

IN THE SUPREME COURT OF FLORIDA

FILED
SUD J. WHITE

JUN 18 1986

STATE OF FLORIDA,


Peteitioner,

vs.

BRENDA CAUSEY

Respondent.

CLERK, SUPREME COURT

By 
Deputy Clerk

CASE NO: 68,624

BRIEF OF RESPONDENT ON THE MERITS

MICHAEL E. ALLEN
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

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 WHEN AN APPELLATE PUBLIC DEFENDER HAS FILED A BRIEF PURSUANT TO <u>ANDERS V.-</u> <u>CALIFORNIA</u> , 386 U.S. 738 (1967) ALLEG- ING HE CANNOT IN GOOD FAITH ARGUE ANY REVERSIBLE ERROR, MAY AN APPELLATE COURT RESOLVE ANY NONFRIVOLOUS ISSUE IT FINDS ON INDEPENDENT REVIEW WITHOUT ALLOWING THE SUBMISSION OF APPELLATE BRIEFS FROM EITHER PARTY AS MANDATED BY <u>ANDERS</u> ?	
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STATE OF FLORIDA,
Petitioner

vs.

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BRENDA CAUSEY,
Respondent

_____ /

I PRELIMINARY STATEMENT

BRENDA CAUSEY, the defendant and appellant in CAUSEY V. STATE, 11 F.L. W. (FLA. 1st DCA JANUARY 3, 1986), will be referred to herein as Respondant. The State of Florida, the prosecution and appellee below, will be referred to herein as Petitioner.

Citations to the Record on Appeal will be indicated paranthetically as "R", with the appropriate page number(s). Citations to the transcripts of proceedings will be indicated paranthetically as "T", with the appropriate page numbers.

II STATEMENT OF THE CASE AND FACTS

Respondent, for the purpose of resolving the issues herein, accepts as accurate Petitioner's Statement of the Case and Facts.

III SUMMARY OF ARGUMENT

It is the Respondent's position that Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 497 (1967), requires appellate courts, upon discovering a meritorious issue in an Anders appeal, to order counsel for both sides to brief the issue prior to rendering its decision. Additionally, Anders requires Appellate courts to review the entire record in each case in which an Anders brief has been filed.

IV ARGUMENT

ISSUE

(RESTATED) THE LANGUAGE OF ANDERS V. CALIFORNIA, 386 U.S. 738 (1967), REQUIRES THAT THE PARTIES IN AN ANDERS APPEAL BE ALLOWED, PRIOR TO THE COURT'S DECISION, TO SUBMIT APPELATE BRIEFS CONCERNING ANY MERITORIOUS LEGAL ISSUE DISCOVERED BY THE APPELLATE COURT.

Respondant is in agreement with Petitioner's position that Anders v. California, 386 U.S. 738, 87 S. CT. 1396, 18 L. ED. 2d 493 (1967), requires Appellate courts, upon discovering a meritorious issue in an Anders appeal, to order counsel for both sides to brief the issue prior to rendering its decision. In addressing this issue, the United States Supreme Court in Anders stated:

A copy of counsel's brief should be furnished the indigent and time allowed him to raise any points that he chooses; the court-- not counsel--then proceeds, after a full examination of all the proceedings, to decide whether the case is wholly frivolous. If it finds it may grant counsel's request to withdraw and dismiss the appeal insofar as federal requirements are concerned, or proceed to a decision on the merits, if state law so requires. On the other hand, if it finds any of the legal points arguable on their merits (and therefore not frivolous) it must, prior to decision, afford the indigent the assistance of counsel to argue the appeal. (Emphasis added)

Id. at 386 U. S. 744

Respondant disagrees, however, with Petitioner's contention that Anders does not require an Appellate court to conduct its own review of the record. The Anders court, in addressing this issue, stated: "This requirement would not force appointed counsel to brief his case against his client but would merely afford the latter that advocacy

which a nonindigent defendant is able to obtain. It would also induce the Court to pursue all the more vigorously its own review because of the ready references not only to the record, but also the legal authorities as furnished it by counsel." (Emphasis added) Id. at 386 U.S. 745. This latter language clearly suggests that the United States Supreme Court envisioned appellate courts conducting their own independent review of the record. In Stokes v. State, 485 So. 2d 875 (FLA 1st DCA 1986), this position was reiterated by Judge Barfield in his separate opinion, in which he concurred in part and dissented in part: "In my view, the better policy is for the appellate court to review the entire record in case in which an Anders brief has been filed by Appellate counsel, whether or not the Appellant files a pro se brief." Id. at 877.


Accordingly, Respondent would urge this Court to disapprove the decision of the District Court, below, to the extent that counsel for both sides were not given the opportunity to submit briefs concerning the arguably meritorious issue discovered. Respondent would further urge this Court to provide guidelines for appellate courts in reviewing Anders appeals; and, specifically, that appellate courts be required to conduct their own review of the record in accordance with the language of Anders v. California, supra.

V CONCLUSION

WHEREFORE, based upon the foregoing, the Respondent requests this Court to disapprove the First District's opinion sub judice to the extent that the court sua sponte reversed the respondent's conviction without ordering the parties to brief the issue considered by the court to be a basis for reversal. Furthermore, to ensure the uniform disposition of Anders appeals in the State of Florida, the Respondent requests this Court to set forth guidelines to be followed by the district courts in Anders appeals. Specifically, Respondent urges that appellate courts not be prohibited from conducting an independent review of the record for errors not raised by either the appellant or his counsel; and in the event a reviewing court finds an issue it considers meritorious, it should require the parties to brief the issue before rendering its decision.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been furnished by U. S. Mail to Patricia Connors, Assistant Attorney General, The Capitol, Tallahassee, Fl 32301 and a copy mailed to appellant, Brenda Causey, 1344 Palo Alto Ave., Panama City, Florida, 32401 on this 13th day of June 1986.


KENNETH L. HOSFORD