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CASES CITED:

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10 FLW 1040 (Fla. 5th DCA April 25, 1985) 2,5

IN THE SUPREME COURT OF FLORIDA

R.L.B., a child, )  
 )  
 Defendant/Petitioner, )  
 )  
 vs. ) CASE NO. 67,000  
 )  
 STATE OF FLORIDA, )  
 )  
 Plaintiff/Respondent. )  
 )  
 \_\_\_\_\_ )

PETITIONER'S INITIAL BRIEF ON THE MERITS

STATEMENT OF THE CASE AND FACTS

Petitioner R.L.B., a child, was arrested for shoplifting on August 3, 1984 (R16)<sup>1/</sup>, and a detention petition was thereafter filed in the Circuit Court for Seminole County on August 4, 1984 seeking that R.L.B. be detained at the Seminole Regional Juvenile Detention Center (R13-15). On August 6, 1984 R.L.B. was released to the custody of his mother (R26).

That same day, R.L.B. appeared before the Honorable Kenneth Leffler. After conferring with counsel, R.L.B. entered a plea of guilty to retail theft. The Court accepted the plea, withheld adjudication of delinquency and directed the state to file a Petition for Delinquency (R28).

<sup>1/</sup> (R ) refers to the Record on Appeal of the instant cause, Fifth District Court of Appeal Case No. 84-1287.

On August 31, 1984 Judge Leffler entered an Order of Dismissal of the matter due to the state's failure to file the Petition for Delinquency as directed (R30).

Upon timely appeal (R31), the Fifth District Court of Appeal reversed the order. State v. R.L.B., 10 FLW 1040 (Fla. 5th DCA April 25, 1985) (see Appendix "A"). A timely Notice to Invoke Discretionary Jurisdiction was thereafter filed by R.L.B., and this Court accepted jurisdiction on September 25, 1985. This brief follows.

SUMMARY OF ARGUMENT

In this case, the state appealed the dismissal of a juvenile proceeding, and succeeded in having the order dismissing the appeal reversed. Because two decisions from this Court hold that the state had no right to appeal an adverse order in a juvenile proceeding, the decision of the district court of appeal must be reversed.

## ARGUMENT

THE STATE HAS NO RIGHT TO APPEAL  
FROM ADVERSE ORDERS IN A JUVENILE  
PROCEEDING.

The issue in this case has been expressly addressed in State v. C.C. et al, 10 FLW 435 (Fla. August 29, 1985) (see Appendix "A"). In C.C., this Court held that the state has neither a statutory nor constitutional right to appeal from an adverse order in a juvenile case. This Court agreed with the following language from State v. C.C., 449 So.2d 280 (Fla. 3d DCA 1983) (En Banc):

The state's right to appeal is purely statutory. Whidden v. State, 159 Fla. 691, 32 So.2d 577 (1947); State v. Brown, 330 So.2d 535 (Fla. 1st DCA 1976); Because the Florida Juvenile Justice Act, Chapter 39, Florida Statutes (1981) contains no provision authorizing an appeal from the state, we grant appellee's motions to dismiss. We expressly disagree with the decision of the Fifth District Court of Appeal in State v. W.A.M., 412 So.2d 49 (Fla. 5th DCA), review denied, 419 So.2d 1201 (Fla. 1982) insofar as it finds a constitutional right of appeal in the state. Furthermore, in our view, Article V, section 4(b)(1) of the Constitution of the State of Florida [footnote omitted] permits interlocutory review only in cases in which appeal may be taken as a matter of right.

C.C., supra at 436.

In State v. Creighton, 469 So.2d 735 (Fla. 1985), this Court held that the state's right to appeal is purely statutory, in that a significant change in the language of the Florida Constitution "must be taken as having intended to negate the interpretation given by [Crownover v. Shannon, 170 So.2d 299 (Fla. 1964)]

that the constitution had bestowed a right of appeal, thus returning to the longstanding rule stated in State v. Whidden, (sic) [Whidden v. State, 159 Fla. 691, 32 So.2d 577 (1947)] that the state's right to appeal is controlled by statute." Creighton, supra at 739.

Applying the holdings of Creighton and C.C. to the instant case, it is apparent that a reversal is required. This proceeding is a juvenile proceeding, controlled exclusively by Chapter 39, Florida Statutes. 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.

The Fifth District Court of Appeal decided that the state has a right to appeal the above dismissal in R.L.B. v. State, supra. That holding is erroneous, and accordingly the decision must be reversed.

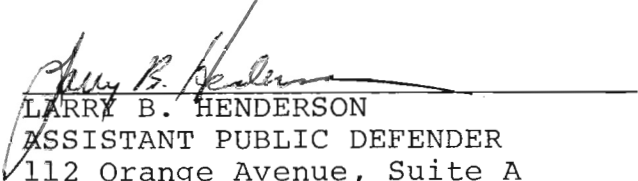


CONCLUSION

Because the appellate court decision erroneously decides that the state may appeal the dismissal of a juvenile proceeding, this Court is respectfully requested to reverse the decision and to remand with directions that the order dismissing the juvenile proceeding be reinstated.

Respectfully submitted,

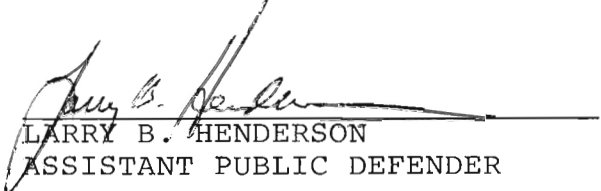
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been mailed to the Honorable Jim Smith, Attorney General at 125 N. Ridgewood Avenue, 4th floor, Daytona Beach, Florida 32014 and to R.L.B. 4540 Welton Place, Orlando , 32801 on this            day of October 1985.

  
LARRY B. HENDERSON  
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