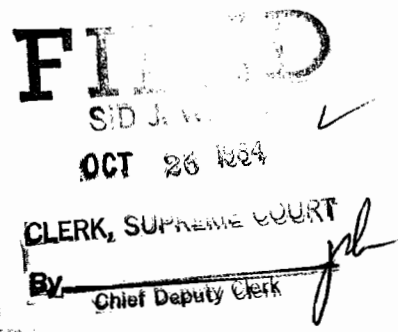


IN THE SUPREME COURT OF FLORIDA



E.N., a child,
Petitioner,

v

CASE NO. 65,977

STATE OF FLORIDA,
Respondent.

RESPONDENT'S BRIEF ON JURISDICTION

JIM SMITH
ATTORNEY GENERAL

MARGENE A. ROPER
ASSISTANT ATTORNEY GENERAL
125 N. Ridgewood Ave.
Fourth Floor
Daytona Beach, Fl. 32014
(904) 252-1067

COUNSEL FOR RESPONDENT

TABLE OF CONTENTS

PAGE:

CITATION OF AUTHORITIES.....ii

ARGUMENT:

WHETHER THE DECISION OF THE FIFTH
DISTRICT COURT OF APPEAL EXPRESSLY
AND DIRECTLY CONFLICTS WITH THE DE-
CISIONS OF EX PARTE AMOS, 112 So.
289 (Fla. 1927), NELL V STATE, 277
So.2d1(Fla. 1973); FERGUSON V STATE,
377 So.2d 709 (Fla. 1979); ARTHUR V
STATE, 391 So.2d 339 (Fla. 4th DCA
1980) AND JONES V STATE, 356 So.2d
4 (Fla. 4th DCA 1977).....1-2

CONCLUSION.....3

CERTIFICATE OF SERVICE.....3

CITATION OF AUTHORITIES

CASE:

PAGE:

<u>Arthur v State,</u> 391 So.2d 339 (Fla. 4th DCA 1980).....	1
<u>Ex Parte Amos,</u> 112 So.289 (Fla. 1927).....	1
<u>Ferguson v State,</u> 377 So.2d 709 (Fla. 1979).....	1
<u>Jones v State,</u> 356 So.2d 4 (Fla. 4th DCA 1977).....	1
<u>Nell v State,</u> 277 So.2d 1 (Fla. 1973).....	1

STATUTE:

Section 228.091(1), Florida Statutes (Supp 1982).....	1
---	---

ARGUMENT

THE DECISION OF THE FIFTH DISTRICT COURT OF APPEAL DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH THE DECISIONS OF EX PARTE AMOS, 112 So. 289 (Fla. 1927), NELL V STATE, 277 So.2d 1 (Fla. 1973); FERGUSON V STATE, 377 So.2d 709 (Fla. 1979); ARTHUR V STATE, 391 So.2d 339 (Fla. 4th DCA 1980) and JONES V STATE, 356 So.2d 4 (Fla. 4th DCA 1977).

Ex Parte Amos, 112 So.289 (Fla. 1927), Nell v State, 277 So.2d 1 (Fla. 1973), Ferguson v State, 377 So.2d 709 (Fla. 1979), Arthur v State, 391 So.2d 339 (Fla. 4th DCA 1980) and Jones v State, 356 So.2d 4 (Fla. 4th DCA 1977), all stand for the proposition that a criminal statute must be strictly construed and where ambiguous, that is, where it admits of two constructions, that which is most favorable to the accused must be adopted. Such proposition was not the issue in the instant appeal and the resultant decision is not in conflict with the above decisions. The narrow issue before the court in this case was whether section 228.091(1), Florida Statutes (Supp 1982), which prohibits trespass upon the grounds of a public school facility applies when a student of one public school unlawfully enters or remains upon the campus or other facility of another public school. App.1. The Fifth District Court of Appeal found the statute to be clear in its meaning and to proscribe the entering or remaining upon school grounds of a person who is not a student, officer or employer of that school, or who otherwise has no legitimate business on that campus or any other authorization, license or invitation to enter or remain on that school

property. Simply because the dissent expressed the view that the majority should have declared the statute ambiguous does not mean the statute is susceptible of differing construction, especially where the decision of the majority was premised on the fact that the statute was clear in its meaning.

None of the cases cited for conflict by Petitioner deal with or construe section 228.091(1), Florida Statutes (Supp 1982). Rather than a case of conflict, the instant case is one of first impression. Moreover, this case does not announce a rule of law which conflicts with the rule of law cited by Petitioner, because in the instant case, the majority simply found no ambiguity. Nor does this case involve substantially the same controlling facts as conflicting cases cited by Petitioner, which do not even involve section 228.091(1). The decisions are hardly wholly irreconcilable so as to warrant the exercise of this Court's discretionary jurisdiction.

CONCLUSION

The decision of the District Court of Appeal, Fifth District, that the Petitioner seeks to have reviewed is not in express and direct conflict with the decisions of another district court or this Court.

Respondent, therefore, requests this Court to decline to extend its discretionary jurisdiction to this cause and dismiss same.

Respectfully submitted,

JIM SMITH
ATTORNEY GENERAL



MARGENE A. ROPER
ASSISTANT ATTORNEY GENERAL
125 N. Ridgewood Ave.
Fourth Floor
Daytona Beach, Fl. 32014
(904) 252-1067

COUNSEL FOR RESPONDENT

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 Lucinda H. Young, Assistant Public Defender, this 24th day of October, 1984.



MARGENE A. ROPER
COUNSEL FOR RESPONDENT