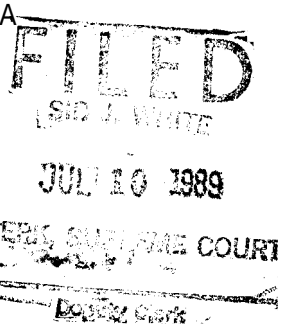
O/a 10-4-89

IN THE SUPREME COURT OF FLORIDA



ALVIN WILLIAMS,

Petitioner,

v.

CASE NO. : 73,948

STATE OF FLORIDA,

Respondent.
_____/

ON PETITION FOR DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

PETITIONER'S BRIEF ON THE MERITS

NATHAN G. DINITZ, ESQUIRE
600 Silver Beach Avenue
Daytona Beach, Florida 32118
(904) 257-1158
ATTORNEY FOR PETITIONER

TABLE OF CONTENTS

APPENDIX

TABLE OF CITATIONS

CONSTITUTIONAI PROVISIONS, STATUTES ~~AND OTHER~~ AUTHORITIES

STATEMENT OE THE EACTS AND OE THE CASE

This matter is before this Honorable Court upon Notice To Invoke Discrtionary Jurisdiction, to review the district court decision in Williams v. State 540 So.2d 229 (Fla. 5th DCA 1989). Proceedings have been consolidated herein with Fieselman v. State, case no. 73,636.

Reference to the Record in this action, consisting of the Appendix filed before the Fifth District Court of Appeal, will be by the symbol "App.__", followed by the appropriate appendix page number. Reference to the Brief Of Respondent On The Merits, filed before this Court by the State in Fieselman, will be by the symbol "Fieselman Brief of Resp. __", followed by the applicable page number from that brief.

Two issues are presented in this appeal. The first issue is whether the district court erred n declining to afford certiorari review of an appellate decision of the circuit court, which decision reversed a county court order finding the F orida Litter Law unconstitutional and dismissing a criminal prosecution thereunder, and which thereby reinstated that prosecution. The second issue is whether the Florida Litter Law is constitutional.

The factual background of this case is as follows:

Oscar Nunez Services is a contruction firm out of Gainesville, Florida, and was a subcontractor with the state of Florida, Department of Transportation, for constructing concrete sidewalks in De'Land. On the date of this incident, Tarmac Florida Concrete Company (hereafter "Tarmac") was in the business of delivering concrete to construction sites. Alvin Williams was employed as a driver for Tarmac, for the purpose of delivering concrete to the

Oscar Nunez job site (App. 16-17).

A concrete delivery truck must be washed off after a delivery, to prevent concrete and rocks from flying off the truck while it is being driven away from the job site. The agreement between Tarmac and Oscar Nunez Services provided that Oscar Nunez Services would provide a place for Tarmac drivers to wash off their trucks, and Oscar Nunez Services would later clean up any discarded concrete (App. 17-18, 43).

On June 5, 1987, Alvin Williams delivered a load of concrete to the Oscar Nunez Services job site in DeLand. After pouring the concrete for the sidewalk, Mr. Williams was instructed by the employees of Oscar Nunez Services to wash down his concrete truck on the shoulder of the road (App. 18). Mr. Williams washed down his concrete truck on the right-of-way, and left a little pile of sand and rock for the Oscar Nunez Services' employees to clean up. At that time Officer Mattingly of the DeLand Police Department drove by, saw Mr. Williams washing his truck on the side of the road, and radioed for an officer to go by and have Mr. Williams clean up the concrete (App. 24-25).

Officer Margaret Lefavor did so. She drove to where Mr. Williams had cleaned his truck, and ordered him to remove the small pile of discarded concrete from the shoulder of the road (App. 18-19, 24-25). Mr. Williams explained to Officer Lefavor that the Oscar Nunez Services' employees were responsible for cleaning up the concrete; and that he had no tools or means of doing so. Nevertheless, Officer Lefavor continued to insist that Mr. Williams clean it up, Mr. Williams insisted that he had no tools or means to clean up the concrete, that it was not his responsibility to do so, and that in any event, the concrete would be cleaned up by the Oscar Nunez Services' employees

as their contract required. The situation reached an impasse, whereupon Officer Lefavor arrested Mr. Williams for littering, and began handcuffing him. At that point, Office Helmer drove by on his motorcycle, saw Officer Lefavor arresting Mr. Williams, and came to her assistance by driving up, drawing his .357 magnum pistol and pointing it at Mr. Williams and threatening to blow his head off if he did not do as instructed (App. 26-27).

Based upon the above, the police officers initially charged Alvin Williams with littering, and also with disorderly conduct and resisting arrest with violence. On or about June 19, 1987, an Information was filed charging the Defendant littering and with resisting an officer without violence (App. 1).

The Defendant filed a Motion To Dismiss (Unconstitutional Statute) (App. 6-8); and a Motion To Dismiss (pursuant to Rule 3.190(c)(4), alleging that the uncontroverted facts did not present a prima facie case of guilt (App. 9-13). The motion to dismiss challenging the constitutionality of the littering statute argued that the statute, as worded and as applied to the facts herein, was unconstitutionally vague a d overbroad. The (c)(4) motion to dismiss argued that the undisputed facts n this case show that Mr. Williams merely placed rubbish on the should of the road for a later scheduled rubbish pick up, and that those facts do not constitute the crime of "littering".

A hearing was held before the Honorable Shawn L. Briese, Volusia County Court Judge, on the Defendant's two motions to dismiss. On November 4, 1987, the trial court entered its Order finding the statute unconstitutionally overbroad. Accordingly, the trial court dismissed the littering charge against Mr. Williams. The court also held that the Defendant's (c)(4) motion

to dismiss was thereby rendered moot (App. 43-44).

The State appealed that order to the circuit court. On January 27, 1989, the Honorable William C. Johnson, Jr., Circuit Court Judge, entered his decis on reversing the order of the county court. A though the circuit court suggested that the trial court should not have reached the constitutional issue, it nevertheless specifically found Florida Statute 403.413 to be constitutional (App. 70-71).

The Defendant then petitioned the Fifth District Court of Appeal for a writ of certiorari, to review the decision of the circuit court, claiming that the circuit court departed from the essential requirements of law. On March 23, 1989, the district court issued its opinion, and declined to grant the writ on the grounds that it would be premature to review the decision of the circuit court prior to a final criminal conviction in the trial court, and the concluson of any subsequent appeal to the circuit court therefrom. The district court, relying on its own earlier decision in Baker v. State 518 So.2d 457 (Fla. 5th DCA 1988), held that certiorari is not available to review appellate decisions of the circuit court which reinstate criminal proceedings in the county court. The district court thereby also allowed the appellate opinion of the circuit court, finding the 1 tter statute to be constitutional, to remain undisturbed. The court specifica ly noted, however, that with regard to the propriety of issuing the writ "we are aware our sister courts disagree with our position, so we express direct conflict with Fieselman v. State 537 So.2d 603 (Fla. 3d DCA 1988) and Mitchell v. State 538 So.2d 106 (Fla. 4th DCA 1989)". Williams v. State 540 So.2d 229,230, (Fla. 5th DCA 1989).

This court has jurisdiction to review Williams v. State, supra, pursuant to Art. V § 3(b)(3), Fla. Const.

On March 27, 1989, the petitioner, ALVIN WILLIAMS, filed his Notice To Invoke Discretionary Jurisdiction of this Court. On June 12, 1989, this Court accepted jurisdiction herein, and consolidated proceedings in this action with the pending case of Fieselman.

SUMMARY ~~OF THE~~ ARGUMENT

1. The Defendant was charged by Information with the crime of littering. The trial court (county court) declared the litter law unconstitutional, and dismissed the criminal charge. The State appealed, and the circuit court reversed, specifically holding the litter law to be constitutional. The Defendant then petitioned to the Fifth District Court of Appeal for a writ of certiorari, claiming that the decision of the circuit court departed from the essential requirements of law. However, the district court declined to exercise certiorari jurisdiction to review the circuit court decision, holding that certiorari is not available to review the appellate decisions of the circuit court which reinstate county court prosecutions. The district court specifically acknowledged, however, that its opinion conflicted with the decisions of two other district courts.

The district court has the jurisdiction to review by certiorari, appellate decisions from the circuit court which depart from the essential requirements of law. The district court therefore erred in finding that it was without authority to grant review, and the decision herein should be reversed.

2. The Defendant was charged with a criminal violation of the Florida Litter Law, for placing a pile of concrete on the shoulder of the road for a later scheduled rubbish collection. This Honorable Court should exercise its discretion to review the constitutionality of the litter law, because its literal enforcement would have significant statewide ramifications. Specifically, municipalities in Florida have refuse pickup services, whereby they encourage citizens to place refuse and other bulky items alongside the road

for later scheduled refuse collection. The language of the litter law clearly prohibits the very conduct that the municipalities now promote and encourage. Either placing refuse alongside the road for later collection is legal (as the county court held herein), or it is not legal (as the circuit court decision suggests) -- but the issue should be resolved before any more citizens are prosecuted for what is commonly perceived as non-criminal acts.

It is further respectfully suggested that the Florida Litter Law is unconstitutional, both on its face and as it was applied to Mr. Williams herein, since it punishes for unoffending behavior draws no distinction between conduct that is calculated to harm and that which s essentially innocent, fails to give a person of ordinary intelligence fair not ce that his contemplated conduct is forbidden by the statute, and may result in arbitrary and erratic arrests and convictions.

The county court was correct in declaring the applicable language of the Florida Litter Law to be unconstitutional; and the circuit court thereby erred in reversing that order. Therefore, the decision of the county court should be reinstated, and the Florida Litter Caw declared unconstitutional.

ARGUMENT

I. **THE DISTRICT COURT ERRED IN DECLINING TO EXERCISE CERTIORARI REVIEW OF AN APPECCATE DECISION FROM THE CIRCUIT COURT, WHICH HELD THE FLORIDA LITTER LAW TO BE CONSTITUTIONAL AND REINSTATED CRIMINAL PROSECUTION THEREUNDER WHEN THAT DECISION DEPARTED FROM THE ESSENTIAL REQUIREMENTS OF LAW.**

The Defendant, Alvin Williams, was charged by Information with violation of the Florida Litter Law. The trial court (county court) found the litter law to be unconstitutional, and dismissed the prosecution. The State appealed, and the Volusia County circuit court, sitting in its appellate capacity, found the litter law to be constitutional and reinstated the criminal proceedings. The Defendant then appealed to the Fifth District Court Of Appeal for a writ of certiorari, claiming that the decision of the circuit court, allowing prosecution under an unconstitutional statute, departed from the essential requirements of law.

The district court, however, relying primarily on its own earlier decision in Baker v. State 518 So.2d 457 (Fla. 5th DCA 1988), refused to exercise its certiorari jurisdiction to review an appellate decision of the circuit court which reinstated a county court prosecution. The district court declined to grant the writ, stating that "to do so would expand too greatly the review to be afforded in criminal cases". Williams v. State 540 So.2d 229, 230 (Fla. 5th DCA 1989). The district court then proceeded to explain its reasoning, that certiorari review under these circumstances was not needed, since the defendant could avail himself of the entire appellate process in the event he were later convicted, and he could then be afforded complete relief; and certiorari review at this stage would unreasonably disrupt criminal appellate procedures and the judicial system. The court further stated that "there is no real need for a

second-level appellate intrusion into a criminal case unless a conviction results. Otherwise, the number of interlocutory appeals will increase and no real appellate need will be served." Id.

Both the Third District Court Of Appeal and the Fourth District Court Of Appeal have disagreed with that reasoning. In Fieselman v. State 537 So.2d 603 (Fla. 3d DCA 1988), that court held as follows:

> We consider first whether the decision of the circuit court is one properly reviewable by certiorari
>
> In Baker v. State 518 So.2d 457 (Fla. 5th DCA 1988), the Fifth District refused to exercise its certiorari jurisdiction to review a circuit court's reversal of a county court's order dismissing a criminal information. Its reasoning was succinct: a circuit court's order on appeal reversing a county court's dismissal and a circuit court's order at the trial level denying a motion to dismiss "amount to the same thing", and since, without dispute, the latter is unreviewable by certiorari, the former is likewise unreviewable. Id. at 458.
>
> We do not agree that a trial court order denying a motion to dismiss criminal charges "amounts to the same thing" as a decision of a court, sitting in an appellate capacity, which reverses a trial court's dismissal of criminal charges. To be sure, in each instance the criminal charge remains pending in the trial court, and a plenary appeal to the court having appellate jurisdiction will lie from a future conviction. And, ordinarily, the availability of an eventual plenary appeal is said to bar certiorari review of an interlocutory decision of a trial court denying a motion to dismiss. Martin-Johnson, Inc. v. Savage 509 So.2d 1097 (Fla. 1987); Brooks v. Owens 97 So.2d 693 (Fla. 1957); Kilgore v. Bird 149 Fla. 570. 6 So.2d 541 (1942). However, in our view, this oft-stated rule does not bar certiorari review of an appellate decision of a circuit court which reverses a trial (county) court's order granting a motion

to dismiss.

> The sole criterion for certiorari review of a circuit court appellate decision is whether the decision departs from the essential requirements of the law, Combs v. State 436 So.2d 93 (Fla. 1983); see also City of Deerfield Beach v. Vaillant 419 So.2d 624 (Fla. 1982), and the availability vel non to the ultimately convicted defendant of an adequate remedy by appeal is simply irrelevant.[1] This is so because, unlike a trial court decision which concerns and binds only the immediate litigants, an appellate decision -- including, of course, one by the circuit court -- establishes law beyond the case in which the decision is rendered. Even as the availability of an adequate remedy by appeal in the event of ultimate conviction is not a ground upon which the Florida Supreme Court would deny certiorari review of an appellatee decision of a district court reversing a trial court's dismissal of criminal charges, it is not a ground for denial of certiorari review in the present case. We thus find no impediment to our certiorari jurisdiction and in this respect, disagree and certify conflict with the Fifth District's decision in Baker v. State 518 So. 2d 457.

1. In Combs, the supreme court modified the decision in Combs v. State 420 So.2d 316 (Fla. 5th DCA 1982), in which the Fifth District had adopted, as it later did in Baker, a similarly narrow view of its certiorari jurisdiction over circuit court appellate decisions.

In Mitchell v. State 538 So.2d 106 (Fla. 4th DCA 1989), that court noted the conflict between the decision of the fifth district in Baker, and the third district in Fieselman, and agreed that Fieselman was correct. That court stated as follows:

> The first issue is whether this court has jurisdiction. In Baker v. State ... the Fifth District ... refused to accept juridiction of

> a circuit court opinion reversing an order granting a motion to dismiss, The court found that such an opinion amounted to the same thing as an order denying a motion to dismiss, concluding that an adequate remedy existed on plenary appeal if conviction ensued.
>
> The Third District, however, considered this issue in Fieselman v. State ... In that case, the court recogonized the general rule that an eventual plenary appeal wi11 bar certiorari review of an interlocutory decision of a trial court denying a motion to dismiss, However, it found that this rule was irrelevant. and did not bar review of an appellate decision of the circuit court which reversed a trial (county) court's order granting a motion to dismiss.
>
> * * *
>
> ... We agree with the reasoning of the third district and determine that this court has jurisdiction.

The fifth district court in the present case declined to entertain certiorari review of the circuit court decision reinstating county court prosecution, because it was concerned that such review would result in cases travelling "around through various courts for a protracted, probably inordinate period of time", and that "justice would be delayed, maybe denied, and our judicial system would be unreasonably disrupted'' Williams, supra. Those concerns, however, were considered and dismissed by this Court in State v. Pettis 520 So.2d 250 (Fla. 1988). In approving the State's right to seek certiorari review in the district court from a circuit court order, this Court noted in Pettis that "very little delay is involved because the petitions are usually denied on their face as not demonstrating a departure from the essential requirements of law". Id 253.

Further, it is respectfully suggested that under the facts of the present case, is the denial of certiorari review that would tend to disrupt the orderly judicial system. If the circuit court opinion were non-reviewable at

this stage, then one of two probable conclusions would result. If Mr. Williams is ultimately acquitted of littering in the county court, or the charges otherwise disposed of, then there would nevertheless be an appellate decision upholding the constitutionality of the Florida Litter Law; which opinion would remain non-reviewable, and which would constitute stare decisis in Volusia County. Alternatively, if Mr. Williams is convicted, he would be required to take an appeal back to the Volusia County circuit court, which is bound by the law of the case to uphold the constitutionality of a clearly unconstitutional statute, and the Defendant would then again have to seek certiorari. It is respectfully suggested that neither result would be satisfactory.

Finally, it should be noted that both th petitioner and the respondent in Fieselman have agreed with Petitioner's posit on herein, that the district court did have certiorari jurisdiction to review the appellate decision of the circuit court in this case. As presented by the State in its brief in Fieselman,

> The Third District has certified conflict with the Fifth District's decision in Baker v. ~~State, supra,~~ concerning the scope of the District Court's certiorari jurisdiction to review orders of the circuit-court issued in its appellate capacity. The State agrees with the Third District that "the sole criterion for certiorari review of a circuit court appellate decision is whether the decision departs from the essential requirements of law, ..., and the availability vel non to the ultimately convicted defendant of an adequate remedy by appeal is simply irrelevant." Fieselman v. State (citation omitted). See also, Mitchell v. State (citation omitted).
>
> (Fieselman Brief of Resp. 9)

For these reasons, it is respectfully suggested that the fifth district erred in refusing to entertain a petition for certiorari from the decision of the circuit court. That decision should be reversed.

11. THE FLORIDA LITTER LAW, WHICH MAKES IT A CRIMINAL OFFENSE TO PLACE RUBBISH ON THE SHOULDER OF THE ROAD FOR A LATER SCHEDULED TRASH PICK-UP, IS UNCONSTITUTIONAL.

Alvin Williams is employed as a Tarmac truck driver, for purposes of delivering and pouring concrete at construction job sites. In June, 1987, Mr. Williams' job including delivering and pouring truckloads of concrete at a job site for Oscar Nunez Services, a State of Florida D.O.T. subcontractor building sidewalks in DeLand. The agreement between Tarmac and Oscar Nunez Services included the Oscar Nunez Services would provide a place for Tarmac drivers to wash off their trucks and leave any discarded concrete, and Oscar Nunez Services' employees would clean up that rubbish after the concrete hardened and could be easily removed.

On June 5, 1987, Alvin Williams delivered his load of concrete. The Oscar Nunez Services' employees told him where to wash off his truck on the shoulder of the road and they would thereafter clean up and dispose of any discarded concrete. Mr. Williams did so, and left a small pile of concrete on the shoulder of the road for the subcontractor's clean-up crew to dispose of. Between the time he finished cleaning his concrete delivery truck and before the clean-up crew came by to remove the small pile of concrete, Mr. Williams was arrested and charged with littering. He was arrested, notwithstanding that the arresting officer knew that the subcontractor's employees would be cleaning up the rubbish shortly (App. 25).

Section 403.413 (2)(a) Fla.Stat. (1985) provided: [1]

> "Litter" means any garbage, rubbish, trash, refuse, can, bottle, container, paper, lighted or unlighted cigarette or cigar, or flaming or glowing material.

1. Fla.Stat. 403.413(2),(4) have been amended by ch. 88-130, §56, Laws of Florida. This amendment, inter alia, adds felony provision for commercial littering. However, the operative language relevant hereto has remained unaffected.

Section 403.413 (4)(a) (1985) provided:

> It is unlawful for any person to throw, discard, place, or deposit litter in any manner or amount: In or on any public highway, road, street, alley, or thoroughfare, including any portion of the right-of-way thereof, or any other public lands, except in containers or areas lawfully provided therefor; when any litter is thrown or discarded from a motor vehicle the operator or owner of the motor vheicle, or both shall be deemed in violation of this section.

It is respectfully submitted that the statute, facially and as it was applied to Mr. Williams, is unconstitutional as vague or overbroad. It is unconstitutional because it defines "littering" in a way contrary to the normally accepted meaning, and without putting reasonable intelligent persons on notice as to that new definition; and because it punishes common non-criminal conduct, and provides the police with unfettered discretion to arrest.

As noted by the trial court, the littering law preamble states that it was the intention of the legislature to protect man's natural heritage of clean water and unsoiled lands (See, App. 42). [2] It was not intended, as was done here, to criminalize persons who temporarily place rubbish on the shoulder of the road for a later scheduled trash pick-up. And additionally, and as the trial court also noted, cities in Volusia County specifically require that persons place construction rubbish on the shoulder of the road for later trash pickup, or else that trash will not be picked up at all. (For example, the City of Holly Hill requires that "... junk, large items, bldg. matl., tree limbs, items must be less than 5 ft in length, placed curbside by 7:00 a.m. on your

2. Ch. 71-239, Laws of Florida

pickup day..." App. 41). If Mr. Williams is guilty of a crime, then a homeowner who remodels his home and places old window frames, old carpet, etc., on the side of the road for municipal rubbish pick-up, would likewise be criminally liable under the language of this statute. It is just not reasonable to suggest, as the State did herein, that the cities in Volusia County invite persons to commit acts which threaten public welfare or safety, or which constitute crimes.

For these reasons, the statute in this case is comparable to the ordinance held unconstitutional in State v. Penley 276 So.2d 180 (Fla.2d DCA), cert. den'd 281 So.2d 504 (Fla. 1973). In Penley, a municipal ordinance provided that "no person shall sleep upon or in any street, park, walk, or other public place". In upholding the trial court's decision that the ordinance was unconstitutional, the district court stated as follows:

> We find that there is marked similarity between this ordinance and most vagrancy legislation in that both provide for punishment of unoffending behavior. This court, therefore, adopts the reasoning in Cazarus v. Faircloth, ... (citation omitted), in holding that the ordinance here under scrutiny draws no distinction between conduct that is calculated to harm and that which is essentially innocent (citation omitted). We further hold that the ordinance is void due to its vagueness in that it "... fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute ... (citation omitted). Further, the ordinance, as written, may result in arbitrary and erratic arrest and convictions (citation omitted). It thus follows that appellee's arrest was unlawful. Therefore, the trial judge was correct in granting appellee's motion to suppress.

See also, State v. Ecker 311 So.2d 104 (Fla. 1975); State v. Bales 343 So.2d 9 (Fla. 1977). And if anything, the statute in the instant case is even less

related to preventing conduct harmful to the public welfare than Penley, because here the conduct the State now claims prohibited, is the exact conduct that is elsewhere invited and encouraged by the State's cities and political subdivisions -- placing rubbish on the shoulder of the road for a later scheduled trash pick-up.

In Ciccarelli v. City of Key West 321 So.2d 472 (Fla. 3d DCA 1975), the court stated that:

> It is well settled that a law denies due process guranteed by the Fourteenth Amendment of the United States Constitution if (1) it is so vague that a person of ordinary intelligence is not put on notice of the conduct which is prohibited, State v. Buchanan ... (citation omitted), or (2) if the law is so overbroad that it makes common conduct criminal and provides the police with unfettered discretion to arrest ... (citation omitted).

The litter law is unconstitutional because it fails to distingu sh between conduct which is harmful to the environment, and conduct which is e ther innocent or beneficial. It fails to distinguish on the one hand between conduct which endangers man's natural heritage of clean water and unsoiled lands and which the statute expressly intends to punish by criminal sanctions, and on the other hand, conduct which actually protects Florida's lands and waterways and which the State otherwise encourages by having municipal trash and rubbish roadside collections. The statute does not differentiate between acts which constitute what is commonly understood to be littering, i.e., discarding or abandoning rubbish or trash -- from acts which have no effect on the environment, i.e., temporarily placing a small pile of rubbish on the shoulder of the road for a later scheduled rubbish pick-up, or otherwise inadvertently or temporarily placing items on the shoulder of the road which are not abandoned. The statute

statute is well intended, but too broadly drafed to accomplish its goals. Cf., as this Court stated in Horsemen's Benev v. Div. of Pari-Mutuel 397 So.2d 692, 694 (Fla. 1981), where the State has the right to regulate, control and supervise certain activities, that power must be exercised for a public purpose. Further, the statutory enactment must reasonably appropriate to accomplish the purpose of the act.

Alternatively, as noted in City of Coral Gables v. Wood 305 So.2d 261, 263 (Fla. 3d DCA 1974), "We are of the opinion that an ordinance which may operate reasonably in some circumstances and unreasonably in others, is not void in toto, but is enforceable except when in the particular circumstances its operation would be unreasonable or oppressive". In the instant case, even were the littering law otherwise constitutional, it would nevertheless be void and unenforceable under the facts of this case.

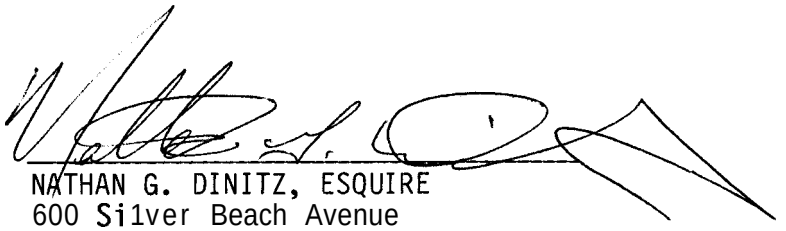
It is further suggested that a decision herein upholding the constitutionality of the litter law would have significant statewide ramifications. It would make criminal the above-noted actions of the City of Holly Hill, and of many other municipalities as well, in advising their residents to place rubbish for later trash collection. It would make criminal the actions of the residents who placed rubbish on the roadside for later trash collection. It might well require that cities either stop collecting rubbish, or at least not do so from the shoulder of the road. It would prohibit the very actions that it was intended to promote -- protection of man's natural heritage of clean water and unsoiled lands. It is therefore respectfully urged that the decision of the circuit court be reversed, the decision of the county court be re-instated, and the portion of the Florida Litter Law comp ained of herein, be held unconst tutional.

CONCLUSION

Accordingly, it is respectfully suggested that the district court erred in declining to entertain certiorari review from the appellate decision of the circuit court, when that decision departed from the essential requirements of law. The opinion of the district court should therefore be reversed.

Additionally, it is respectfully suggested that the language of the Florida Litter Law, which prohibits temporarily placing rubbish on the shoulder of the road for a later scheduled trash pickup, is unconstitutional. It is therefore respectfully urged that the operative language herein of the Florida Litter Law be declared unconstitutional; that the decision of the circuit court be reversed, and the order of the county court herein, be reinstated.

Respectfully submitted,



NATHAN G. DINITZ, ESQUIRE
600 Silver Beach Avenue
Daytona Beach, Florida 32118
(904) 257-1158
ATTORNEY FOR PETITIONER
Florida Bar Number: 364118

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by mail delivery this 7th day of July, 1989, to Michael J. Neimand, Esquire, Assistant Attorney General, Department of Legal Affairs, 401 N. W. 2nd Avenue, Suite N921, Miami, Florida 33128.

ATTORNEY

cc: M. Lewis Hall 111, Esquire