

69097

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,)
)
 Petitioner,)
)
 v.)
)
 GEORGE PETTIS,)
)
 Respondent.)
 _____)

CASE NO.

JUL 1983
 BY *M*
 Deputy Clerk

PETITIONER'S BRIEF ON JURISDICTION

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LIST OF CITATIONS

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PRELIMINARY STATEMENT

The Petitioner herein was the Appellee and the Respondent the Appellant, in the Fourth District Court of Appeal. In this brief, STATE OF FLORIDA will be referred to as the "Petitioner" and GEORGE PETTIS, the "Respondent."

"A" means Petitioner's Appendix to the Jurisdictional Brief, and "e.a." means emphasis added.

STATEMENT OF THE CASE AND FACTS

In its Petition for a Writ of common-law certiorari filed in the Fourth District, (A, 1-5, with Exhibits 1-7), Petitioner sought relief from an order of the Circuit Court in and for Palm Beach County, which denied the State's motion in limine, which sought to prevent defense impeachment of a State witness, with evidence of disciplinary actions and reprimands against said witness (a police officer), while employed by the City of Miami.

On August 7, 1985, the Fourth District issued an opinion, ruling that it had jurisdiction to review a pre-trial evidentiary ruling by common-law certiorari. (A, 6). The Court further granted the writ, concluding, inter alia, that the evidence of the officer's reprimands were improper attempts to impeach the witness, and was not otherwise admissible on any other basis. (A, 6-7). The Fourth District thus quashed the order of the trial court, which denied the State's motion in limine. (A, 7).

However, on Respondent's motion for rehearing (A, 8-9), the Fourth District vacated its original opinion in the case on May 14, 1986, instead substituting an opinion which denied the State's petition for certiorari relief, on the basis of two of this Court's prior rulings, specifically, Jones v. State, 477 So.2d 566 (Fla. 1985); RLB v. State, 11 FLW 174 (Fla., April 17, 1986); and State v. Smulowitz, 10 FLW 1786 (Fla. 3rd DCA 1982), a Third District case. (A, 10). The panel expressly recognized and stated, in their substituted opinion, that the decision in Pettis, supra, was in conflict with the decision of the Second District, in State v. Wilson, 483 So.2d 23 (Fla. 2nd DCA 1985), (A, 10)(reported as State v. Pettis, 488 So.2d 877 (Fla. 4th DCA 1986)(on rehearing)).

Petitioner invoked its Notice of Discretionary Jurisdiction, in this case, on July 18, 1986. (A, 11).

POINT ON APPEAL

WHETHER PETITIONER HAS PROPERLY INVOKED JURISDICTION OF FLORIDA SUPREME COURT IN THIS CAUSE, SINCE OPINION OF FOURTH DISTRICT COURT OF APPEAL DIRECTLY AND EXPRESSLY CONFLICTS WITH DECISIONS OF OTHER STATE APPELLATE COURTS?

SUMMARY OF ARGUMENT

Petitioner has appropriately invoked this Court's jurisdiction, to review the Fourth District's decision in this case, based on the express and direct conflict created by the Fourth District's opinion, with that of State v. Wilson, 483 So.2d 23 (Fla. 2nd DCA 1985), on the issue of the State's right to seek common-law certiorari relief, from an interlocutory non-appealable order in a criminal case.

ARGUMENT

PETITIONER HAS PROPERLY INVOKED JURISDICTION OF FLORIDA SUPREME COURT IN THIS CAUSE, SINCE OPINION OF FOURTH DISTRICT COURT OF APPEAL DIRECTLY AND EXPRESSLY CONFLICTS WITH DECISIONS OF OTHER STATE APPELLATE COURTS.

In order to properly invoke the "conflict certiorari" jurisdiction of this Court, pursuant to Article V, Section 3(b)(3) of the Florida Constitution (1980), and Rule 9.030(a)(2)(A)(iv) Fla.R.App.P. (1980), Petitioner must demonstrate that there is "express and direct conflict" in the decision sub judice, with the holding of another prior state District Court of Appeal decision on the same rule of law. Dodi Publishing Company v. Editorial America, S.A., 385 So.2d 1369 (Fla. 1980); Jenkins v. State, 385 So.2d 1356 (Fla. 1980); Mancini v. State, 312 So.2d 732 (Fla. 1975). The Supreme Court's discretionary certiorari jurisdiction is also properly invoked, based on conflict, when a particular state appellate court applies a particular rule of law to produce a different result, in a case with substantially the same facts, as those considered by the other court in developing or applying said rule of law. Mancini, supra, at 733 (e.a.).

It is thus evident, as the Fourth District expressly acknowledged in this case, that the result in this case, expressly and directly conflicts with the decision in State v. Wilson, 483 So.2d 23 (Fla. 2nd DCA 1985). (A, 10). The Fourth District's reliance on Jones v. State, 477 So.2d 566 (Fla. 1985); RLB v. State, 11 FLW 174 (Fla., April 17, 1986); and State v. Smulowitz, 10 FLW 1786 (Fla. 3rd DCA, July 23, 1985), in denying Petitioner's claim for relief, (A, 10), clearly indicates the conclu-

sion that the State had no right to seek relief by certiorari, of an error which the State could not seek review of, by direct appeal. Jones, supra, at 566, and cases cited therein. However, in Wilson, supra, the Second District, faced with the identical issue of the State's right to seek certiorari review of a non-appealable interlocutory motion in limine which sought to exclude certain evidence from a trial, Wilson, at 24, concluded that the State did have such a right. The Wilson panel interpreted the Jones decision, and other decisions of this Court on the same subject, as a decision which did not squarely confront a case involving "certiorari review of a non-appealable interlocutory order in a criminal case." Wilson, at 25. Further, the court in Wilson relied upon the absence of any express disapproval by this Court, of cases, permitting the State to seek certiorari relief, of similar orders, in similar circumstances. Id.

Thus, without question, the interpretation of this Court's Jones decision, to preclude review by certiorari of a non-appealable interlocutory order, denying a motion in limine in a criminal case, (A, 1, 10), expressly and directly conflicts with the Second District's interpretation of the same decision, to provide and grant certiorari review and relief, from a non-appealable interlocutory order, denying a motion in limine in a criminal case. Wilson, supra. There can be no clearer example of a different and conflicting application and interpretation of law, on cases with virtually the exact same facts, to produce a totally conflicting result. Dodi Publishing, supra; Mancini, supra.

The appropriateness of certiorari review in this case is further substantiated by this Court's grant of certiorari review in Wilson, supra, at 24, based on a certified question involving the State's right of certio-

rari review, of the same kind of order challenged by the State herein, State v. Wilson, Case No. 68,369. Further, in State v. Thayer, 11 FLW 1083 (Fla. 4th DCA, May 7, 1986), the Fourth District, faced with the same question and issue, expressly acknowledged conflict, in its interpretation of the Jones decision, with the Wilson decision, and has been subsequently accepted for certiorari review by this Court. State v. Thayer, Case No. 68,842.

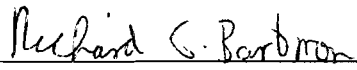
Thus, in view of the express and direct conflict between Pettis herein, and Wilson, and the fact that the Wilson decision has been accepted and is presently pending before this Court, Petitioner has appropriately invoked this Court's jurisdiction in this case.

CONCLUSION

Based on the argument and authorities cited herein, Petitioner respectfully requests that this Honorable Court ACCEPT jurisdiction and certiorari review of this cause, and proceed to decide said cause on the merits.

Respectfully submitted,

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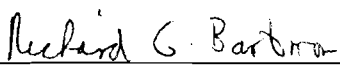


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petitioner's Brief on Jurisdiction, and accompanying Appendix, has been furnished, by courier delivery, to TATJANA OSTAPOFF, ESQUIRE, Assistant Public Defender, Public Defender's Office, 224 Datura Street, 13th Floor, West Palm Beach, Florida 33401, on this 28th day of July, 1986.



Of Counsel