

66,090

IN THE SUPREME COURT OF FLORIDA

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

CASE NO.

PETITIONER'S BRIEF ON JURISDICTION

**FILED**  
SID J. WHITE  
NOV 5 1984

JAMES B. GIBSON  
PUBLIC DEFENDER  
SEVENTH JUDICIAL CIRCUIT  
By *[Signature]* Chief Deputy Clerk

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IN THE SUPREME COURT OF FLORIDA

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

CASE NO.

PETITIONER'S BRIEF ON JURISDICTION

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., 9 FLW 2087 (Fla. 5th DCA September 27, 1984). 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.

ARGUMENT

THE DECISION OF THE FIFTH  
DISTRICT COURT OF APPEAL  
EXPRESSLY AND DIRECTLY CON-  
FLICTS 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 HEREBY CERTIFY that a true and correct copy of the foregoing has been mailed to: The Honorable Jim Smith, Attorney General, 125 N. Ridgewood Avenue, Fourth Floor, Daytona Beach, FL 32014 and Mr. Donald A. Ernst, III, 2505 Highlawn Avenue, Sanford, FL this 2nd day of November, 1984.

*Daniel J. Schaffer*

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DANIEL J. SCHAFER  
ASSISTANT PUBLIC DEFENDER