

IN THE SUPREME COURT OF FLORIDA

CASE NO. 70, 226

THE STATE OF FLORIDA,

Petitioner,

vs.

JOSEPH CASSEUS,

Respondent.

FILED
MAY 19 1987
SUPREME COURT
Deputy Clerk

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ON PETITION FOR DISCRETIONARY REVIEW

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BRIEF OF PETITIONER ON JURISDICTION

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INTRODUCTION

The Petitioner, The State of Florida, was the Appellee in the District Court of Appeal of Florida, Third District, and the prosecution in the trial court, the Circuit Court of the Eleventh Judicial Circuit, in and for Dade County, Florida. The Respondent, Joseph Casseus, was the Appellant in the District Court of Appeal and the Defendant 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 to this brief. All emphasis is supplied unless the contrary is indicated.

STATEMENT OF THE CASE AND FACTS

Respondent was charged in case nos. 82-25201, 82-25233, and 82-26520, with three counts of robbery with a firearm and one count of armed kidnapping. On April 18, 1983 Respondent pleaded guilty to the above charges and received a sentence of life imprisonment.

On November 1st, 1986, Respondent filed a Rule 3.850 motion in the trial court (Exhibit "A"), alleging that his trial counsel was ineffective for failing to advise him that the above convictions are grounds for deportation under Federal Immigration Laws. ^{1/}. The trial court summarily denied the 3.850 motion (Exhibit "B"), and Respondent appealed to the Third District. Without requesting a response from the State of Florida, the Third District reversed the trial court's summary denial of the 3.850 motion, and remanded for further proceedings consistent with Ginebra v. State, 490 So.2d 467 (Fla. 3d DCA 1986), and Edwards v. State, 393 So.2d 597 (Fla. 3d DCA 1981). In Edwards, supra, the Third District had held that failure to advise an alien defendant of the possibility of deportation as a result of his conviction constituted ineffective assistance

^{1/} Respondent also stated that he was an illegal alien from Haiti, which meant that he was automatically deportable whether he pleaded guilty to the above charges or not.

of counsel as a matter of law, and therefore rendered the guilty plea involuntary. The Third District further held that when an alien defendant raises the above issue in a 3.850 motion, he is automatically entitled to an evidentiary hearing to determine whether his attorney did in fact fail to advise him of the deportation consequences, and whether he will in fact be deported as a result of his convictions.

As recognized by Chief Judge Schwartz in his special concurrence in Martinez, the position of the Third District in Edwards and Martinez (and the instant case) is in direct and express conflict with the First District's decision in Hahn v. State, 421 So.2d 710 (Fla. 1st DCA 1982). (A. 8). Chief Judge Schwartz stated that he himself disagreed with Edwards,^{2/} but felt bound to concur because of its binding authority.

A notice invoking the discretionary review jurisdiction of this Court was filed on March 11, 1987.

This Court has already granted discretionary review based on this conflict in State v. Ginebra, case no. 69,283, (oral argument May 6, 1987).

^{2/} As had then Chief Judge Hubbard in his strong dissent in Edwards.

QUESTION PRESENTED

WHETHER THE DECISION OF THE THIRD DISTRICT COURT OF APPEAL IN CASSEUS V. STATE, _____ SO.2D _____ (FLA. 3d DCA 1987, CASE _____ DECIDED FEBRUARY 24, 1987, CASE NO. 87-310), 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 in the case sub-judice directly and expressly conflicts with the decision of the First District in Hahn, supra, hence the exercise of discretionary review in this cause is warranted. This Court has already granted discretionary review based on this identical conflict in State v. Ginebra, case no. 69,283 (oral agrument May 6, 1987).

ARGUMENT

THE DECISION OF THE THIRD DISTRICT COURT OF APPEAL IN CASSEUS V. STATE, SO.2D _____ (FLA. 3D DCA 1986, CASE DECIDED FEBRUARY 24, 1987, CASE NO. 87-310), DIRECTLY AND EXPRESSLY CONFLICTS 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 defendants of possible deportation consequences renders a guilty plea involuntary, has been addressed by both the Third and First District Court of Appeals, with opposite results. ^{3/} In Edwards v. State, 393 So.2d 597 (Fla. 3d DCA 1981), the Third District held that failure to advise an alien defendant that his conviction might result in deportation pursuant to Federal Immigration Laws, constituted ineffective assistance of counsel, and hence rendered the defendant's guilty plea involuntary. Where an alien defendant alleges such a failure by counsel in his 3.850 motion, the trial court must hold an evidentiary hearing to determine if the allegation is true, and if the defendant is actually going to be deported.

^{3/} The Fourth District recently adopted the holding of Edwards in its brief opinion in Rodriguez v. State, 487 So.2d 1224 (Fla. 4th DCA 1986).

The Second District has even more recently rejected Edwards in its comprehensive opinion in Villavende v. State, 12 F.L.W. 702 (Fla. 2nd DCA, case decided March 4, 1987). (Copy attached as Exhibit "D").

In Hahn v. State, 421 So.2d 710 (Fla. 1st DCA 1982), the defendant, relying on Edwards, supra, presented the identical argument to the First District. The First District rejected this argument, holding that an attorney has no affirmative duty to advise an alien defendant of the deportation consequences which might result from a plea of guilty. The First District concluded its opinion by stating "We acknowledge conflict with Edwards." (Id. at 710).

The subsequent opinions of the Third District in Martinez, Ginebra, and Casseus (the instance case), supra, merely reaffirmed its prior holding in Edwards.

In his special concurrence in Martinez, Chief Judge Schwartz stated his own opposition to the Edwards rule, and specifically recognized the conflict between the Third and First Districts, citing Hahn, supra. Chief Judge Schwartz thus sided with then Chief Judge Hubbard, who entered a vigorous dissenting opinion in Edwards.

Finally, this Court has granted discretionary review based upon the identical conflict in State v. Ginebra, case no. 69,283 (oral argument May 6, 1987).

In sum, the decision of the Third District in the case sub judice directly and expressly conflicts with the

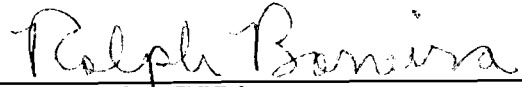
decisions of both the First District in Hahn and the Second District in Villavende, supra, hence the exercise of discretionary review in this cause is warranted.

CONCLUSION

Based upon the foregoing, Petitioner respectfully urges this Court to grant discretionary review in this cause.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing BRIEF OF PETITIONER ON JURISDICTION was furnished by mail to JOSEPH CASSEUS, Pro Se, Prisoner # 089313, 19000 Southwest 377 Street, Florida City, Florida 33034, on this 17 day of March, 1987.


RALPH BARREIRA