

IN THE SUPREME COURT OF FLORIDA

CASE NO. 67,659

THE STATE OF FLORIDA,

Petitioner,

vs.

ROBERTO VASQUEZ,

Respondent.

* * * * *

ON PETITION FOR DISCRETIONARY REVIEW

* * * * *

Respondent
BRIEF OF ~~PETITIONER~~ ON JURISDICTION

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INTRODUCTION

The petitioner, Roberto Vasquez, was the defendant in the trial court and the appellant in the Third District Court of Appeal. The respondent, the State of Florida, was the prosecution in the trial court and the appellee in the Third District Court of Appeal. The parties will be referred to as they stood before the trial court.

STATEMENT OF THE CASE AND FACTS

The state adopts the opinion of the court in Roberto Vasquez vs. the State of Florida, _____ So.2d _____, (Fla. 3d DCA, Case No. 84-2164, opinion filed August 20, 1985), as an appropriate Statement of the Case and Facts.

QUESTION PRESENTED

WHETHER THE INSTANT OPINION OF THE THIRD DISTRICT COURT OF APPEAL PROVIDES JURISDICTION FOR REVIEW IN THIS COURT.

SUMMARY OF THE ARGUMENT

The opinion of the Third District Court of Appeal states that it would have affirmed the trial court's ruling if it had reached the merits. The opinion states the basis for that statement by holding there was competent evidence to support the trial court's ruling. Therefore, whatever this Court decides concerning the authority of a district court to hear an appeal from the denial of a motion to dismiss pursuant to Rule 3.213 will be moot. The Third District Court of Appeal has already stated it will affirm this cause on the merits. The defendant will not be effected by any decision this Court makes. This Court should therefore deny discretionary review.

ARGUMENT

THIS COURT DOES NOT HAVE JURISDICTION TO
REVIEW THE OPINION OF THE THIRD DISTRICT
COURT OF APPEAL.

This Court should deny the request for discretionary review.

The Third District Court of Appeal made alternative findings in its opinion. Before it even dismissed the appeal, the court stated it would affirm the trial court because there was substantial competent evidence to support the trial court's ruling. Therefore, even assuming this Court accepts jurisdiction and reverses the opinion of the Third District Court of Appeal, there will be no effect on this defendant. The Third District Court of Appeal has already stated it will affirm and has stated its basis for affirming. That basis does not provide grounds for appeal to this Court. Ultimately the effect on the defendant will be the same whether this Court accepts or rejects discretionary review. For that reason, this opinion does not conflict with Ricciardelli v. State, 453 So.2d 199 (Fla. 4th DCA 1984) wherein the court remanded the case to the trial court. In this case, the Defendant/Petitioner will not be effected by any decision this Court makes. This Court should therefore not accept jurisdiction in a case where its opinion will not have any effect upon the defendant, whether he wins or loses.

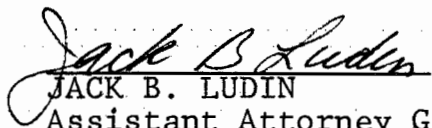
There is no conflict with State v. Vigil, 410 So.2d 528 (Fla. 2d DCA 1982). State v. Vigil, id, is concerned with Rule 3.217, Florida Rules of Criminal Procedure. The case sub judice concerns Rule 3.213, Florida Rules of Criminal Procedure. The two opinions, therefore, do not construe the same rule and therefore cannot conflict.

CONCLUSION

Based upon the foregoing, the State submits that discretionary review should be denied.

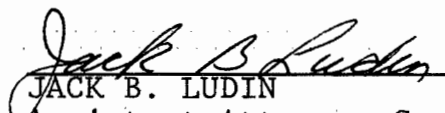
Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing BRIEF OF PETITIONER ON JURISDICTION was furnished by mail to the LAW OFFICES OF PAUL MORRIS, P.A., Specially Appointed Counsel, 2000 S. Dixie Highway, Suite 212, Miami, Florida 33133, on this 18th day of October, 1985.


JACK B. LUDIN
Assistant Attorney General

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