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IN THE SUPREME COURT OF FLORIDA

FILED
SID J. WHITE

THE STATE OF FLORIDA,)
)
 Petitioner,)
)
 vs.)
)
 LAZARO GINEBRA,)
)
 Respondent.)

SEP 15 1986
CLERK, SUPREME COURT
By [Signature]
CASE NO. Deputy Clerk

OPPOSITION FOR DISCRETIONARY REVIEW
OF THE DISTRICT COURT OF APPEAL,
THIRD DISTRICT OF FLORIDA

BRIEF OF RESPONDENT ON JURISDICTION

LAZARO GINEBRA, Pro se
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INTRODUCTION

The Respondent, Lazaro Ginebra, was the Appellant in the District Court of Appeal, Third District of Florida, and the Defendant in the trial court, the Circuit Court of the Eleventh Judicial Circuit, in and for Dade County, Florida. The Petitioner, The State of Florida, was the Appellee in the District Court of Appeal, and the prosecution in the trial court. The parties will be referred to as they stand in this Court. The symbol "A" will be utilized to designate the Appendix in this brief. All emphasis is supplied unless contrary is indicated.

STATEMENT OF THE CASE AND FACTS

Respondent agrees with the Petitioner's presentation of the Statement of the Case and Facts as purported in its brief.

However, Petitioner has failed to include Respondent's Reply to State's Response to Show Cause Order, as filed with the Third District Court of Appeal on August 14, 1986.

Nevertheless, Respondent shall attach copy of said Reply, in the form of an Appendix. (A. 1). In fact, as supported by "A. 1", Respondent is presently under a detainer issued by the Immigration and Naturalization Service, United States Department of Justice.

QUESTION PRESENTED

WHETHER THE DECISION OF THE THIRD DISTRICT COURT OF APPEAL IN GINEBRA V. STATE, SO.2D (FLA. 3D DCA 1986, CASE DECIDED AUGUST 26, 1986 CASE NO. 86-1802), EXPRESSLY AND DIRECTLY CONFLICTS WITH THE FIRST DISTRICT COURT OF APPEAL'S DECISION IN STATE V. HAHN, 421 SO.2d 710 (FLA. 1ST DCA 1982).

SUMMARY OF ARGUMENT

The decision of the Third District Court of Appeal in the case sub judice does not directly or expressly conflict with the decision of the First District Court of Appeal in Hahn v. State, 421 So.2d 710 (Fla. 1st DCA 1982), hence the exercise of discretionary review is not warranted in this cause.

ARGUMENT

THE DECISION OF THE THIRD DISTRICT COURT OF APPEAL IN GINEBRA V. STATE, _____ SO.2D _____, (FLA. 3D DCA 1986, CASE DECIDED AUGUST 26, 1986, CASE NO. 86-1802) DOES NOT DIRECTLY AND EXPRESSLY CONFLICT WITH THE FIRST DISTRICT COURT OF APPEAL'S DECISION IN STATE V. HAHN, 421 SO.2D 710 (FLA. 1ST DCA 1982).

The issue, whether counsel's failure to advise alien criminal defendants of possible deportation consequences renders a guilty plea involuntary, has been addressed by the First, Third, and Fourth District Courts of Appeal, with the Third and Third Districts concurring in their decisions.

However, and imperative herein, is the reason as to the First District Court of Appeal not agreeing with the Third District; specifically, not agreeing with Edwards v. State, 393 So.2d 597, pet. for rev. denied., 402 So.2d 613 (Fla. 1981).

At the outset, therefore, it must be established that in Hahn v. State, 421 So.2d 710 (Fla. 1st DCA 1982), the court held that in the northern part of Florida, counsel would not reasonably expect his client to be a deportable alien, and consequently counsel was not held ineffective when affirming the lower tribunal's denial.

Accordingly, the distinction between Edwards and Hahn, supra, is axiomatic in light that sub judice is undoubtedly a case out of the southern part of Florida.

More apropos, sub judice is out of Miami, where, there is an abundance of aliens residing therein.

Furthermore, and more on point herein, in Hahn, supra, the defendant had not raised a Sixth Amendment collateral attack by claiming he received ineffective assistance of counsel. Moreover, Hahn specifically relied on a Fifth and Fourteenth Amendment argument.

Conversely, however, at bar, Appellant has properly raised an ineffective assistance of counsel claim; thereby distinguishing sub judice to Hahn, supra, inter alia.

In a nutshell, then, a conflict does not exist inasmuch as the question herein unequivocally is: Whether or not counsel was ineffective for not apprising Respondent as to the consequences of deportation inherently attached to a plea of guilty?

Additionally, the First District Court of Appeal expressly asserted that in northern Florida counsel would not be expected to know his client to be a deportable alien. Hahn, supra. And, the Hahn court articulated that, inter alia, defendant had not raised an ineffective assistance of counsel claim.

The rationale encapsulating Edwards, supra, has recently been embraced by the Fourth District Court of Appeal, to-wit: Rodriguez v. State, 487 So.2d 1224 (Fla. 4th DCA 1986). In Rodriguez, supra, the court concurred with the rationale found in Edwards, supra, inasmuch as counsel was held to be ineffective, and reversed therefore.

Finally, in Martinez v. State, 475 So.2d 1292 (Fla. 3d DCA 1985), again the Third District Court of Appeal applied its prior rationale as controlling; thereby reversing and remanding the case back to the trial court.

Accordingly, it is incumbent on this Honorable Court to deny Petitioner's Petition as it is readily apparent that the distinction between Edwards and Hahn, supra, is of such substance as to negate any conflict between the First and Third District Courts of Appeal. Of course, this Court should also contemplate the decision of the Fourth District Court of Appeal, which, is correct and wholly concurring with the Fourth District Court of Appeal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing BRIEF OF RESPONDENT ON JURISDICTION was furnished by U.S. Mail to RALPH BARREIRA, Assistant Attorney General, Department of Legal Affairs, 401 N.W. 2nd Avenue, Suite 820, Miami, Florida 33128 on this 10th day of September, 1986.


LAZARO GINEBRA, Pro se