IN THE SUPREME COURT OF FLORIDA

R.L.B., a child,
Defendant/Petitioner,
v.
STATE OF FLORIDA,
Plaintiff/Respondent.

CASE NO. 67,000

APPLICATION FOR DISCRETIONARY REVIEW
OF THE DISTRICT COURT OF APPEAL, FIFTH
DISTRICT OF FLORIDA.

BRIEF OF RESPONDENT ON JURISDICTION

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CITATION OF AUTHORITIES

STATEMENT OF THE CASE AND FACTS

The respondent accepts the statement of the case and facts as set out by the petitioner subject to the following additional pertinent facts.

A detention petition was filed against petitioner, as a result of his being observed in a Sears store by one of the security guards. Petitioner had placed a pair of trousers into a bag and left the store without paying for them (R. 8-9,16).

Petitioner was arraigned on August 6, 1984 (R. 1-12). At that hearing, the public defender was appointed to represent him and he stated that he was pleading guilty to the charges (R. 6). The court questioned him concerning the facts of the case and his understanding of the consequences of his plea (R. 6-9). At that point in time, a petition for delinquency had not been filed and the trial court withheld adjudication, pending the filing of the petition by the state attorney's office. The trial court asked the assistant state attorney to have the petition filed within two weeks of the date of the arraignment (R. 2). Section 39.05(6), Florida Statutes (1984), provides that the petition must be filed within forty-five days from the date the child was taken into custody.

On August 31, 1984, Judge Leffler entered an order of dismissal of the matter due to the state's failure to file the petition as directed, although the forty-five day time limit provided by statute had not run.

SUMMARY OF ARGUMENT

Any conflict in the positions of the Fifth District Court of Appeal and the Third District Court of Appeal has been recently resolved in the case of State v. Creighton, 10 F.L.W. 257 (Fla. May 2, 1985). Moreover, a mere extraneous footnote is not an opinion, so as to be in express and direct conflict with another decision.

ARGUMENT

THE PRESENT DECISION IS NOT IN EXPRESS AND DIRECT CONFLICT WITH THOSE CASES HOLDING THAT THERE IS NO STATUTORY PROVISION FOR APPEAL BY THE STATE OF DETERMINATIONS UNDER THE FLORIDA JUVENILE JUSTICE ACT.

State v. R.L.B., 10 F.L.W. 1040 (Fla. 5th DCA, Apr. 25, 1985), and State v. C.C., 449 So.2d 280 (Fla. 3d DCA 1983), both involve the issue of whether the state may appeal orders of the juvenile court dismissing or discharging a defendant. In State v. C.C., supra, the Third District Court of Appeal dismissed the state appeal of a juvenile matter, holding that no jurisdiction existed upon which to base an appeal. In State v. W.A.M., 412 So.2d 49 (Fla. 5th DCA); review denied 419 So.2d 1201 (Fla. 1982), the Fifth District Court of Appeal reached an opposite determination, deciding that the state had a constitutional right of appeal from an order discharging a juvenile on speedy trial grounds. In the present case, the Fifth District Court of Appeal referred to its previous holding in State v. W.A.M., in a footnote of its opinion.

Any conflict in the positions of the Fifth District Court of Appeal and the Third District Court of Appeal has been recently resolved in the case of State v. Creighton, 10 F.L.W. 257 (Fla. May 2, 1985). In Creighton, the Florida Supreme Court determined that the state's right of appeal is governed strictly by statute. Any conflict being thus resolved, it is unnecessary for this court to accept jurisdiction on the basis of creating uniformity of law among the

district courts.

Certiorari is not to be employed indiscriminately, as an added escape route to reach the objective of a second appeal. Karlin v. City of Miami Beach, 113 So.2d 551 (Fla. 1959). The district courts of appeal were never intended to be intermediate courts. It was the intention of the framers of the constitutional amendment which created the district courts of appeal, that the decisions of these courts would, in most cases, be final and absolute. Johns v. Wainwright, 253 So.2d 873 (Fla. 1971). The limited purpose of certiorari review was to allow the supreme court to clarify the law when it became necessary. Where it was not absolutely necessary, the court should not express its views, because the constitutional role of the district courts of appeal, as courts of last resort, would be diminished to the extent that the supreme court used its discretionary review to express itself in situations which did not require clarification. The instant case is one of those situations which does not require clarification. The decision in Creighton, made it absolutely clear that the state's right of appeal is governed strictly by statute.

Moreover, a mere footnote is not an opinion in the sense of a discussion, analysis or statement of the principles of law applied in reaching a decision, therefore, it cannot be, and is not, in express and direct conflict with another decision. The district court's order merely cites in a footnote its reason for accepting jurisdiction, and suggests

that some contrary authority exists. It does not contain any statement of law capable of causing confusion or disharmony in the law of the state, especially in view of the recent decision in Creighton. Therefore, it is not the kind of decision which Article V, section 3(b)(3), Florida Constitution, contemplates as being reviewable by this court.

CONCLUSION

The decision of the Fifth District Court of Appeal, that the petitioner seeks to have reviewed, is not in direct and express conflict with the decision of the Third District Court of Appeal, in the case of State v. C.C., 449 So.2d 280 (Fla. 3d DCA 1983). Because of the reasons and authorities set forth in this brief, it is submitted that the decision in the present case is correct.

The respondent, therefore, requests this court to decline to extend its discretionary jurisdiction to this cause.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing Brief of Respondent on Jurisdiction has been furnished by mail to Larry B. Henderson, Assistant Public Defender, 112 Orange Avenue, Suite A, Daytona Beach, Fl. 32014, this 18th day of June, 1985.

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