

DA 10-4-89

IN THE SUPREME COURT OF FLORIDA

FILED
SID J. WHITE

AUG 11 1989

CLERK, SUPREME COURT
By [Signature]
Deputy Clerk

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 REPLY BRIEF

NATHAN G. DINITZ, ESQUIRE
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(904) 257-1158
ATTORNEY FOR PETITIONER

ARGUMENT

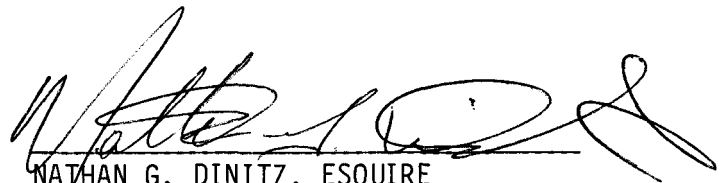
In reply to the Respondent's argument herein, the Petitioner, ALVIN WILLIAMS, would show as follows:

The county court declared the Florida Litter Law to be unconstitutionally overbroad, because it made criminal the placement of debris on the side of the road for a later scheduled trash pick-up. The Respondent argues in its brief on the merits, that the Florida Litter Law only prohibits the abandonment of litter in public areas. If the language of the Florida Litter Law can be interpreted to only prohibit the abandonment of litter, then the Petitioner would agree with the Respondent that the statute is not unconstitutional, and the actions of the Petitioner/Defendant which formed the basis of these criminal charges do not constitute littering and should have been dismissed by the trial court under Fla.R.Cr.P. 1.190(c)(4). However, if the language of the Florida Litter Law does prohibit the placement of refuse or rubbish on the shoulder of the public road for a later scheduled trash pick-up as the county court determined, then the Petitioner would maintain that the statute is unconstitutional. In either event, this case should be remanded to the district court with instructions that the matter be returned to county court for the Petitioner/Defendant to be discharged from further prosecution herein.

Petitioner agrees with the remainder of the analysis of the issues presented by the Respondent. The undersigned is personally embarrassed by his own failure to consider or cite to Fla.Stat. 26.012, and agrees with the Respondent that this statute is controlling herein. The circuit court was without jurisdiction to enter its decision reversing the county court; the district court had certiorari jurisdiction to review the decision of the circuit court -- but

also had plenary appellate jurisdiction over the order of the county court and should have exercised its appellate jurisdiction. However, since the question of the constitutionality of the Florida Litter Law is properly before this Court at this time, **it** is respectfully urged that this Honorable Court exercise its discretion to review this challenge to its constitutionality.

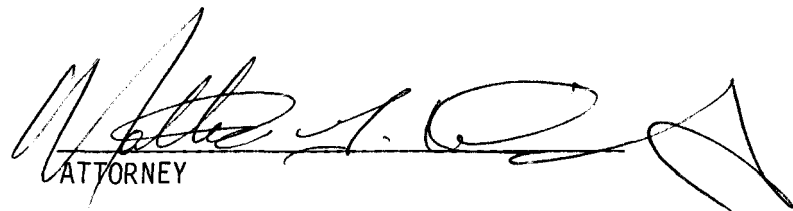
Respectfully submitted,



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Florida Bar Number: 364118

CERTIFICATE OF SERVICE

■ HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by mail delivery this 10th day of August, 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: Lewis Hall III, Esquire