

IN THE SUPREME COURT OF FLORIDA

CASE NO. 66,766

THE STATE OF FLORIDA,

Petitioner By

CLERK OF THE SUPREME COURT  
CHIEF DEPUTY CLERK

-vs-

E.L.S., a juvenile,

Respondent.

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ON DISCRETIONARY REVIEW

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BRIEF OF RESPONDENT ON THE MERITS

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INTRODUCTION

The respondent, E.L.S., 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

Because petitioner's Brief on the Merits omits facts relevant for this Court's consideration of this appellate proceeding, Respondent adds the following:

1. On October 15, 1984, the state filed a notice of appeal from an order of the trial court which dismissed a petition for delinquency. (R. 7).

2. On February 14, 1985, [prior to the filing of petitioner's Initial Brief] respondent filed a motion to dismiss the appeal. (A. 1).

3. On March 18, 1985, the District Court of Appeal of Florida, Third District, issued an order dismissing the appeal (R. 13), and certified that its decision directly conflicted with a decision of another district court of appeal. (R. 12).

QUESTION PRESENTED

WHETHER THE STATE HAS A RIGHT OF REVIEW BY APPEAL OR CERTIORARI FROM A FINAL ORDER OF THE TRIAL COURT DISMISSING A JUVENILE-DELINQUENCY PROCEEDING BECAUSE OF A VIOLATION OF THE SPEEDY TRIAL RULE?

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

THE STATE HAS NO RIGHT OF REVIEW BY APPEAL OR CERTIORARI FROM A FINAL ORDER OF THE TRIAL COURT DISMISSING A JUVENILE-DELINQUENCY PROCEEDING BECAUSE OF A VIOLATION OF THE SPEEDY TRIAL RULE.

In State v. C.C., 10 FLW 435 (Fla. Aug. 29, 1985), this Court held that the state has 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 (R. 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 has 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, is 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.E.A. v. State, 10 FLW 603 (Fla. Nov. 14, 1985). This precedent, which is controlling in this case (and unaccountably ignored in petitioner's brief), requires approval of the order of dismissal of the court below.



CONCLUSION

Based on 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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of Florida  
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BY:   
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief of Respondent on the Merits was delivered by mail to the Office of the Attorney General, NANCY C. WEAR, Assistant, Suite 820, 401 N.W. 2nd Avenue, Miami, Florida 33128, this 5th day of December, 1985.

  
HENRY N. HARNAGE  
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