IN THE SUPREME COURT OF FLORIDA

E.N., a child,	)	
	)	
Petitioner,	)	
	)	
vs.	)	CASE NO. 65,977
	)	
STATE OF FLORIDA,	)	
	)	
Respondent.	)	
	)	

PETITIONER'S BRIEF ON JURISDICTION

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

LUCINDA H. YOUNG
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ATTORNEY FOR PETITIONER

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STATEMENT OF THE CASE AND FACTS

On September 9, 1983 the State filed a petition against the Petitioner, a juvenile, charging him with delinquency and alleging that he entered or remained upon the campus of Grand Avenue School in Orange County, in violation of Section 228.091(1), Florida Statutes (1983) (R10). Petitioner filed a motion to dismiss the delinquency charge alleging, without contest, that he was an enrolled student at Memorial Junior High, a public school (R13-14). The trial court granted the motion on the grounds that Petitioner was a student of a public school and the applicability of Section 228.091(1) to public school students was ambiguous (R7-8).

The State appealed to the Fifth District Court of Appeal. On September 13, 1984 the District Court of Appeal by a two-to-one vote reversed the trial court's order of dismissal, ruling that the Legislature did not intend that all students of all public schools were exempt from prosecution under the statute. State v. E.N., 9 FLW 1934 (Fla. 5th DCA, September 13, 1984). Judge Cowart in his dissent stated that the statute's applicability to public school students was ambiguous and that the majority had failed to apply the correct rule of law that penal statutes must be strictly construed and any ambiguity resolved in favor of the accused. Id.

Petitioner filed Notice to Invoke Discretionary Review on October 4, 1984.

ARGUMENT

POINT I

THE DECISION OF THE FIFTH DISTRICT COURT OF APPEAL EXPRESSLY AND DIRECTLY CONFLICTS 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).

The decision of the Fifth District Court of Appeal expressly and directly conflicts 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), wherein the courts ruled 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.

E.N. was charged with violating Section 228.091(1), Florida Statutes, which provides as follows:

> Trespass upon grounds or facilities of public schools; penalties; arrest
> (1) Any person who:
> (a)1. Is not a student, officer, or employee of a public school;
> 2. Does not have legitimate business on the campus or any other authorization, license, or invitation to enter or remain upon school property; or
> 3. Is not a parent, guardian, or person who has legal custody of a student enrolled at such school; or
> (b)1. Is a student currently under suspension or expulsion; or
> 2. Is an employee who is not required by his employment by such school to be on the campus or any other

> facility owned, operated, or controlled by the governing board of such school and who has no lawful purpose to be on such premises;
> and who enters or remains upon the campus or any other facilty owned by any such school commits a trespass upon the grounds of a public school facility and is guilty of a misdemeanor of the second degree, punishable as provided in §775.082, §775.083, or §775.084.

(Emphasis added).

It was undisputed that E.N. was a duly enrolled public school student, but did not attend the particular school he allegedly entered. The statutory language of subsection (1)(a)1. excludes from prosecution under the statute persons who are students "of a public school". No language is used to limit or qualify "public school". The trial judge and Judge Cowart in his dissent recognized that, as a "student" of "a public school", E.N. fell within the class of persons excluded by the language of subsection (1)(a)1. Despite the language of (1)(a)1., the majority ruled that the Legislature intended that only students enrolled at the particular school which they were charged with entering upon were excluded from prosecution by (1)(a)1., and for this reason reversed the trial court's order of dismissal. This contravenes the rule recognized in Ex Parte Amos, supra at 292-293, Ferguson, supra at 711, and Nell, supra at 4, that "nothing not clearly and intelligently described in a statute's very words" shall be considered included within a penal statute and that "the accused must be plainly and unmistakably placed within the criminal statute and all reasonable doubts resolved in his favor."

As Judge Cowart noted in his dissent, it is not unreasonable for the Legislature to have excluded public school

students from prosecution under Section 228.091. Basketball courts, baseball diamonds, football fields, and playground equipment are located on public school grounds. Traditionally, public school grounds have served as neighborhood recreational areas for the benefit of school children in general. The dissenting opinion also pointed out that usually trespasses to land are not made criminal unless committed for some specific wrongful purpose or after at least one warning. No warning or notice is required for a violation of Section 228.091(1). The State may prosecute a public school student under the general trespassing statutes, Sections 810.08 and 810.09, Florida Statutes, for trespassing upon public school grounds after being warned, irrespective of Section 228.091. It is possible that the Legislature intended that public school students only be prosecuted for trespassing on public school grounds after warning.

In conclusion, the decision of the Fifth District in the instant case is in direct conflict with decisions of this Court and of other district courts of appeal. Because the case involves an important issue of statutory construction, this Court should exercise its discretionary jurisdiction.

POINT II

THE DECISION OF THE FIFTH DISTRICT COURT OF APPEAL EXPRESSLY AND DIRECTLY CONFLICTS WITH STATE V. G.P., 429 So.2d 786 (Fla. 3d DCA 1983).

The instant case is a State appeal from a trial court's dismissal of a petition for delinquency of a juvenile. The majority in its opinion noted that the Fifth District in State v. W.A.M., 412 So.2d 49 (Fla. 5th DCA 1982), upheld the State's right to appeal in juvenile cases. In State v. G.P., 429 So.2d 786 (Fla. 3d DCA 1983), the Third District disagreed and held that the State had no right to appeal final judgments of the juvenile court. This issue is presently pending before this Court following certification of the question by the Third and Fourth District Courts of Appeal. State v. G.P. (Sup.Ct. Case No. 63,613); State v. J.P.W. (Sup.Ct. Case No. 63,981).

CONCLUSION

For the reasons expressed herein, the Petitioner respectfully requests this Honorable Court to accept jurisdiction of this cause and reverse the decision of the Fifth District Court of Appeal.

Respectfully submitted,

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

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CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the Honorable Jim Smith, Attorney General, 125 North Ridgewood Avenue, Fourth Floor, Daytona Beach, Florida 32014; and mailed to E.S.N., 602 20th Street, Orlando, Florida 32805, on this 11th day of October, 1984.

Lucinda H. Young

LUCINDA H. YOUNG
ASSISTANT PUBLIC DEFENDER