

IN THE SUPREME COURT OF FLORIDA

MARY SUE DUKE,

Petitioner,

v.

CASE NO.

72,912

STATE OF FLORIDA,

Respondent.

FILED

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ANSWER BRIEF OF RESPONDENT

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ANSWER BRIEF OF RESPONDENT

PRELIMINARY STATEMENT

Petitioner, Mary Sue Duke, Appellant below, will be referred to herein as "Petitioner." Respondent, the State of Florida, will be referred to herein as "the State." References to the record on appeal will be by the symbol "R" followed by the appropriate page number. References to the transcript of proceedings will be by the symbol "R" followed by the appropriate page number.

STATEMENT OF THE CASE AND FACTS

The State is in substantial agreement with Petitioner's statement of the case and facts but would note that Petitioner was found guilty of coercing/inducing a minor under the age of twelve to engage in sexual acts with Petitioner's husband, in which Petitioner also participated (R 3, 38; T 67). In addition, the State would note that since the original trial leading to Petitioner's conviction was in 1986, the 1985 Florida Statutes were in effect.

SUMMARY OF ARGUMENT

Since the actual argument is within the page limitations for a summary of argument, to avoid needless repetition a formal summary of argument will be omitted here.

ARGUMENT

ISSUE

THE TRIAL COURT PROPERLY IMPOSED ADULT
SANCTIONS ON PETITIONER.

Although Petitioner was fifteen years old when she committed the offense for which she was convicted, pursuant to Section 39.02(5)(c)(1), Florida Statutes (1985), she was tried as an adult since she was indicted on a life felony charge (R 3-4). Similarly, Petitioner could not have been accorded youthful offender status since Section 958.04(1)(c), Florida Statutes (1985), states that no person who has been found guilty of a life felony may be sentenced as a youthful offender.

The First District Court of Appeal affirmed Petitioner's conviction and sentence and held that an indictment for an offense punishable by death or life imprisonment does not constitute a transfer within the meaning of Section 39.02(6), Florida Statutes (1985). Duke v. State, __ So.2d __, __ FLW __ (Fla. 1st DCA, August 4, 1988).

The district court certified the following question: Whether an indictment for an offense punishable by death or life imprisonment constitutes a "transfer" from circuit court juvenile jurisdiction to circuit court criminal jurisdiction in light of the decision in State v. Goodson, 403 So.2d 1337 (Fla. 1981), which held that a minor is to be considered "transferred for

prosecution to the criminal division" even though he is initially proceeded against by indictment and there is no actual transfer from one division to another (Restated).

The State submits that there is no "transfer" if the juvenile is initially proceeded against by indictment. Section 39.02(5)(c)(1), Florida Statutes (1985) clearly states;

(c) 1. A child of any age charged with a violation of Florida law punishable by death or by life imprisonment shall be subject to the jurisdiction of the court as set forth in s. 39.06(7) **unless** and until an indictment on such charge is returned by the grand jury. When an indictment is returned, the petition for delinquency, **if any**, shall be dismissed. The child shall be tried and handled **in every respect** as if he were an adult. . . (Emphasis supplied).

In the instant case, no petition for delinquency was filed, and the grand jury returned an indictment, therefore exclusive original jurisdiction was vested in the criminal division of the circuit court and no "transfer" occurred as none was possible. Consequently the provisions of Section 39.111, Florida Statutes (1985), are inapplicable and the trial judge had no cause or authority to consider any predispositional report under that section.

Words of common usage should be construed in their plain and ordinary sense. State v. Cormier, 375 So.2d 852 (Fla. 1979); Tatzel v. State, 356 So.2d 787 (Fla. 1978).

In support of the proposition that no "transfer" occurs when a juvenile is proceeded against by indictment, the State relies on Myers v. State, 442 So.2d 272 (Fla. 1st DCA 1983) and Postell v. State, 383 So.2d 1159 (Fla. 3d DCA 1980).

In Myers, supra, the First District Court of Appeal found that a minor indicted by the grand jury was not "transferred" within the meaning of the statute relating to delinquency cases, and thus he was not entitled to findings of fact by the trial judge as to why he should not be sentenced as a juvenile (Myers was decided subsequent to Goodson).

The Third District Court of Appeal held in Postell, supra, that a child indicted by the grand jury for an offense punishable by death or life imprisonment is not "transferred" within the purview of Chapter 39, Florida Statutes.

Despite the clear mandate of the the statute, the First District in its opinion in the instant case, correctly points out that this Court's opinion in Goodson, supra, engenders "possible confusion."

In Goodson, Justice Boyd wrote that

. . . the state argues that Goodson could not have been "transferred" to the criminal division of the circuit court as required by section 958.04(1)(a), since he was brought before the criminal division pursuant to an indictment and was never subject

to the circuit court's juvenile division. To accept this argument would create the anomalous situation in which a person between the ages of eighteen and twenty-one who is indicted may be classified as a youthful offender, whereas a person under eighteen who is indicted may not be. **Goodson v. State**, 392 So.2d at 1336-37. We do not believe the legislature intended such a result. We find the district court's decision on this point to be very persuasive and therefore adopt it as our own.

Goodson, supra at 1339.

The First District pointed out that there is no "anomalous situation" and the Goodson opinion appears to be based on a flawed interpretation of Section 958.04(1)(b) (See footnote 1, Duke, supra.). The State would point out that legislative intent is best perceived through the plain meaning of legislation. This Court has held that an inquiry into legislative intent for purposes of interpreting a statute may begin only where a statute is ambiguous on its face. Streeter v. Sullivan, 509 So.2d 268 (Fla. 1987). Justice Boyd identified no ambiguity but merely disagreed with the perceived result. The Legislature has shown its clear intention to treat juvenile capital felons as if they were adults. In this situation there clearly is no "transfer" unless a petition for delinquency was filed prior to the indictment, in which case the juvenile is then "transferred" from the juvenile to the criminal division of the circuit court. Any "constructive transfer" is purely judicial innovation and is plainly contrary to the law as written.

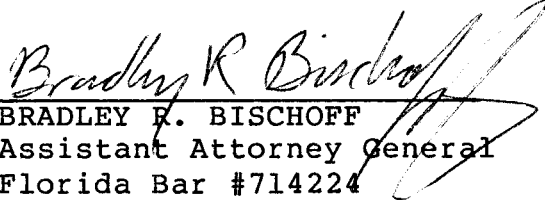
For the foregoing reasons, the State respectfully requests this Court to affirm the judgement of the district court. Regarding the certified question, the State respectfully requests that this Court make clear that there is no "transfer" from juvenile to criminal court unless original jurisdiction is vested in the juvenile court and then transferred to the criminal court. It is in the public interest to clarify the "possible confusion" engendered by Goodson, supra, and unequivocally rule that the statute means what it says.

CONCLUSION

Based on the above cited legal authorities, Appellee prays this Honorable Court affirm the judgment rendered in this case.

Respectfully Submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

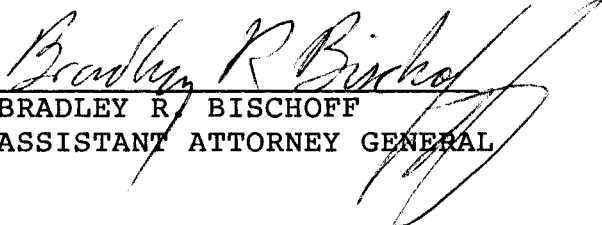

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been forwarded by U.S. Mail to Mr. Carl S. McGinnes, Assistant Public Defender, Post Office Box 671, Tallahassee, Florida, 32302, this 22nd day of August, 1988.


BRADLEY R. BISCHOFF
ASSISTANT ATTORNEY GENERAL