the Office of the State Attorney filed an Information on September 9, 1983, charging Appellant with agreeing to sell a false controlled substance in violation of Florida Statutes 817.563. Appellant, by and through the undersigned counsel, moved to dismiss the Information herein based on the unconstitutionality of the penalty provisions of Section 817.563, Florida Statutes. (R4-6) The Office of the State Attorney subsequently filed a written answer to Defendant's Motion to Dismiss (R7-9). A hearing was then conducted on November 21, 1983 before the Honorable Thomas L. Clarke, Jr. (R11-29).

In essence, the Appellant argued that the issues regarding the penalty provisions of the statute were, at this time, a case of first impressions and not the issues resolved in State vs. Thomas, 428 So. 2d 327, (Fla. 1 DCA 1983) and M. P. vs State, 430 So. 2d 23, (Fla 2 DCA 1983) which held the substantive portion of the statute constitutional (R-21). The Court indicated at the conclusion of the hearing that although the Second District Court of Appeal did not address the "direction" that was discussed by Appellant in the Motion to Dismiss, that the Court was nevertheless going to deny the motion and leave it to the Second District Court of Appeal to decide the matter. A Notice of Appeal was timely filed and this appeal follows.

On July 27, 1984, the Second District Court of Appeal rendered its opinion regarding the constitutionality of Florida Statutes 817.563. In their opinion, the Second District rejected the Appellant's contention that the substantive portions of the Statute are unconstitutional and that the penalty provisions of the statute are unconstitutional.

Appellant timely filed a Notice to Invoke Discretionary Jurisdiction of the Supreme Court and now files his Brief on Jurisdiction.

ISSUE

WHETHER THE SUPREME COURT OF THE STATE OF FLORIDA SHOULD INVOKE ITS DISCRETIONARY JURISDICTION TO REVIEW THE DECISION OF THE SECOND DISTRICT COURT OF APPEAL IN HOUSER V STATE OF FLORIDA WHEN SAID DECISION DIRECTLY CONFLICTS WITH STATE VS BUSSEY, 444 SO 2D 63 (FLA 4TH DCA 1984), AND WHEN BOTH DECISIONS CONSTRUE THE CONSTITUTIONALITY OF SECTION 817.563, FLORIDA STATUTES (1983).

ARGUMENT

The Supreme Court of Florida should invoke its discretionary jurisdiction to review the decision of the Second District Court of Appeal in Houser in that said decision directly conflicts with State v Bussey and passes on the constitutionality when both decisions construe the constitutionality of Section 817.563, Florida Statutes.

Appellant challenged the constitutionality of Section 817.563, Florida Statutes at the trial court and Second District Court of Appeal. In its opinion, the Second District Court of Appeal upheld the constitutionality of the substantive and penalty provisions of said Statute. Notably, the Court recognized a direct conflict with the decision rendered by the Fourth District Court of Appeal in State v Bussey, 444 So 2d 63 (Fla. 4th DCA, 1984). Appellant would argue that it is necessary to have a uniform administration of the law throughout the State of Florida and that the Supreme Court should accept jurisdiction of this cause in order to resolve the conflict between the District Courts of Appeal.

Appeal. Appellant would respectfully request that the Supreme Court review the decision rendered in this cause and in State v Bussey and exercise its discretion to entertain this matter on the merits. Hopefully, the Court's decision would provide for uniform application of the law throughout the State of Florida by making a determination as to the constitutionality of the statute in question.

CONCLUSION

The Appellant respectfully requests this Honorable Court to accept jurisdiction and issue its opinion on the merits resolving the conflict between the cited cases.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief on Jurisdiction was furnished by U.S. Mail this 31 day of August, 1984 to: Peggy A. Quince, Esq., Attorney General's Office, 1313 Tampa Street, Suite 804, Tampa, Florida 33602,



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