No Reg Case 067

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,	)	
	)	
Petitioner,	)	
	)	
v.	)	CASE NO. 69,097
	)	
GEORGE PETTIS,	)	
	)	
Respondent.	)	
	)	

PETITIONER'S BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

Petitioner, STATE OF FLORIDA, was the prosecution, and Respondent, GEORGE PETTIS, was the defendant, in the pre-trial proceedings held in the Circuit Court of the Nineteenth Judicial Circuit, in and for Palm Beach County, Florida. Petitioner and Respondent were designated as such, in Petitioner's proceeding for common-law certiorari, before the Fourth District Court of Appeal

In this brief, the STATE OF FLORIDA and GEORGE PETTIS will be referred to as Petitioner and Respondent, respectively.

Additionally, the symbol PA means Petitioner's Appendix, attached to its Initial Brief herein; and "e.a." means "emphasis added." The Fourth District's original opinion, and opinion on rehearing in this case, included as Exhibits H and K in Petitioner's Appendix, will be referred to by said exhibit designation, and page number, in their slip opinion forms, and are officially reported as State v. Pettis, 10 FLW 1878 (Fla. 4th DCA, August 7, 1985); and State v. Pettis, 488 So.2d 877 (Fla. 4th DCA 1986)(on rehearing), respectively.

STATEMENT OF THE CASE

In May, 1984, Respondent was charged, in Palm Beach County, Florida, in Case No. 84-3668 CF, with having committed the criminal offense of selling marijuana. (PA, Exhibit A). According to the probable cause affidavit, said sale was made on or about May 21, 1984, by Respondent, to an undercover police officer employed by the Riviera Beach police department, Reno Wells. (PA, Exhibit B, 1-2).

On March 26, 1985, the State filed a written Motion in Limine, seeking to prevent the anticipated impeachment of Officer Wells, by Respondent, by inquiry about remote, irrelevant and improper specific acts, consisting of departmental actions and reprimands while Wells was a Miami police officer, in violation of Florida law. (PA, Exhibit C). The trial court held a hearing on said motion, on March 26, 1985 (Exhibit D, at 1-13). At said hearing, the State maintained that its argument would be the same as that in State v. Jackson, Case No. 84-3655, involving a drug prosecution with Officer Wells as a witness, and incorporated the nature of the impeachment of Wells therein, as that anticipated in this case. (Exhibit D, at 3, 6; E, at 1-51). On March 29, 1985, the Circuit Court denied the State's motion in limine. (Exhibit F).

On April 29, 1985, the State filed a petition for common-law certiorari, in the Fourth District, State of Florida (Exhibit G, at 1-5 (exhibits omitted)), challenging said ruling. On August 7, 1985, the Fourth District issued its opinion, granting the State's petition, and quashing the Circuit Court's denial of Petitioner's motion in limine. (Exhibit H, at 1-2). Respondent filed a motion for rehearing, challenging the Fourth District's ruling that it had jurisdiction (Exhibit I, at

1-2), to which Petitioner filed a response. (Exhibit J, at 1-3). On May 14, 1986, the Fourth District vacated its original ruling (Exhibit H), and substituted an opinion, denying the State's petition for certiorari relief. (Exhibit K); State v. Pettis, 488 So.2d 877 (Fla. 4th DCA 1986) (on rehearing). In its opinion, the panel expressly recognized that their decision, on rehearing, was in conflict with the decision of the Second District in State v. Wilson, 483 So.2d 23 (Fla. 2nd DCA 1985). (Exhibit K, at 1).

Petitioner filed its Notice to Invoke Discretionary Jurisdiction, on July 18, 1986 (Exhibit L), with this Court, which subsequently accepted jurisdiction of the case on November 26, 1986.

STATEMENT OF FACTS

This cause arises from the Fourth District's denial of common-law certiorari, as sought by Petitioner, seeking to prevent the anticipated impeachment of a State witness by Respondent, by references to irrelevant specific acts of alleged misconduct of the witness while employed as a police officer in Miami, in Respondent's criminal trial on drug sale charges. (Exhibit A, C, G).

In its motion in limine (Exhibit C), the State maintained that the anticipated cross-examination impeachment of Officer Reno Wells, a Riviera Beach police officer who was the undercover police officer involved in the drug transaction which resulted in the subject charges against Respondent, was irrelevant, collateral and improper in form. (Exhibit C, at 1). Specifically, the State argued that use of Wells' departmental reprimands and disciplinary actions, while employed by the City of Miami was remote and collateral, and had no relevance to the facts of the drug charges against Respondent. Petitioner further stated that the use of specific acts impeachment was improper in form. (Exhibit C, at 1).

At the hearing of said motion, Petitioner added its concern that in cases involving the word of an undercover police officer against a defendant, "one-on-one", that an officer's credibility could be tested in an unlimited fashion, by reference to his employment records. (Exhibit D, at 2-3). The prosecutor said he would make and incorporate the same arguments, as made in a similar drug sale prosecution, where Officer Wells had also testified, and impeachment by use of his Miami departmental reprimands had been used. (Exhibit D, at 3, 6; E, at 1-51). At the hearing in this case, the State additionally stated that such impeachment testi-

mony would effectively "emasculate" the State's case (D, at 3, 45), a statement with which the trial court agreed. (D, at 5). The State maintained further that Respondent's authorities only allowed such impeachment, when relevance to the pending charges was shown, and that such relevance did not exist herein. (D, at 7). The State also argued that Wells' prior reprimands did not all involve truthfulness or veracity; that there had been no demonstration that Wells had a motive to lie; and that the only real purpose for presenting such impeachment testimony was to show that Wells was then acting in conformance with his prior character and falsehoods, which was completely improper. (D, at 8-10). Petitioner concluded by adding that proof of character could be by reputation alone, not specific bad acts. (D, at 10). The trial court's basis for its ruling, was to permit Respondent to test Wells' credibility, in a full and fair manner. (D, 6-7, 13).

The cross-examination of Officer Wells, in the Jackson case excerpts, incorporated by the State in its motion in this case (E, at 1-51), featured the use, for impeachment purposes, of the alleged use of excessive force, during a stop for a traffic violation, in December, 1981 (E, at 25); the failure to report Wells' accidental discharge of a weapon, while pursuing a robbery suspect, in May, 1981 (E, at 27); the alleged mishandling of a wallet belonging to an individual arrested for a misdemeanor, in April 1982 (E, 29-31); the misrepresentation about a court appearance that Wells allegedly never attended, and his claim for overtime pay, despite this fact, in February, 1982 (E, 35-38); and the mistreatment of a prisoner, while in his custody, in December, 1981. (E, 47-48). The State initially objected to this line of questioning, at said hear-

ing, on the basis that Respondent's impeachment, by specific acts, was improper. (E, 25).

In its petition for common-law certiorari, before the Fourth District (G), Petitioner maintained, inter alia, that Respondent's impeachment of Wells in Jackson, and anticipated impeachment of Wells herein, violated the Florida evidence code, by reference to specific acts; was remote and irrelevant to Wells' present employment with Riviera Beach, or his connection to Respondent's case; and was further irrelevant to show bias or interest by Wells. (G, at 2-4).

In its original opinion, the Fourth District agreed with Petitioner on the merits, concluding it had jurisdiction, by common-law certiorari, to review the trial court's pre-trial evidentiary ruling. (H, at 1). State v. Pettis, 10 FLW 1878 (Fla. 4th DCA, August 7, 1985). Specifically, the Fourth District Court found that the reprimands occurred during Officer Wells' prior employment, were at least three years old, prior to this case, were irrelevant to Respondent, and were improperly used for impeachment purposes, to prove Wells' alleged "untruthful character". (H, at 1); Pettis, at 1878-1879.

POINT ON APPEAL

WHETHER THE STATE HAS RIGHT TO SEEK REVIEW ON NON-APPEALABLE, INTERLOCUTORY ORDER IN A CRIMINAL CASE, WHEN SUCH ORDER DEPARTS FROM ESSENTIAL REQUIREMENTS OF LAW, BY INDEPENDENT MEANS OF WRIT OF COMMON-LAW CERTIORARI; THUS, SINCE THE TRIAL COURT'S ORDER WAS DEPARTURE FROM ESSENTIAL REQUIREMENTS OF LAW, WHETHER SAID ORDER SHOULD BE QUASHED?

SUMMARY OF ARGUMENT

The State has the right to seek review of a pre-trial evidentiary ruling, that departed from the essential requirements of law, by permitting improper and irrelevant impeachment of a State witness in a criminal trial, through the procedural mechanism of a writ of common-law certiorari. This Court's presently-binding precedent, which prohibits the State from seeking certiorari review of a ruling, if the State has no right to directly appeal such a ruling, should be specifically receded from and rejected by this Court. Such interpretations of the proper use of common-law certiorari, with all due respect to this Court, appear to erroneously equate the nature, scope and role of common-law certiorari, with that of direct appellate review. Furthermore, this Court's recent recognition and approval of the use of common-law certiorari, for review of a non-final, non-appealable order in Vasquez v. State, 11 FLW 548 (Fla., October 30, 1986), cannot be reconciled with this Court's decisions such as Jones v. State, 477 So.2d 566 (Fla. 1986), and McIntosh v. State, 496 So.2d 120 (Fla. 1986), and must be read as an implicit overruling of such cases.

Affirmance of the Fourth District's ruling, on rehearing, in this case, will leave uncorrected a trial court's ruling that erroneously expands the scope and nature of impeachment of a witness, to ignore Florida law and statutes governing relevancy and the proper method and scope of witness character impeachment. Such an affirmance will encourage trial courts to permit similar violations of rules governing appropriate impeachment in subsequent cases, and will foreclose the State from seeking redress of such rulings, through the specific, historically-recognized process designed to address such clearly erroneous rulings, despite the Fourth

District's original approval of the State's position, on the merits, in this case.

ARGUMENT

STATE HAS RIGHT TO SEEK REVIEW ON NON-APPEALABLE, INTERLOCUTORY ORDER IN A CRIMINAL CASE, WHEN SUCH ORDER DEPARTS FROM ESSENTIAL REQUIREMENTS OF LAW, BY INDEPENDENT MEANS OF WRIT OF COMMON-LAW CERTIORARI; THUS, SINCE TRIAL COURT'S ORDER WAS DEPARTURE FROM ESSENTIAL REQUIREMENTS OF LAW, SAID ORDER SHOULD BE QUASHED.

Despite the fact that the Fourth District, in its original ruling in this case, agreed with Petitioner on the merits of the trial court's pretrial evidentiary ruling, State v. Pettis, 10 FLW 1878 (Fla. 4th DCA, August 7, 1985); Exhibit H, at 1-2, the appeals court ultimately denied Petitioner's requested certiorari relief, on rehearing. State v. Pettis, 488 So.2d 877 (Fla. 4th DCA 1986)(on rehearing); Exhibit K, at 1. The Fourth District based its conclusion on prior decisions of this Court, which essentially hold that the State has no right to seek redress of erroneous orders, by the remedy of common-law certiorari, when it has no right to a direct appeal of such orders. Pettis, (on rehearing), Exhibit K, at 1, citing Jones v. State, 477 So.2d 566 (Fla. 1986); RLB v. State, 11 FLW 174 (Fla., April 17, 1986)[1]; and State v. Smulowitz, 10 FLW 1786 (Fla. 3rd DCA, July 23, 1985).[2] The effect of the Fourth District's ruling, on rehearing, was to prevent the State from seeking a remedy that was deemed specifically appropriate in its original ruling in the case, based on recent Court decisions which have emasculated the State's use of a procedural remedy which had previously been consistently approved and applied, pursuant to a long,

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[1] now officially cited as RLB v. State, 486 So.2d 588 (Fla. 1986).

[2] The Third District's opinion was withdrawn and vacated, and subsequently reported, on rehearing, as State v. Smulowitz, 482 So.2d 1388 (Fla. 3rd DCA 1986)(on rehearing).

consistent line of Florida court decisions. State v. Thayer, 489 So.2d 782, 783-784 (Fla. 4th DCA 1986)(Glickstein, J, concurring specially); review granted, Fla.Sup.Court, Case No. 68,842; State v. Jones, 488 So.2d 527, 529 (Fla. 1986); (Boyd, C, J; Ehrlich, J; and Shaw, J, concurring in part, dissenting in part); Jones v. State, 477 So.2d 566 (Fla. 1985)(Boyd, C, J, specially concurring opinion); State v. Wilson, 483 So.2d 23, 25 (Fla. 2nd DCA 1985), rev. granted, Florida Supreme Court, Case No. 68,369. In view of the nature and purpose of common-law certiorari, and State's appropriate resort to such remedy herein, in a manner not at all intended as a "backdoor direct appeal," this Court should recede from the view expressed in Jones, supra, and more recent decisions, and remand to the Fourth District, for entry of its original opinion on the merits.

It is axiomatic that common-law certiorari exists as a remedy, to any litigant, to seek to correct court rulings which depart from the essential requirements of law, and for which the moving party has no adequate remedy at law, including the right to a direct appeal of the ruling. State v. Edwards, 490 So.2d 235 (Fla. 5th DCA 1986); Vasquez v. State, 11 FLW 548, 549 (Fla., October 30, 1986); Wilson, supra, at 25; Jones, supra, at 567-569 (Boyd, specially concurring opinion) and cases cited therein; RLB v. State, 486 So.2d 588, 590-591 (Fla. 1986)(Boyd, concurring in part, dissenting in part); State v. Busciglio, 426 So.2d 1233 (Fla. 2nd DCA 1983); Jantzen v. State, 422 So.2d 1090 (Fla. 3rd DCA 1982); State v. Steinbrecher, 409 So.2d 510 (Fla. 3rd DCA 1982); State ex rel Bludworth v. Kapner, 394 So.2d 541 (Fla. 4th DCA 1981); State v. Smith, 260 So.2d 489 (Fla. 1972); Kilgore v. Bird, 6 So.2d 541, 149 Fla. 570 (Fla. 1942). Among such decisions, as pointed out by Chief Justice Boyd

in his specially concurring opinion in Jones, supra, are those cases where certiorari was denied, on the basis of the failure of the movant to establish the required criteria for common-law certiorari relief, but not the inability or lack of authority of an appellate court to issue such a writ, if warranted. Article V, §4(b)(3), Fla. Const. (1980); Jones, supra, at 507 (Boyd, C, J, specially concurring opinion), and cases cited; see also, Hydrocarbon Trading & Transport Company v. Ramco International, 11 FLW 1178 (Fla. 4th DCA, May 21, 1986); Martin-Johnson, Inc. v. Savage, 11 FLW 978 (Fla. 1st DCA, April 28, 1986). As these cases demonstrate, the remedy of common-law certiorari, and the prerequisites for properly invoking it, have been applied in a variety of circumstances, as a basis for invoking the discretionary jurisdiction of an appeals court, as an independent means of review, existing separate and apart from review by direct appeal. Vasquez v. State, 11 FLW 548 (Fla., October 30, 1986); Edwards, supra; State v. Jones, supra (Boyd, C, J; Shaw, J; Ehrlich, J, concurring in part and dissenting in part); Jones v. State, supra (Boyd, C, J, specially concurring opinion); Steinbrecher, supra, at 511; Smith, supra, at 491; State v. Harris, 136 So.2d 633 (Fla. 1962); State v. Mitchell, 490 So.2d 163, 164 (Fla. 4th DCA 1986)(Glickstein, J, specially concurring); Article V, §4(b)(3), supra; Rule 9.100(a), Fla.R.App.P. (1985); Rule 9.030(b)(3), Fla.R.App.P. (1985). This procedure thus evidently does not encompass an alternate means of direct appellate review for the State, or any other litigant, since availability of such an appellate remedy immediately renders such relief inappropriate, and since the mechanism and scope of common-law certiorari does not address the same magnitude or degree of error in a legal ruling, as on direct appeal. Edwards, supra; Vasquez, supra; State v. Jones, at 175

(Boyd, C, J; Shaw, J; Erhlich, J, concurring in part, dissenting in part); Jones v. State, at 569 (Boyd, C, J, concurring opinion); Jantzen, supra; Steinbrecher; State v. Horvatch, 413 So.2d 469 (Fla. 4th DCA 1982); Smith, supra.

However, as is becoming increasingly more apparent, this Court's recent pronouncements have rejected the State's appropriate invocation of the writ of common-law certiorari, by directly equating review by direct appeal, with review by common-law certiorari. McIntosh v. State, 496 So.2d 120 (Fla. 1986); Jones v. State, supra; RLB, supra; State v. GP, 476 So. 2d 1272 (Fla. 1985); State v. CC, 476 So.2d 144 (Fla. 1985). With all due respect to this Court and its precedent on the issue, this ultimate conclusion is fatally flawed, since it ignores the nature, scope and historical existence of the remedy of common-law certiorari, and the power and jurisdiction of appellate courts to entertain such petitions for relief, unconditioned on a prerequisite determination of the existence of a right to direct appeal of the same issue, by an aggrieved party. RLB, supra, at 590 (Boyd, J, concurring in part and dissenting in part); Edwards, supra; Wilson; Horvatch; Steinbrecher; Smith; Jones v. State, supra (Boyd, J, concurring opinion). Furthermore, the content of those decisions relied on by this Court in McIntosh, and the Fourth District in this case, illustrates that such decisions should not be interpreted to prevent the original granting of certiorari relief by the Fourth District herein, on the merits.

This Court's decision in C.C., supra, involved circumstances in which the State sought appellate review of the granting of a suppression motion in a delinquency proceeding, among other orders therein. C.C., at 145. This Court concluded that since no statutory right to direct appeal

of such rulings by the State, and the statutory provisions governing criminal cases were not analogous to juvenile proceedings, the State had no right to appeal interlocutory or plenary judgments or rulings. C.C., at 146. The majority relied on Article V, §4(b)(1), Fla. Const. (1980), in further concluding that, regarding appeals of interlocutory orders, such direct appellate review existed only in cases involving direct appeal as a matter of entitlement, and that the Florida Supreme Court had not created rules enabling the State to appeal any adverse ruling. Id. Clearly, the C.C. decision's impact and effect was limited solety to attempts by the State to seek review by direct appeal, which, as aforementioned, is not tantamount or analogous to review by common-law certiorari. Jones v. State, supra (Boyd, C, J, specially concurring opinion); Wilson, supra, at 25. Since thre was obviously no discussion or mention of certiorari review of a non-appealable, interlocutory order, the C.C. decision does not prevent the State from seeking such review, where, as originally determined herein, there was a demonstration by Petitioner, before the Fourth District, of a ruling by a trial court which clearly met the magnitude of error required for such relief. Pettis, supra, at 1-2.

This Court's decision in G.P., supra, encompassed a final order, dismissing a juvenile delinquency petition, from which the State sought direct appeal, and appeal by certiorari. G.P., at 1273. Without much discussion, this Court noted that interlocutory appellate review was limited to cases encompassing a right to direct appeal, and concluded that "Chapter 39, dealing with juveniles, is a purely statutory creation which does not give the State the right of appeal. The State has no greater right by certiorari." Id. (e.a.). It is thus apparent that the Second District

correctly interpreted the G.P. case, as standing for the proposition that the State could not employ certiorari review, as an alternative means of direct appellate review. Wilson, at 25; Jones v. State, (Boyd, C,J, specially concurring opinion). Given the fact that the State sought common-law certiorari herein as its independent and sole basis for review, before the Fourth District, and the fact that any other interpretation of G.P. would not be reasonable, in light of the aforementioned consistent and appropriate invoking of the remedy of common-law certiorari in Florida decisional law, supra, this Court's G.P. decision should not be interpreted to prevent the State's resort to certiorari review herein, before the Fourth District.[3]

In Jones, supra, as in C.C. and G.P., this Court was faced again with factual circumstances --- a State appeal of a final order, dismissing probation violation charges --- not presented by the present case. Jones, at 566; Wilson, at 25. The holding of this Court therein, which the Fourth District expressly relied on in denying certiorari in the present case, was that the appeals court therein "erred ... in reviewing by certiorari a case it could not review by appeal." Jones, at 566. However, as Chief Justice Boyd consistently stressed in his specially concurring opinion, such a ruling must be appropriately limited to the conclusion that common-law certiorari, while not cognizable as a substitute method of seeking direct appellate review, does exist to provide a remedy to the State, for errors far beyond mere legal error, which cannot be rectified by any

[3] It is noteworthy that during the 1986 legislative session, the Florida legislature adopted a measure that specifically provides for the State to seek direct appellate review of the orders that were the subject of C.C. and G.P. Chapter 86-251, Laws of Florida (1986). Such legislation at least demonstrates clear legislative intent that the State possesses the right to review of the validity of pre-trial orders. Thayer v. State, 335 So.2d 815 (Fla. 1976).

adequate legal remedy. Jones v. State, supra, at 567-569 (Boyd, C, J, specially concurring opinion). Based on the nature of the remedy of common-law certiorari, and its discretionary jurisdictional basis, on factors other than those involved in direct appeal of an order or judgment as an entitlement to a litigant, it appears that Chief Justice Boyd's view in Jones, as interpreted by the Second District in Wilson, appropriately and correctly interprets the State's right to certiorari review of a non-appealable interlocutory order in a criminal case. Steinbrecher, at 511. As further pointed out in Justice Boyd's opinion in Jones, and in Wilson, a strict, broad application of the majority opinion of this Court in Jones, would have necessitated a complete rejection, of the consistent recognition by this and other courts of the appropriate use and common-law requirements for certiorari. Wilson, at 25; Jones v. State, supra, at 567, 568 (Boyd, C, J, specially concurring opinion); Smith, supra; Thayer, slip op., at 3 (Glickstein, J, dissenting opinion). An interpretation of Jones, in its strictest sense, thereby reaching a conclusion that "... when there is no entitlement to an appeal, certiorari is ipso facto not available as a remedy ...", Jones v. State, at 567 (Boyd C, J, specially concurring opinion), effectively eliminates common-law certiorari as an available remedy to the State, to correct precisely the kind of error committed by the trial court in this case, as recognized by the Fourth District, Thayer, slip op., at 1, that certiorari was specifically designed to correct.

This Court's ruling in Jones, as in G.P., additionally relied upon an interpretation of Article V, §4(b)(1), supra, as allowing interlocutory appeals solely in cases where direct appeal as of right exists. Jones, at 566; G.P., at 1273. This conclusion is supported by the ex-

press language of this state Constitutional provision, dealing exclusively with direct appellate jurisdiction. Article V, §4(b)(1). Said provision is also necessarily so limited in scope, because of the nature of the common-law certiorari requirements, most significantly the absence of a legal remedy such as direct appeal. Thus, to interpret Article V, §4(b)(1), as having any effect on the propriety or scope of common-law certiorari, as an independent means of review and not an unauthorized means of direct appellate review, is belied by the consistently recognized role and scope of the remedy of certiorari. Article V, §4(b)(3), supra; Steinbrecher, supra, at 511.

As already mentioned, Petitioner is not unmindful of the conclusion reached by this Court, and other courts, in post-Jones v. State decisions, absolutely consistent with the view held by the majority therein. State v. Jones, supra; RLB, supra; McIntosh, supra; State v. Croft and Thurman, 11 FLW 2365 (Fla. 5th DCA, November 13, 1986); Adams v. State ex rel Eagan, 495 So.2d 1229 (Fla. 5th DCA 1986); State v. Johnson, 490 So.2d 1076 (Fla. 4th DCA 1986); Thayer, supra. However, it is significant to point out that these decisions were essentially summarily based, without discussion, on this Court's prior decisions in CC, Jones, and GP. As a continuation of the unduly strict holdings of these prior cases, the decisions subsequent to Jones, including McIntosh, RLB and intermediate appellate decisions on the issue, must also be viewed as an inappropriate interpretation of the scope and role of common-law certiorari, and should be receded from by this Court. Moreover, this Court's recent decision in Vasquez (a post-McIntosh case), is both irreconcilable with Jones, McIntosh and the progeny of cases in between them, and supports Petition-

er's argument, and the views expressed in the dissent and concurrences in (inter alia) Jones v. State, State v. Jones, RLB, Mitchell, supra; and Thayer, supra.

In Vasquez, supra, this Court was presented with a defendant's attempt to seek review of a trial court's denial of his motion to dismiss criminal charges, pursuant to Rule 3.213(b), Fla.R.Crim.P., in view of his continuing and prospective incompetence to stand trial, and involuntary hospitalization. Vasquez, at 549. In a reversal of the Third District's rejection of any right to appeal said non-final, interlocutory order, and despite an express finding that direct appellate review was not available in such a circumstance, this Court concluded that the defendant was entitled to review, by common-law certiorari. Id. In justifying this ruling, this Court relied on the otherwise inequitable result, of the defendant having no other means of appellate review of such a ruling, resulting in continued involuntary commitment. Id. This Court further noted that common-law certiorari was an appropriate remedy, to "ensure the trial court's proper application" of certain "Constitutional mandates", and the protection of the rights of incompetent criminal defendants. Id. Of further crucial significance, is that this Court expressly analogized the Vasquez circumstances, to those in State v. Vigil, 410 So.2d 528 (Fla. 2d DCA 1982), in which this Court expressly approved the State's resort therein to common-law certiorari, to seek review of an otherwise non-appealable order releasing a criminal defendant found not guilty of a crime by reason of insanity. Vasquez, at 549; Vigil, supra, at 529, 530.

The significance of the Vasquez decision, in the context of the State's right to use common-law certiorari as a procedural mechanism to

review non-final, non-appealable interlocutory orders, cannot be overestimated. It is clear that the express underlying rationale in Vasquez, was that common-law certiorari was a necssary and appropriate remedy, despite the lack of direct appellate review of the subject ruling, to maintain the equitable and legal protections, entitled to by an aggrieved party. The nature and scope of such a remedy, as thus recognized in Vasquez, is a reiteration of the precise historical role of common-law certiorari, recognized by the dissenting viewpoints expressed by certain members of this Court in Jones v. State, State v. Jones, and RLB, supra. Thus, the Vasquez decision must thus be read, as the re-emergence of this Court's recognition (pre-CC), of the proper scope and role of common-law certiorari, as an independent means of judicial review of decisions departing from essential requirements of law, where no adequate remedy at law exists, including direct appeal. Edwards; Steinbrecher; Horvatch; Jones v. State, (Boyd, J, concurring in part and dissenting in part), and cases cited therein. It is virtually impossible to reconcile this result, with the one reached in the Jones-CC-GP-McIntoch line of cases, and because Vasquez is a subsequent pronouncement, said line of cases could be interpreted as implicitly overruled by Vasquez.[4] This conclusion is further supported by this Court's approval of Vigil, in Vasquez, to which Petitioner's factual

[4] Another possible interpretation of Vasquez, is that it presents a lone exception to the Jones-McIntosh holding, which would, for whatever reason, substantiate the conclusion reached by the dissent in State v. Jones, that the State is being "singled out as a litigant" that cannot seek certiorari review in similar situations, while a defendant can. This Court's approval of the Vigil case, involving the State's reliance on common-law certiorari, however, supports Petitioner's view that Vasquez amounts to a receding from the majority holding in Jones, CC, GP, RLB and McIntosh. Further support for this view may be found in this Court's decision in State v. Palmore, 11 FLW 592 (Fla., May 1, 1986)(corrected opinion), in which the Court did not expressly disapprove or reject the common-law certiorari analysis of the Third District in State v. Palmore, 469 So.2d 136 (Fla. 3rd DCA 1984, or Steinbrecher, supra, which support Petitioner's argument here.

circumstances can be appropriately analogized.

In Vigil, supra, the State sought to review the release from custody, of a defendant, found not guilty of murder by reason of insanity. Vigil, at 529-530. By upholding common-law certiorari as a remedy for such review, in Vigil (as approved in Vasquez), the implied reasoning appears to be that the protection of the public safety, by psychiatric evaluations for "dangerousness" going beyond a single HRS evaluation, could not otherwise be enforced or accomplished, by any other legal remedy. Vigil, at 529-530. In the same manner herein, the State had no other legal remedy, by which to review the trial court's pre-trial evidentiary ruling, allowing improper, irrelevant and prejudicial impeachment of a State witness, other than common-law certiorari, to correct and review a departure from essential legal requirements. Pettis, supra, Exhibit H, at 1-2; Thayer, supra (Glickstein, J, specially concurring); Mitchell, supra (Glickstein, specially concurring); Jones v. State (Boyd, J, concurring opinion). This conclusion is further supported by the Fifth District's granting of common-law certiorari to the State in Edwards. In a similar context, the State had no other legal remedy therein, to seek review of a pre-trial motion in limine, granted by the trial court, which departed from essential requirements of law in forbidding the State to prove the location and existence of a murder of a prison inmate, by reference to the word "prison" or "prisoner". Edwards, at 236.

It is clear that the immediate and long-term effects, of a decision to uphold the Fourth District here, and to continue to consistently apply the Jones line of cases of this Court, would be severely detrimental to the State and the criminal justice system, by leaving uncorrected a

trial court's erroneous ruling, of a magnitude far greater than that of mere error. Horvatch; Jones v. State, at 569 (Boyd, C J, specially concurring); RLB, supra, at 590 (Boyd C J, concurring in part and dissenting in part); Edwards, supra; State v. Thayer, supra (Glickstein, J, specially concurring). Such a result would allow the defense, in this case, to proceed to impeach a State witness-police officer, with intrinsic reference to irrelevant, collateral, and remote departmental reprimands, in violation of Florida Statutes restricting the form of such impeachment to reputation testimony as to truthfulness. Pettis, Exhibit H, at 2; §90.404(1)(c); §90.609, Fla. Stat. (1983); Hitchcock v. State, 413 So. 2d 741, 744 (Fla. 1982); Dixon v. State, 426 So.2d 1258, 1259 (Fla. 2nd DCA 1983); Wrobel v. State, 410 So.2d 950 (Fla. 5th DCA 1982), cert. denied, 419 So.2d 1201 (Fla. 1980); Pino v. Koelber, 389 So.2d 1191 (Fla. 1980); A McD v. State, 422 So.2d 336, 337-338 (Fla. 3rd DCA 1982). Additionally, such a result would absolutely foreclose the State from seeking the remedy specifically designed to address such clearly erroneous rulings.

Furthermore, the Fourth District's ruling on rehearing, following its original merits ruling in the State's favor, will invite more frequent use of similarly improper impeachment, for the purpose of destroying the character of State witnesses, by methods and references which violate the Florida evidence code, and state substantive law. Any apprehension, inherent in this Court's decisions in CC, Jones and GP, that the State is seeking to abuse common-law certiorari to achieve what cannot be obtained by direct appellate review, is both historically unfounded, and can be resolved by the inherent nature of the availability of the writ when other legal remedies exist. The potential for abuse, if any, pales by comparison

to the actual result of applying Jones, CC, GP, RLB and McIntosh to this case --- namely, a legal ruling, which was originally recognized by the Fourth District as a departure from the essential requirements of law, that will be judicially sanctioned, and result in the undermining of statutory and case law limitations on the proper use and scope of impeachment in criminal cases.

The circumstances before this Court, present an especially compelling basis for a rescission of this Court's decisions in cases such as Jones, CC and McIntosh, and a quashing of the Fourth District's denial of certiorari on rehearing, with remand to re-instate the Fourth District's original ruling, on the merits, as issued August 7, 1985.

CONCLUSION

WHEREFORE, based on the foregoing arguments and authorities cited therein, Petitioner respectfully requests that this Honorable Court quash the opinion of the Fourth District, on rehearing, and remand with instructions to reinstate the Fourth District's original opinion in this case, issued August 7, 1985, granting Petitioner's petition for common-law certiorari.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petitioner's Brief on the Merits has been furnished, by courier, to TATJANA OSTAPOFF, ESQUIRE, Assistant Public Defender, 15th Judicial Circuit, The Governmental Center, 301 North Olive Avenue, West Palm Beach, Florida 33401, on this 22nd day of December, 1986.

Richard G. Bartmon

Of Counsel