

IN THE SUPREME COURT OF FLORIDA

ROBERT GLEN FIKE,)
)
 Petitioner,)
)
 vs.)
)
 STATE OF FLORIDA,)
)
 Respondent.)
 _____)

66,024

CASE NO. ~~5~~,

PETITIONER'S BRIEF ON JURISDICTION

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

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ATTORNEY FOR PETITIONER

FILED

SID J. WHITE

OCT 16 1984

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

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STATEMENT OF THE CASE AND FACTS

As stated by the District Court's opinion, the Defendant was challenging his judgment and sentence for sale of cannabis. Fike v. State, 9 FLW 1932 (Fla. 5th DCA, September 13, 1984) (Appendix). The information in the instant case alleged that Fike "did unlawfully and feloniously sell or deliver to another person, cannabis". Id. On Appeal Fike argued that the information was insufficient to invoke the jurisdiction of the circuit court because it alleged in the alternative a felony or a misdemeanor. The Fifth District Court of Appeal in an en banc decision affirmed by a four-to-two vote, receding from its decisions in Nelson v. State, 398 So.2d 920 (Fla. 5th DCA 1981) and Young v. State, 439 So.2d 306 (Fla. 5th DCA 1983). Id. The Court's rationale was that the portion of the information which alleged a misdemeanor was "mere surplusage". Id. The Court recognized conflict with Pope v. State, 268 So.2d 173 (Fla. 2d DCA 1972), cert. discharged 283 So.2d 99 (Fla. 1977), and Rogers v. State, 336 So.2d 1233 (Fla. 4th DCA 1976), cert. disp. 348 So.2d 952 (Fla. 1977). Id. The dissenting judges thought the information was duplicitous and would have reversed the conviction for lack of jurisdiction. Id.

Notice to Invoke Discretionary Jurisdiction was timely filed on October 12, 1984.

ARGUMENT

THE DECISION OF THE FIFTH DISTRICT COURT OF APPEAL EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISIONS OF POPE V. STATE, 268 So.2d 173 (Fla. 2d DCA 1972) AND ROGERS V. STATE, 336 So. 2d 1233 (Fla. 4th DCA 1976).

The Fifth District Court of Appeal in the instant case held that an information which charges, in the alternative, a felony or a misdemeanor is sufficient to invoke the jurisdiction of the Circuit Court. Fike v. State, 9 FLW 1932 (Fla. 5th DCA, September 13, 1984). As the Court noted in its opinion, this decision is in conflict with Pope v. State, 268 So.2d 173 (Fla. 2d DCA 1972) and Rogers v. State, 336 So.2d 1233 (Fla. 4th DCA 1976).

The information at issue in Pope and Rogers, like the information in the instant case, failed to specify whether the crime charged was a felony or a misdemeanor. The Second and Fourth Districts in Pope and Rogers found that the informations were insufficient to invoke the jurisdiction of the trial court.

In Pope, supra, the information charged the accused with possession of cannabis without alleging any specific amount of cannabis or that the defendant was a previous drug offender. Under the applicable statute, an accused was charged with a felony only if the amount of cannabis exceeded five grams or if he was a previous drug offender. In Rogers, supra, the information alleged that the defendant did "unlawfully and secretly carry on or about her person a concealed weapon to wit: a pistol, a better and more particular description of said weapon

being to the State Attorney unknown, contrary to Florida Statute 790.01". Because the first part of the information appeared to charge the defendant with carrying a concealed weapon, a misdemeanor, while the second part appeared to charge the felony offense of carrying a concealed firearm, the Fourth District Court of Appeal held the information invalid.


The opinion of the Fifth District Court of Appeal expressly and directly conflicts with the two aforementioned cases on an important issue involving jurisdiction of the Circuit Court. This Court should accept this cause, reverse the instant decision, and thereby restore the law requiring the State to properly invoke the jurisdiction of the Circuit Court.

CONCLUSION

BASED UPON the authorities and arguments cited herein, the Petitioner 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

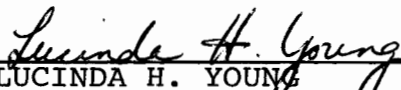


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CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the Honorable Jim Smith, Attorney General, 125 N. Ridgewood Avenue, Fourth Floor, Daytona Beach, Florida 32015; and mailed to Robert Glen Fike, P.O. Box 283, Candler, Florida 32624, on this 15th day of October, 1984.



LUCINDA H. YOUNG
ASSISTANT PUBLIC DEFENDER