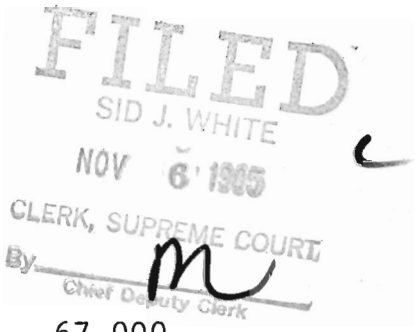
IN THE SUPREME COURT
STATE OF FLORIDA



R.L.B., a child,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.
_____/

CASE NO. 67,000

RESPONDENT'S BRIEF ON THE MERITS

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SUMMARY OF ARGUMENT

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CITATION OF AUTHORITIES

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The state has a statutory right of appeal from an order dismissing a juvenile proceeding pursuant to section 924.071 (1), Florida Statutes (1981), even though these sections apply to criminal appeals as the language in section 39.14, Florida Statutes (1981), evidences no legislative intent to dispose of the state's right to appeal orders in juvenile cases. Even in the event an appeal by the state was inappropriate, the lower court order dismissing the delinquency petition rose to the level of an abuse of judicial power and a writ of certiorari would properly have issued.

ARGUMENT

THE STATE HAS THE RIGHT TO APPEAL FROM ADVERSE ORDERS IN A JUVENILE PROCEEDING.

This cause is before the court on petition for review of the decision of the district court of appeal in State v. R.L.B., 10 F.L.W. 1040 (Fla. 5th DCA, Apr. 25, 1985). This court accepted jurisdiction and dispensed with oral argument pursuant to Florida Rule of Appellate Procedure 9.320, on the basis of conflict with State v. C.C., 449 So.2d 28 (Fla. 3d DCA 1983).

This proceeding was begun by the filing of a detention petition against R.L.B., as he was observed by a security guard in a Sears store, placing a pair of trousers in a bag and leaving without paying for them (R 8-9:13-25). He was taken into custody on August 3, 1984, and was arraigned on August 6, 1984 (R 1-12;16). At the arraignment, R.L.B. stated that he was pleading guilty to the charges, and the court questioned him concerning the facts of the case and his understanding of the consequences of his plea (R 6-9). The trial court withheld adjudication pending the filing of a petition for delinquency by the state attorney's office (R 10). The trial court asked the assistant state attorney to have the petition filed within two weeks of the date of the arraignment, and the assistant state attorney agreed to do this (R 2). On August 31, 1984, the trial court entered an order dismissing the case against R.L.B. for failure to file a petition for delinquency within two weeks after entry of the trial court's order requiring such a filing (R 30). Section 39.05(6), Florida Statutes (1983) provides, however, that a petition alleging delinquency need only be filed within 45 days from the date the

child was taken into custody. The state appealed from the dismissal of its case against R.L.B., and the Fifth District Court of Appeal reversed the order of dismissal, holding that the trial court could not shorten the time period within which the state must file a petition or suffer dismissal with prejudice. The juvenile did not move to dismiss the state's appeal on the ground that the state was not entitled to take an appeal from a final order of the circuit court, sitting in its capacity of juvenile court, but argued in its brief that the state had no right to appeal from judgments in juvenile cases.

The sole point on appeal herein is R.L.B.'s contention that the state has no statutory right pursuant to chapter 39, to appeal the order dismissing the juvenile proceeding, nor does the constitution confer such a right.

In State v. Creighton, 469 So.2d 735 (Fla. 1985), this court found that the state's right of appeal is governed by statute. The state would submit that its right of appeal in criminal cases, provided by sections 924.07 and 924.071, Florida Statutes (1981), in particular section 924.071(1), applies to parallel situations arising in juvenile delinquency cases. The procedures for adjudication of delinquency are adversary in nature and the accused juvenile is entitled to many of the same due process protections to which persons accused of crime are entitled. Juvenile delinquency proceedings are in many ways analagous to criminal proceedings. When the state is aggrieved by an adverse and erroneous trial court decision in a criminal case, it has an appellate remedy to the extent that such is granted by sections 924.07 and 924.071, Florida Statutes (1981). These

statutes should be construed to similarly apply to adverse judgments and orders in juvenile delinquency proceedings. The order of dismissal of a delinquency petition should come within the scope of section 924.07(1), the statutory provision authorizing appeal by the state from any "order dismissing an indictment or information or any count thereof." See, Fla. R. App. P. 9.140(c)(1)(a). Therefore the state should be entitled to appeal the instant order.

The state recognizes that this court has previously stated in State v. C.C., 10 F.L.W. 435 (Fla. Aug. 29, 1985), that these sections apply to criminal and not juvenile cases, and that because chapter 924 gives a defendant a right of appeal, section 39.14 would not be necessary to give a juvenile defendant a right of appeal if chapter 924 applied to juvenile proceedings, and, therefore, the legislature has exhibited no intent to have chapter 924 apply to juvenile proceedings. Applying similar logic, the state would suggest that the Florida Juvenile Justice Act, Chapter 39, Florida Statutes (1981), once having been created, had the legislature intended that the state stand remediless in the face of error in juvenile cases, in contravention of all current practices, in derrogation of the status quo, and against all concepts of equity, then the legislature would have taken that opportunity to explicitly deny to the state any right of appeal in juvenile cases, especially in view of the fact that juvenile proceedings are considered criminal in nature. A lack of intent on the part of the legislature to have chapter 924 apply to juvenile proceedings simply cannot be inferred on the basis of the fact that

chapter 924 gives a defendant a right of appeal and section 39.14 would not be necessary to give a juvenile defendant a right of appeal if chapter 924 applied to juvenile proceedings. Section 39.14 gives "any child, and any parent or legal custodian of any child, affected by an order of the court" a right of an appeal. A criminal defendant, however, may not appeal "an" order or "any" order, but must appeal from a final judgment and sentence. §924.06, Fla. Stat. (1981). Thus, juvenile appellate rights appear broader than those of the criminal defendant. It is much more logical that in setting out section 39.14, the legislature intended to broaden the juvenile's right to appeal, rather than off-handedly eliminating the state's right to appeal by parroting the criminal defendant's right to appeal in a juvenile context, yet not so parroting the state's right to appeal. An intent to eliminate altogether the state's right to appeal cannot be demonstrated by a mere broadening of the right to appeal in the context of juveniles and the state would ask that this court revisit its decision in State v. C.C., supra. Pursuant to the language of section 39.14, the legislature has exhibited an intent to have chapter 924 apply to juvenile proceedings, except for broadening the appellate rights of the child, parent or legal custodian to appeal "an" order of the court. Moreover, the child has no right to self-representation and an explanatory provision is always needed to establish what parties may represent him, so that merely carrying forward his right to appeal pursuant to chapter 924, would be inadequate to establish his right to appeal. Hence, the more definitive provisions of section 39.14 were necessary and should not be construed so as to take away the state's right to appeal.

Statutes should be construed so as to make them harmonize with existing law and not conflict with long settled principles. Similarly, the courts will assume that fundamental rules of equity jurisprudence are known to the legislature at the time it enacts a statute, and will not ascribe to the legislature an intent to radically depart from those principles, unless clear and explicit language to this purport is used in the statute. Akins v. Bethea, 160 Fla. 99, 33 So.2d 638 (1948). Equity demands that the state not be without remedy in the face of erroneous lower court rulings in the context of juvenile cases. The undeservedly victorious juvenile who escapes the consequences of his actions is the adult burglar, sexual batterer and murderer of tomorrow. The state would further submit that R.L.B. has demonstrated no error in the decision of the Fifth District Court of Appeal or in the court's having entertained the case on the merits in the first instance. Even in the event an appeal by the state was inappropriate, the lower court judgment or order dismissing the delinquency petition was rendered in excess of the lower court's jurisdiction and constituted a departure from the essential requirements of law. See, e.g., Dresner v. City of Tallahassee, 164 So.2d 208 (Fla. 1964). The lower court's order involved something far beyond mere legal error, and the order dismissing the delinquency petition rose to the level of abuse of judicial power or act of judicial tyranny perpetrated with disregard of procedural requirements resulting in a gross miscarriage of justice. The writ of certiorari properly issues to correct such essential illegality and R.L.B. has not shown that such writ would be inappropriate under the

present circumstances, especially in view of the fact that the lower court superimposed its own procedural requirements upon and in derrogation of section 39.05(6), Florida Statutes (1983). While the majority opinion characterizes this court's decision in State v. G.P., 10 F.L.W. 469 (Fla. Aug. 30, 1985), as having held that "no right of review by certiorari exists if no right of appeal exists," this is correct to the extent that it's understood to say that when appellate review is not available, certiorari review may not be made into a substitute therefor, providing an alternate means by which to obtain appellate review. The common law writ of certiorari is within the jurisdiction of the district courts of appeal and issuable in the appellate courts' discretion under certain circumstances when there is no right of appeal. Indeed, the lack of availability of an appeal or other remedy is one of the prerequisites of the issuance of the writ. Jones v. State, 10 F.L.W. 565 (Fla. Oct. 17, 1985) (Boyd, C.J., concurring specially). Considering the abuse of judicial power in the present case, the Fifth District Court of Appeal could just as well have entertained this case, not as an appeal, but pursuant to a petition for writ of certiorari to correct such essential illegality.

CONCLUSION

Because of the reasons and authorities set forth in this brief, it is submitted that the decision in the present case is correct and should be approved by this court as the controlling law of this state.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing Answer Brief of Appellee has been furnished by mail to Larry B. Henderson, Assistant Public Defender, 112 Orange Avenue, Suite A, Daytona Beach, Florida 32014, counsel for the petitioner, this 4th day of November, 1985.

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