74,364

IN THE SUPREME COURT OF FLORIDA

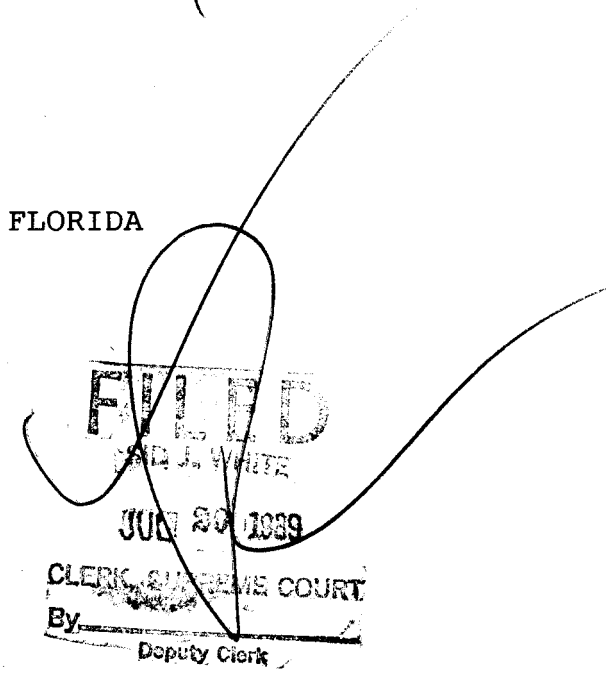
ARTIS RAYNARD LEWIS,)

Petitioner,)

vs.)

STATE OF FLORIDA,

Respondent.



DISCRETIONARY REVIEW OF DECISION OF THE
DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

ANSWER BRIEF OF RESPONDENT ON JURISDICTION

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

WILLIAM I. MUNSEY, JR.
Florida Bar No. 0152141
Assistant Attorney General
1313 Tampa Street, Suite 804
Tampa, Florida 33602
(813) 272-2670

COUNSEL FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF CITATIONS

SUMMARY OF ARGUMENT

There are two cases which Petitioner relies on in attempting to establish jurisdiction. The first is Blankenship v. State, No. 74-176 (pending) and the second is State v, Gordon, 14 FLW 308, ____So. 2d____ (Fla. No.72,850)(Opinion filed June 22, 1989). The latter case does not address the single subject rule of the Florida constitution; and, the former does not address the "double jeopardy" bars which prohibit entry of judgments for both purchase and possession of a controlled substance. Petitioner was granted relief under the authority of Gordon.

The Second District in the Lewis opinion involves application of constitutional principles to the facts of the case. . . .nothing more and nothing less. Petitioner fails to establish where there has been a construction of the statute in the opinion so as to obtain jurisdiction in this Court. See, Lewis v. State, 14 FLW 1470, ____So. 2d____ (Fla. 2d DCA No 88-01841)(Opinion filed June 14, 1989). Respondent submits that there is no jurisdictional basis for further appellate review.

ARGUMENT

ISSUE

WHETHER THIS COURT SHOULD GRANT DISCRETIONARY REVIEW ON A LOWER COURT OPINION WHICH APPLIES CONSTITUTIONAL PRINCIPLES TO THE FACTS OF A CASE. (AS RESTATED BY THE RESPONDENT)

On June 14, 1989, the Second District rendered an opinion in Lewis v. State, 14 FLW 1470, ____So.2d____ (Fla. 2d DCA No 88-01841). There the Second District affirmed Artis Lewis' judgment for the purchase of cocaine; but reversed his conviction for the possession of cocaine. The opinion points out the narcotic offenses occurred prior to the amendment of §775.921(4), Florida Statutes (1988 Supp.). On June 22, 1989, this Court rendered an opinion in State v. Gordon, 14 FLW 308, _____ So.2d _____ (No. 72,850); and, there is no conflict of holding between the holding below and Gordon.

As to Blankenship v. State, No. 74,176 (pending), the Second District found no violation of the single subject rule of the Florida constitution. In the case at bar, there has been no express construction of a constitutional provision. See, Art. V §3(b)(3) Fla. Const. (1980) which in pertinent part states: "[The Supreme Court] may review a decision of the district court of appeal. . . .that expressly construes a provision of the state or federal constitution." The jurisdictional authority for review remains intact on this score. See, Carmazi v. Board of County Commissioners of Dade County, 104 So.2d 727 (Fla. 1958) and Armstrong v. City of Tampa, 106 So.2d 407 (Fla. 1958). What petitioner overlooks and fails to consider is that a decision is

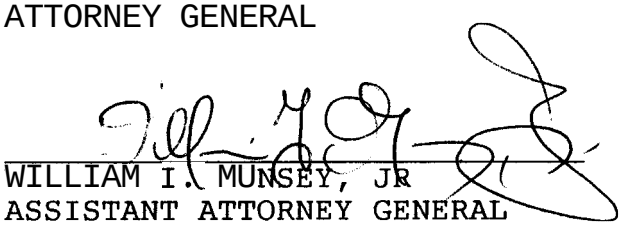
not reviewable under Article V, §3(b)(3) merely because it has the practical effect of construing a provision of the Florida or federal constitution. See, Miami Herald Publishing Co. v. Brautigam, 121 So.2d 431 (Fla. 1960). At bar, the decision below does not contain a "plain statement" explaining or defining the disputed constitutional language. Below, the Second District has merely applied constitutional pronciples to the facts of the case. See, Page v. State, 113 So.2d 557 (Fla. 1959). Thus, under the limitations of the decision below, discretionary review should be denied.

CONCLUSION

WHEREFORE, based upon the foregoing reasons, argument and authority, Respondent would pray that this Court make and render an opinion denying discretionary review of the decision below.

Respectfully submitted,

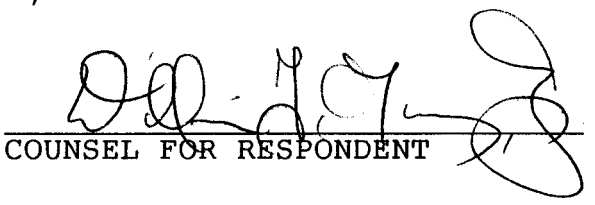
ROBERT A BUTTERWORTH
ATTORNEY GENERAL



WILLIAM I. MUNSEY, JR
ASSISTANT ATTORNEY GENERAL
FLA. BAR NO. 0152141
PARK TRAMMELL BUILDING
1313 TAMPA STREET, SUITE 804
TAMPA, FLORIDA 33602
(813) 272-2670
COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to ANDREA STEFFEN, Assistant Public Defender, Polk County Courthouse, P. O. Box 9000--Drawer PD. Bartow, FL 33830 this 18th of JULY, 1989.



COUNSEL FOR RESPONDENT