



TABLE OF CONTENTS

	<u>PAGE NO.</u>
TABLE OF CONTENTS	i
TABLE OF CITATIONS	ii
STATEMENT OF THE CASE AND FACTS	1
ARGUMENT	3
THE PROVISIONS OF ARTICLE V, SECTION 4(b)(1) OF THE FLORIDA CONSTITUTION ARE NOT SELF-EXECUTING SO AS TO AFFORD THE STATE THE RIGHT TO APPEAL FROM A FINAL JUDGMENT IN A JUVENILE PROCEEDING.	
CONCLUSION	4
CERTIFICATE OF SERVICE	4

TABLE OF CITATIONS

PAGE NO.

CASES CITED:

<u>State v. D.A.E.</u> 456 So.2d 569 (Fla. 5th DCA 1984)	2
<u>State v. G.P.</u> 429 So.2d 786 (Fla. 3d DCA 1983)	2
<u>State v. J.P.W.</u> 433 So.2d 616 (Fla. 4th DCA 1983)	2,3
<u>State v. W.A.M.</u> 412 So.2d 49 (Fla. 5th DCA) <u>Petition for rev.</u> <u>denied</u> 419 So.2d 1201 (Fla. 1982)	2

OTHER AUTHORITIES:

Article V, Section 4(b)(1), Florida Constitution	3
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IN THE SUPREME COURT OF FLORIDA

D.A.E., a child,            )  
                                  )  
                  Petitioner,    )  
                                  )  
vs.                            )  
                                  )  
STATE OF FLORIDA            )  
                                  )  
                  Respondent.   )  
                                  )  
\_\_\_\_\_                      )

CASE NO. 66,090

PETITIONER'S BRIEF ON THE MERITS

STATEMENT OF THE CASE AND FACTS

The juvenile Petitioner, Donald A. Ernst, III, was arrested on November 24, 1983 for automobile theft (R14). A Delinquency Petition was filed in the Circuit Court on January 5, 1984, 42 days after Petitioner's arrest (R26). The Honorable Kenneth M. Leffler, Circuit Judge, dismissed the case because the State had failed to comply with his order to file the Petition by December 6, 1983 (R8).

On February 3, 1984 the State filed Notice of Appeal (R28). In its Initial Brief to the Fifth District Court of Appeal the State argued the trial court erred in dismissing the Delinquency Petition because by statute the State had 45 days to file the Petition (Initial Brief of Appellant, pages 4-7). Petitioner responded to the argument, and also raised the question of whether the State has the right to appeal final judgments in juvenile cases. (Answer Brief of Appellee, page 5).

On September 27, 1984 the District Court reversed the trial court's order in State v. D.A.E., 456 So.2d 569 (Fla. 5th DCA 1984) (See A-1). As to the State's right to appeal, the District Court stated the following:

This court has held that the State has the right to appeal from final orders in juvenile proceedings. State v. W.A.M., 412 So.2d 49 (Fla. 5th DCA), petition for rev. denied, 419 So.2d 1201 (Fla. 1982). However, that issue is presently pending before the supreme court following certification of the question as one of great public importance by the Third and Fourth District Courts of Appeal. State v. J.P.W., 433 So.2d 616 (Fla. 4th DCA 1983) agrees that review is available; State v. G.P., 429 So.2d 786 (Fla. 3d DCA 1983) holds that review is not available. The Supreme Court has not as yet resolved the conflict, but relying on W.A.M., we review the order of dismissal.

Petitioner filed Notice to Invoke Discretionary Review on October 25, 1984. This Court accepted jurisdiction on January 25, 1985.

ARGUMENT

THE PROVISIONS OF ARTICLE V, SECTION 4(b)(1) OF THE FLORIDA CONSTITUTION ARE NOT SELF-EXECUTING SO AS TO AFFORD THE STATE THE RIGHT TO APPEAL FROM A FINAL JUDGMENT IN A JUVENILE PROCEEDING.

As his argument on this point, D.A.E. hereby adopts the arguments made by the Petitioner in J.P.W. v. State, (Supreme Court Case No. 63,981), attached hereto (See A-2).

CONCLUSION

Petitioner respectfully requests this Honorable Court to reverse the decision of the Fifth District Court of Appeal and quash the State appeal in this cause and decline to treat said Notices of Appeal as petitions for Writ of Certiorari.

Respectfully submitted,

JAMES B. GIBSON  
PUBLIC DEFENDER  
SEVENTH JUDICIAL CIRCUIT

*Daniel J. Schaffer*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been mailed to the Honorable Jim Smith Attorney General at 125 N. Ridgewood Avenue, 4th Floor, Daytona Beach, Florida 32014 on this 14th day of February 1985.

*Daniel J. Schaffer*

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DANIEL J. SCHAFER  
ASSISTANT PUBLIC DEFENDER