

IN THE SUPREME COURT OF FLORIDA

FILED
SID J. WHITE

MAY 2 1988

CLERK, SUPREME COURT

ALVIN WILLIAMS,

Petitioner,

v.

CASE NO. 73,948 By Deputy Clerk

STATE OF FLORIDA,

Respondent.

RESPONDENT'S BRIEF ON JURISDICTION

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STATEMENT OF THE CASE AND FACTS

Petitioner was charged in county court with a misdemeanor violation of the Florida Litter Law. Section 403.413(4)(a), Fla. Stat. (1987). The charges were dismissed after the county judge declared the statute unconstitutional for vagueness. The state appealed to the circuit court which reversed the dismissal. Petitioner then filed a petition for writ of certiorari in the Fifth District Court of Appeal seeking review of the circuit court decision, declaration that the statute is unconstitutional and an order dismissing the charges.

The court in Williams v. State, 14 F.L.W. 756 (Fla. 5th DCA March 23, 1989), declined to grant the writ "because to do so would expand too greatly the review to be afforded in criminal cases." They further stated that there was no need "for a second-level appellate intrusion into a criminal case unless a conviction results." Upon denying the writ, the court expressed direct conflict with Fieselman v. State, 537 So.2d 603 (Fla. 3d DCA 1988), and Mitchell v. State, 14 F.L.W. 390 (Fla. 4th DCA February 8, 1989). (See Appendix).

SUMMARY OF ARGUMENT

POINT I: The discretionary jurisdiction of this court may be sought to review a decision of a district court of appeal that expressly and directly conflicts with a decision of another court of appeal or of this court on the same question of law. The Fifth District Court of Appeal expressed direct conflict with two of its sister courts. This court may accept jurisdiction. However, it would serve judicial economy for this court to hold this cause in abeyance until it either accepts jurisdiction of Fieselman v. State and resolves the issue therein or declines to do so.

POINT 11: The issue presented to this court is whether or not it should exercise its discretionary jurisdiction, not whether or not the Florida Litter Law is constitutional. There is no basis for this court to accept jurisdiction based on this point, as it is irrelevant at this time.

ARGUMENTS

POINT I

WHETHER THIS COURT SHOULD ACCEPT
JURISDICTION WHEN THE FIFTH DISTRICT
COURT OF APPEAL EXPRESSES DIRECT
CONFLICT WITH TWO SISTER COURTS.

The discretionary jurisdiction of this court may be sought to review a decision of a district court of appeal that expressly and directly conflicts with a decision of another court of appeal or of this court on the same question of law. Fla.R.App.P. 9.030(a)(2)(A)(iv). The Fifth District Court of Appeal expressed direct conflict with Fieselman v. State, 537 So.2d 603 (Fla. 3d DCA 1988) and Mitchell v. State, 14 F.L.W. 390 (Fla. 4th DCA February 8, 1989). Thus, this court may accept jurisdiction.

Petitioner urges this court to accept jurisdiction in this case "to resolve the conflict between the Fifth District Court and the other district courts on the issue presented herein." Petitioner's Brief on Jurisdiction, page 7. As petitioner points out, the issue to be resolved herein is presently pending jurisdictional review before this court, Fieselman v. State, supra, case number 73,636. As the identical issue is pending before this court, it would be an unnecessary waste of judicial time and resources for this court to accept jurisdiction of this cause until Fieselman, supra, has been resolved. Thus, respondent strongly urges this court hold this cause in abeyance until it either accepts jurisdiction of Fieselman, supra, and resolves the issue therein or declines to do so.

POINT II

WHETHER THIS COURT SHOULD EXERCISE
ITS DISCRETION TO CONSIDER THE
CONSTITUTIONALITY OF THE FLORIDA
LITTER LAW.


The issue now in front of this court is whether to exercise its discretionary jurisdiction based on the issue that is in conflict, not to decide the constitutionality of the Florida Litter Law. There is no basis for this court to accept jurisdiction based on this point, as it is irrelevant at this time.

CONCLUSION

Based on the arguments and authorities presented herein, respondent respectfully prays this honorable court hold this cause in abeyance until this court accepts jurisdiction of Fieselman v. State, and resolves the issue therein or declines to do so.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Respondent's Brief of Jurisdiction has been furnished by U.S. Mail to Nathan G. Dinitz, Esquire, 600 Silver Beach Avenue, Daytona Beach, Florida, 32018, this 1st day of May, 1989.


Bonnie Jean Parrish
Of Counsel—