

IN THE SUPREME COURT OF FLORIDA

BOBBY BROWN, )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 STATE OF FLORIDA, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

**FILED**

SID J. WHITE ✓

OCT 22 1988

CASE NO. 86,032 CLERK SUPREME COURT

By \_\_\_\_\_  
Chief Deputy Clerk *jsl*

PETITIONER'S BRIEF ON JURISDICTION

JAMES B. GIBSON  
PUBLIC DEFENDER  
SEVENTH JUDICIAL CIRCUIT

BRYNN NEWTON  
ASSISTANT PUBLIC DEFENDER  
1012 South Ridgewood Avenue  
Daytona Beach, FL 32014-6183  
(904) 252-3367

ATTORNEY FOR APPELLANT

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TABLE OF CITATIONS

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CASE CITED:

State v. Bussey,  
444 So. 2d 63 (Fla. 4th DCA 1984) i, 3  
Appeal pending Fla. Sup. Ct. Case No. 64,966

OTHER AUTHORITY:

Section 817.563, Florida Statutes (1981) 2, 3  
Rule 9.030(a)(2)(A)(iv), Florida Rules of Appellate Procedure 3

IN THE SUPREME COURT OF FLORIDA

BOBBY BROWN,

Petitioner,

vs.

CASE NO. 66,032

STATE OF FLORIDA,

Respondent.

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PETITIONER'S BRIEF ON JURISDICTION

PRELIMINARY STATEMENT

Petitioner was the Appellant in the Fifth District Court of Appeal and Respondent was the Appellee. In the brief the parties will be referred to as they appear before this Honorable Court.

In the brief the following symbol will be used:

"R" - Record on appeal.

STATEMENT OF THE CASE AND FACTS

Petitioner was charged by two informations filed in the Circuit Court of Orange County, Florida, with two counts of "sale of a counterfeit substance in lieu of controlled substance." (R 26, 29) On February 21, 1984, his motion to dismiss the informations, grounded on the unconstitutionality of the statute under which he had been charged, was denied. (R 54-59, 11) §817.563, Fla. Stat. (1981). He entered a plea of nolo contendere to each charge, reserving his right to appeal the trial court's denial of the motions to dismiss. (R 14) Orders placing Petitioner on concurrent probation terms of five years each were entered on March 8, 1984. (R 77-80)

Notice of appeal was timely filed on March 21, 1984, and on October 11, 1984, the Fifth District Court of Appeal affirmed the orders of probation and held that Section 817.563 was constitutional. (R 82; Appendix) Notice to invoke this Honorable Court's jurisdiction was filed in the District Court on October 15, 1984.

ARGUMENT

THE DISTRICT COURT OF APPEAL'S  
DECISION DIRECTLY AND EXPRESSLY  
CONFLICTS WITH THE DECISION IN  
STATE v. BUSSEY, 444 So. 2d 63  
(Fla. 4th DCA 1984).

The Fourth District Court of Appeal, in State v. Bussey, 444 So. 2d 63 (Fla. 4th DCA 1984), Appeal pending, Fla. Sup. Ct. Case No. 64,966, held that Section 817.563 of the Florida Statutes (1981), under which Petitioner was charged in the Circuit Court in this case, was unconstitutional. When the District Court in this case affirmed the trial court's orders of probation, it held Section 817.563 to be constitutional, and stated:

"This decision directly conflicts  
with State v. Bussey, 444 So. 2d 63  
(Fla. 4th DCA 1984)."

The Fifth District Court of Appeal's decision in this case, therefore, expressly and directly conflicts with the decision of another District Court of Appeal on the same question of law. Rule 9.030(a)(2)(A)(iv). This Honorable Court therefore has jurisdiction to review the District Court of Appeal's decision herein.

CONCLUSION

For the reasons expressed herein, Petitioner respectfully requests that this Honorable Court assume jurisdiction over this cause, and review the District Court of Appeal's decision herein.

Respectfully submitted,

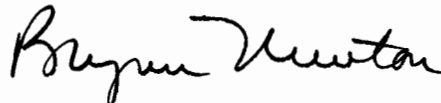
JAMES B. GIBSON, PUBLIC DEFENDER  
SEVENTH JUDICIAL CIRCUIT



BRYNN NEWTON, ASSISTANT PUBLIC DEFENDER  
1012 South Ridgewood Avenue  
Daytona Beach, Florida 32014-6183  
904-252-3367

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to the Honorable Jim Smith, Attorney General, 125 N. Ridgewood Avenue, Daytona Beach, Florida, 32014, by delivery; and by mail to Mr. Bobby Brown, 1216 S. Orange Blossom Trail, C-28, Orlando, Florida 32805, this 19th day of October, 1984.



ATTORNEY