IN THE SUPREME COURT OF FLORIDA

CASE NO. 66,654

THE STATE OF FLORIDA,

Petitioner,

-vs-

E.W.M., a juvenile,

Respondent.

ON DISCRETIONARY REVIEW

BRIEF OF RESPONDENT ON THE MERITS

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INTRODUCTION

The respondent, E.W.M., was the appellee in the District Court of Appeal of Florida, Third District, and the respondent in the trial court, the Circuit Court of the Eleventh Judicial Circuit of Florida (Juvenile-Family Division), in and for Dade County. The petitioner, the State of Florida, was the appellant in the district court of appeal and the petitioner in the trial court. The parties will be referred to in this brief as they stood before the trial court.

The symbol "A" will be utilized to designate the appendix to this brief. All emphasis is supplied unless the contrary is indicated.

STATEMENT OF THE CASE AND FACTS

Respondent accepts petitioner's statement of the case and facts, and adds the following:

1. On October 5, 1984, the state filed a notice of appeal from an order of the trial court which dismissed a petition for delinquency. (A. 1).

2. On January 14, 1985, respondent filed a motion to dismiss the appeal. (A. 2).

3. On February 20, 1985, the District Court of Appeal of Florida, Third District, issued an order dismissing the appeal, and certified that its decision passed upon a question of great public importance. (A. 3-4).

QUESTION PRESENTED

WHETHER COMMON-LAW CERTIORARI IS AVAILABLE FOR REVIEW OF FINAL ORDERS OF CIRCUIT COURTS IN JUVENILE-DELINQUENCY CASES UNDER CHAPTER 39, FLORIDA STATUTES (1983)?

SUMMARY OF ARGUMENT

In full accord with this Court's decisions in State v. C.C., 10 FLW 435 (Fla. Aug. 29, 1985), State v. G.P., 10 FLW 469 (Fla. Aug. 30, 1985), J.P.W. v. State, 10 FLW 486 (Fla. Aug. 30, 1985), and D.A.E. v. State, 10 FLW 603 (Fla. Nov. 14, 1985), the district court of appeal properly dismissed the state's purported appeal from an order dismissing a juvenile-delinquency petition, and properly refrained from reviewing that order by common-law certiorari.

ARGUMENT

COMMON-LAW CERTIORARI IS NOT AVAILABLE FOR REVIEW OF FINAL ORDERS OF CIRCUIT COURTS IN JUVENILE-DELINQUENCY CASES UNDER CHAPTER 39, FLORIDA STATUTES (1983).

In State v. C.C., 10 FLW 435 (Fla. Aug. 29, 1985), this Court held that the state had no right of appeal from final or interlocutory orders in juvenile-delinquency cases brought under Chapter 39, Florida Statutes (1983). The dismissal of the purported appeal in this case, taken from an order dismissing a delinquency petition (A. 1), was indisputably proper under the C.C. holding.

In State v. G.P., 10 FLW 469 (Fla. Aug. 30, 1985), this Court held that the state had no right to seek review of unappealable orders in juvenile-delinquency cases by common-law certiorari:

> In State v. C.C., (citation omitted), we held that the right of appeal given in section 39.14, Florida Statutes (1981), does not extend to the state. We also agreed with the district court in C.C. that interlocutory review is available only in cases in which an appeal may be taken as a matter of right.
>
> In the instant case the third district reached the same result and held that, because the state has no right to appeal under section 39.14, it also has no right to have a juvenile order reviewed by writ of certiorari. (citation omitted). We agree with the district court. Chapter 39, dealing with juveniles, is a purely statutory creation which does not give the state the right of appeal. The state has no greater right by certiorari. We approve the district court's decision.

Ibid.; Accord, J.P.W. v. State, 10 FLW 486 (Fla. Aug. 30, 1985);

D.A.E. v. State, 10 FLW 603 (Fla. Nov. 14, 1985). This precedent, which is controlling in this case, requires approval of the order of dismissal of the court below.[1]

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[1] Petitioner's attempt to litigate the merits of its improper appeal is of no avail, not only because of the jurisdictional bar, but also because the merits of the improper appeal were never before the district court of appeal. E.g., Trushin v. State, 425 So.2d 1126, 1130 (Fla. 1983); Simmons v. State, 305 So.2d 178, 180 (Fla. 1974).

CONCLUSION

Based upon the foregoing, respondent requests this Court to approve the decision of the district court of appeal in this cause.

Respectfully submitted,

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BY: Beth C. Weitzner
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief was delivered by mail to the Office of the Attorney General, CHARLES M. FAHLBUSCH, Assistant, Suite 820, 401 N.W. 2nd Avenue, Miami, Florida 33128, this 26th day of November, 1985.

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