

IN THE SUPREME COURT OF FLORIDA

JAMES A. MAYS,)
)
 Petitioner,)
)
 vs.)
)
 STATE OF FLORIDA,)
)
 Respondent.)
 _____)

CASE NO. 70,330

FILED
APR 27 1971
CLERK OF THE SUPREME COURT
TALLAHASSEE, FLORIDA
pl

RESPONDENT'S BRIEF IN OPPOSITION
TO JURISDICTION

ROBERT A. BUTTERWORTH
Attorney General
Tallahassee, FL

AMY L. DIEM
Assistant Attorney General
111 Georgia Avenue, Ste. 204
West Palm Beach, FL 33401
(305) 837-5062

Counsel for Petitioner

TABLE OF CONTENTS

	<u>PAGE</u>
LIST OF CITATIONS	ii
PRELIMINARY STATEMENT	1
STATEMENT OF THE CASE AND FACTS	2
SUMMARY OF THE ARGUMENT	3
ARGUMENT	
POINT I	4-5
THE FLORIDA SUPREME COURT SHOULD DECLINE TO EXERCISE ITS DISCRETION TO REVIEW THIS CASE.	
CONCLUSION	6
CERTIFICATE OF SERVICE	6
APPENDIX	

LIST OF CITATIONS

<u>CASE</u>	<u>PAGE</u>
<u>Gaffney v. State</u> , 497 So.2d 1292 (Fla. 5 DCA 1986)	4
<u>Hughes v. State</u> , 497 So.2d 938 (Fla. 1 DCA 1986)	4
<u>Jenkins v. State</u> , 444 So.2d 947 (Fla. 1984)	5

OTHER AUTHORITIES

<u>Florida Constitution</u> (1980), Art. V §3(b)(3)	4
<u>Florida Statutes</u> §27.3455 (1985)	3,4

PRELIMINARY STATEMENT

Petitioner was the Appellant and the defendant and Respondent was the Appellee and the prosecution in the Criminal Division of the Circuit Court of the Nineteenth Judicial Circuit, in and for Martin County, Florida. In the brief, the parties will be referred to as they appear before this Honorable Court of Appeal.

The following symbol will be used:

"A" Appendix.

STATEMENT OF THE CASE AND FACTS

Respondent accepts Petitioner's statement of the case and facts as found on page two (2) of Petitioner's Brief on Jurisdiction, with the following additions and/or clarifications:

Petitioner never made a motion to be declared indigent for purposes of serving community service.

SUMMARY OF THE ARGUMENT

This Court should not exercise its discretionary jurisdiction to review this cause where Petitioner never sought a determination of indigency for the purposes of §27.3455, Florida Statutes (1985), and thus his complaints are premature.

ARGUMENT

POINT I

THE FLORIDA SUPREME COURT SHOULD
DECLINE TO EXERCISE ITS DISCRETION
TO REVIEW THIS CAUSE.

Petitioner seeks to invoke this Court's "conflict" jurisdiction under Article V, §3(b)(3), Florida Constitution (1980) and Fla. R. App. P. 9.030(a)(2)(iv).

Although Respondent acknowledges that the opinion in the instant case is in conflict with Hughes v. State, 497 So.2d 938 (Fla. 1 DCA 1986) and Gaffney v. State, 497 So.2d 1292 (Fla. 5 DCA 1986); Respondent submits that this Court should decline to exercise discretionary review in the present case.

The decision of the Fourth District Court of Appeals in the case sub judice held that a defendant need not be given notice, and a full opportunity to object, prior to the imposition of costs under §27.3455, Florida Statutes (1985). (A2).

Respondent maintains the correctness of the decision of the Fourth District where Petitioner never moved for a determination of indigency for purposes of this statute. If a defendant is declared indigent for the purposes of the statute then the costs requirement is converted to performance of community service. Thus the clerk's certificate not to receive gain time was proper. (A3). As Petitioner has not attempted to move for a determination of indigency pursuant to this statute, his complaints are premature, the decision of the district court is without prejudice to appellant, upon proper motion, to seek

community service in lieu of these costs. (A1). The rationale of Jenkins v. State, 444 So.2d 947 (Fla. 1984) is not applicable to costs taxed under §27.3455 as the statute has adequate procedural safeguards which were not present in the statutes construed by Jenkins. Thus, this Court should declare to exercise its discretion to review this cause as Petitioner's complaints are premature.

CONCLUSION

WHEREFORE, in the exercise of its certiorari jurisdiction, this Court should decline to review the decision of the district court of appeal.

Respectfully submitted,


ROBERT A. BUTTERWORTH
Attorney General
Tallahassee, FL



Amy L. Diem
Assistant Attorney General
111 Georgia Avenue, Ste. 204
West Palm Beach, FL 33401
(305) 837-5062

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy hereof has been furnished to Jeffrey L. Anderson, Assistant Public Defender, 301 N. Olive Avenue, the Governmental Center, West Palm Beach, Florida 33401, this 23rd day of April, 1987.



Of Counsel