

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,)
)
 Petitioner,)
)
 v.)
)
 ROXANNE WILLIAMS,)
)
 Respondent)

70,580

2d DCA Case No. 85-2855

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BRIEF OF PETITIONER ON JURISDICTION

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PRELIMINARY STATEMENT

ROXANNE WILLIAMS will be referred to as the "Appellant" in this brief and the STATE OF FLORIDA will be referred to as the "Appellee". The Record on Appeal will be referenced by the symbol "R" followed by the appropriate page number.

STATEMENT OF THE CASE AND FACTS

The state sought a prosecution against appellant for leaving the scene of an accident involving personal injury. (A.2) After a bench trial, the trial court found her to be guilty despite her defense that she was too intoxicated to have the mental capacity to "wilfully" leave the scene of the accident. (A.2) The trial court imposed a condition of probation requiring her to make restitution to her employer or her insurance company if the insurance company reduced its claim to judgment and notified the court. (A.2).

On appeal, respondent challenged both the sufficiency of the evidence in light of her intoxication defense and the condition of probation requiring her to make restitution. (A.1,2) It had been her contention that none of the injuries arose as a result of her offense, leaving the scene. (A.2)

The court below addressed the state's argument that this court's decision in J.S.H. v. State, 472 So.2d 737 had limited the viability of Fresneda v. State, 347 So.2d 1021 (Fla. 1977) and that it should follow the lead of the Fifth District in Bowling v. State, 479 So.2d 146 (Fla. 5th DCA 1985). The court rejected the state's argument reasoning that the restitution award here could subject appellant to making restitution for damages caused in the accident. (A.5) The court then noted that its decision was in conflict with Bowling. (A.5)

QUESTION PRESENTED

WHETHER THE DECISION BELOW IS IN EXPRESS AND DIRECT CONFLICT WITH THE DECISION OF THE FIFTH DISTRICT IN BOWLING V. STATE, 479 SO.2D 146 (FLA. 5TH DCA 1985) ON THE SAME QUESTION OF LAW?

SUMMARY OF THE ARGUMENT

The court below expressed the conflict. And, its attempt to distinguish the cases fails because a reading of the decision shows the purported distinction to be illusory.

ARGUMENT

To invoke this court's jurisdiction it is necessary for the moving party to show express and direct conflict of decisions. Jenkins v. State, 385 So.2d 1356 (Fla. 1980).

The court below expressed that the decisions are in conflict (A.5).

That conflict is direct and readily apparent. Although the court below sought to distinguish its facts from those in Bowling on the ground that the damages for which restitution must be made might arise from the accident itself that distinction is illusory. That is exactly what the Bowling court ordered. It said, "In this case there was no question that the probationer caused the accident and injuries as a result of his reckless driving." 479 So.2d at 147. There, as here, the claim had been that there had been no injuries arising from the offense charged.


The court should exercise its discretion to entertain this case as this case deprives those injured by a crime of restitution if the prosecutor fails to pick the exactly right charge or only brings one of a number of charges that might be leveled against a criminal with a deep pocket. This is a significant victim's rights case. The court should exercise its discretion and rectify this serious insult to the rights of crime victims in this state.

CONCLUSION

Based upon the foregoing reasons, argument and citations of authority, this court should entertain jurisdiction in this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Dale Gardner Jacobs, Esquire, Post Office Box 2538, Lakeland, Florida 33806-2538, this 19th day of May, 1987.



OF COUNSEL FOR PETITIONER