IN THE SUPREME COURT
STATE OF FLORIDA

JAMES WILSON, et al,

Petitioners,

vs.

STATE OF FLORIDA,

Respondent.

Case No. 68,369

APPEAL FROM THE CIRCUIT COURT
IN THE SIXTH JUDICIAL CIRCUIT
FOR PASCO COUNTY, FLORIDA

BRIEF OF RESPONDENT

JIM SMITH
ATTORNEY GENERAL

PEGGY A. QUINCE.
Assistant Attorney General
1313 Tampa Street, Suite 804
Park Trammell Building
Tampa, Florida 33602
(813) 272-2670

COUNSEL FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF CITATIONS

OTHER AUTHORITIES

STATEMENT OF THE CASE AND FACTS

Petitioners were indicted on August 10, 1982, by the Grand Jury of Pasco County for the offenses of Murder in the First Degree and the Killing of an Unborn Child by Injury to the Mother. Jessie Haynes was indicted on August 10, 1982, by the Grand Jury of Pasco County and charged with the same offenses. On December 21, 1984, following a trial, the defendant, Jessie Haynes, was found not guilty of each of the counts laid in the aforementioned indictment. Petitioners were scheduled for trial to commence on June 3, 1985. Prior to the commencement of the trial, the State of Florida filed its Motion in Limine seeking a pre-trial ruling from the trial Court concerning the admissibility of any evidence in Petitioners' trial regarding the not guilty verdict returned against Jessie Haynes in a separate proceeding. The alleged facts which gave rise to the indictment charging the Petitioners are that the Petitioners hired Jessie Haynes to murder Ernestine Wilson. The Circuit Court, after hearing argument of counsel, denied the state's Motion in Limine and found that evidence and argument concerning the finding by a jury that the defendant Jessie Haynes was not guilty would be admissible in Petitioners' trial.

The State of Florida then filed its motion for a stay of proceedings and for extension of speedy trial, and upon hearing, the Court entered its order granting the motion for stay and extending speedy trial. A petition for writ of certiorari was filed in the Second District Court of Appeals alleging the

above ruling of the circuit court departed from the essential requirements of law. The Second District granted certiorari relief and certified the following question to this Court.

> WHETHER THE HOLDINGS IN JONES V. STATE, NO. 64,042 (FLA. OCT. 17, 1985); STATE V. G.P., NO. 63,613 (FLA. AUG. 30, 1985); AND STATE V. C.G., 64,354 (FLA. AUG. 29, 1985), PRECLUDE THE STATE FROM SEEKING COMMON LAW CERTIORARI REVIEW OF NON-APPEALABLE INTERLOCUTORY ORDERS IN CRIMINAL CASES.

After rehearing was denied, petitioner filed a notice to invoke discretionary jurisdiction.

SUMMARY OF THE ARGUMENT

This Court's opinion in Jones v. State, 477 So.2d 566 (Fla. 1985) does not deprive the State of the right to seek in the district courts a common law writ of certiorari from a ruling of the circuit court. The purpose of such a certiorari petition is a redress departure from the essential requirements of law by a trial judge. This remedy must be and is available to any aggrieved party.

ARGUMENT

THE DISTRICT COURT PROPERLY ENTERTAINED THE STATE'S PETITION FOR WRIT OF CERTIORARI PURSUANT TO RULE 9.030(b)(3), FLA. R.APP.P.

Appellant seems to argue the State was not entitled to appeal this case pursuant to Section 924.07(8), Florida Statutes, because the State had already had one appeal pursuant to that subsection. Appellant's argument does not hit the heart of this matter. Respondent does not now nor ever contend the circuit court's order was appealable. The State sought and was granted a common-law writ of certiorari since the trial judge departed from the essential requirements of law and the State had no adequate remedy at law, i.e., no right to appeal.

Our district courts have two types of certiorari jurisdiction. Rule 9.030(b)(2), Fla. R.App.P.[1] provides for certiorari jurisdiction to review:

> (A) non-final orders of lower tribunals than as prescribed by Rule 9.130;
>
> (B) final orders of circuit courts acting in review capacity.

1/ Respondents certiorari petition in the district court erroneously cited this rule as the basis for jurisdiction. However, it is clear that a common-law writ of certiorari was being sought (Rule 9.030(b)(3)) as Rule 9.100(c) pertaining to common law certiorari was also cited in the jurisdictional statement.

Rule 9.030(b)(3), Fla.R.App.P. Provides

> (3) Original Jurisdiction. District courts of appeal may issue writs of mandamus, prohibition, quo warranto, common law certiorari and all writs necessary to the complete exercise of the courts' jurisdiction; or any judge thereof may issue writs of habeas corpus returnable before the court or any judge thereof, or before any circuit judge within the territorial jurisdiction of the court.

It is under subsection (b)(3) that Respondent sought certiorari review of the trial court's order.

The State, sub judice, never filed a notice of appeal: the proceeding was commenced by the filing of a petition for writ of certiorari in the appropriate district court. See, Rule 9.100(c), Fla.R.App.P. This is one of the factors which distinguish this case from Jones v. State, supra. In Jones the State filed a notice of appeal from the trial court's order dismissing the case on double jeopardy grounds. The defendant filed a motion to dismiss the appeal for lack of jurisdiction. The State responded the order was appealable pursuant to Rule 9.140(c) and Section 924.07, Florida Statutes. Nothing in either the district court opinion or the opinion from this Court suggests the parties discussed Rule 9.030(b)(3) or whether the trial court's order departed from the essential requirements of law.

Since the Jones opinion does not make reference to a court's authority to entertain a common-law writ of certiorari, Respondent submits the right of the State or any other party to so petition still exists. As Mr. Justice Boyd pointed out in his opinion in

D.A.E. v. State, 478 So.2d 815 (Fla. 1985), the Florida constitution confers certiorari jurisdiction on the district courts; the scope of that jurisdiction has been developed through decisional law. The case law has provided for certiorari review where the party seeking review has no adequate remedy at law, i.e., no appeal remedy, and the court has departed from the essential requirements of law. See, e.g., Leithauser v. Harrison, 168 So.2d 95 (Fla. 2d DCA 1964); Pitts v. Pitts, et al, 162 So. 708 (Fla. 1935), Caudell v. Leventis, et al, 43 So.2d 853 (Fla. 1950) and State v. Wilcox, 351 So.2d 89 (Fla. 2d DCA 1977).

This Court said in Kilgore v. Bird, 6 So.2d 541 (Fla. 1942):

> Certiorari is a discretionary common-law writ which, in the absence of an adequate remedy by appeal or writ of error or other remedy afforded by law, a court of law may issue in the exercise of a sound judicial discretion to review a judicial or quasi judicial order or judgment that is unauthorized or violates the essential requirements of controlling law, and that results or reasonable may result in an injury which section 4 of the Declaration of Rights of the Florida constitution commands shall be remedied by due course of law in order that right and justice shall be administered. Hartford Accident & Indemnity Co. v. City of Thomasville, 100 Fla. 748, 130 So.7.
>
> (text at P. 544)

Sub judice, the State acknowledged it had no remedy by appeal and the state could have been irreparably harmed by use of the unlawfully admitted evidence. Certainly there is nothing Respondent could have done if an acquittal had resulted.

These same principles were recognized by Justice Boyd in Jones. He differentiated between an appeal and review by certiorari; the former being addressed to the legality of the judgment and the latter being addressed to an essential illegality. The justice opined:

> Furthermore, certiorari provides a much more limited kind of review than appellate review. Common-law certiorari does not lie to determine whether there was error in the judgment of the lower court. The scope of the writ is limited to a determination of
>
> > whether the Judge exceeded his jurisdiction in hearing the case at all, or adopted any method unknown to the law or essentially irregular in his proceeding . . . . A decision made according to the form of law and the rules prescribed for rendering it, although it may be erroneous in its conclusion as to what the law is as applied to the facts, is not an illegal or irregular act or proceeding remediable by certiorari.
>
> Basnet v. City of Jacksonville, 18 Fla. at 526-27. The Court there added that certiorari cannot be made to "serve the purpose of an appellate proceeding in the nature of a writ of error with a bill of exceptions." Id. at 527
>
> In Brinson v. Tharin, 99 Fla. 696, 127 So. 313 (1930), the Court pointed out that on common-law certiorari, the review of the record was
>
> > not for the purpose of determining whether the evidence was of sufficient probative force to sustain the verdict, nor to reconcile conflicting testimony, but to ascertain if a palpable abuse of the power to determine the controverted facts was disclosed . . . . . .
> >
> > A judgment void for lack of jurisdiction or a proceeding characterized by a kind of tyranny in the failure to observe essential requirements should be subject to correction at the discretion of the court vested with the power to issue the writ.
>
> Id. at 701-03, 127 So. at 316 (emphasis supplied) (477 So.2d at 568-569)

The district court in this case found a departure from the essential requirements of the decisional law of this state.

Neither the Jones decision nor any of the other certiorari cases cited above restrict the use of a petition for common-law writ of certiorari to any aggrieved party except the State. Such an interpretation would leave the prosecutors open to the kind of "tyranny" denounced by Justice Boyd in Jones. As Mr. Justice Cardozo said in Snyder v. Massachusetts, 291 U.S. 97, 54 S.Ct. 330, 78 L.Ed. 674 (1934):

> The law, as we have seen is sedulous in maintaining for a defendant charged with crime whatever forms of procedure are of the essence of an opportunity to defend. Privileges so fundamental as to be inherent in every concept of a fair trial that could be acceptable to the thought of reasonable men will be kept inviolate and inviolable, however crushing may be the pressure of incriminating proof. But justice, though due to the accused, is due to the accuser also. The concept of fairness must not be strained till it is narrowed to a filament. We are to keep the balance true.
>
> (text at 78 L.Ed. P.686-687)

If the balance is to be kept true, the State must be allowed to maintain its access to the courts for redress of tyrannical actions. The form of redress in a case such as this is via a petition for common-law certiorari.

Respondent further submits neither State v. C. G.; 476 So.2d 144 (Fla. 1985) nor State v. G.P., 476 So.2d 1272 (Fla. 1985) abrogate the State's right to seek review by common-law certiorari. The court in C. G. held, essentially, the state has no right to appeal at all in a

juvenile. The court later in State v. G.P. cites to the earlier opinion and maintains the state cannot seek interlocutory review in juvenile cases.

CONCLUSION

Based on the foregoing argument, the certified question should be answered in the negative, and the ruling of the district court should be affirmed.

Respectfully submitted,

JIM SMITH
ATTORNEY GENERAL

PEGGY A. QUINCE
Assistant Attorney General
1313 Tampa Street, Suite 804
Park Trammell Building
Tampa, Florida 33602
(813) 272-2670

Counsel for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Charlie Luckie, Jr. Esq., 106 South Sixth Street, P.O. Drawer 1047, Dade City, Florida 34297-1047 and Alfred J. Ivie, Jr., Esq., P.O. Box 1776, Dade City, Florida 34297-1776 on this 14th day of April, 1986.

Of Counsel for Respondent