

IN THE SUPREME COURT OF
FLORIDA

CASE NUMBER: 74,509

DANIEL E. REMETA,

Petitioner,
vs.

STATE OF FLORIDA,

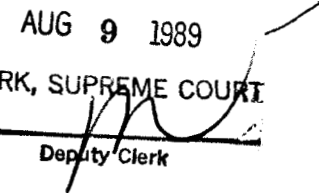
Respondent.

PETITION FOR REVIEW OF
FIFTH DISTRICT COURT OF APPEALS
CASE NUMBER: 89-26

FILED
SID J. WHITE

AUG 9 1989

CLERK, SUPREME COURT

By 
Deputy Clerk

JURISDICTIONAL BRIEF OF PETITIONER

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TABLE OF CONTENTS

TABLE OF CITATIONS	ii
STATEMENT OF THE CASE AND FACTS	1
SUMMARY OF THE ARGUMENT	2
ARGUMENT.	3-5
<u>POINT I.</u> THE SUPREME COURT HAS JURISDICTION	3-4
<u>POINT II.</u> THE SUPREME COURT SHOULD EXERCISE ITS DISCRETIONARY JURISDICTION.	4-5
CERTIFICATE OF SERVICE	6
APPENDIX	

...
TABLE OF CITATIONS

CONSTITUTION:

5th Amend. U.S. Const.
6th Amend. U.S. Const.
Art. V, Section 3(b)(3), Fla. Constitution (1980).

STATUTES AND RULES OF APPELLATE PROCEDURE:

Section 925.035(4), Fla. Stat.
Section 925.036, Fla. Stat
Rule 9.030(a)(2)(A)(i) and (ii), Fla.R.App.P.

CASE AUTHORITY:

Lyons v. Metropolitan-Dade County, 507 So.2d 588
(Fla. 1981)
Makemson v. Martin County, 491 So.2d 1109
(Fla. 1986), cert. denied, 479 U.S. 1043,
107 S.Ct. 908, 93 L.Ed.2d 857 (1987)

STATEMENT OF THE CASE AND THE FACTS

This attorney was appointed to represent DANIEL E. REMETA in an Executive Clemency proceeding, pursuant to Section 925.035(4), Florida Statutes. (Appendix 1) After that representation, application was made to the trial court for compensation for 51.65 hours expended in the representation. (Appendix 1) Section 925.035(4) allows compensation, not to exceed \$1,000.00, for attorney's fees and costs, but the trial court awarded this attorney \$3,000.00 in fees plus \$622.78 for expenses. (Appendix 1) A Petition for Certiorari was filed by the State of Florida, Department of Corrections, contesting the attorney fee awarded, because it was in excess of the statutory amount. (Appendix 1). The Fifth District Court of Appeals, in an Opinion filed on June 8, 1989, decided that the trial court had no authority to exceed the \$1,000.00 plus expenses limitation set forth in the statute. (Appendix 5)

A Motion for Rehearing was filed by this Petitioner on June 23, 1989 and denied by decision dated July 18, 1989. (Appendix 6)

SUMMARY OF THE ARGUMENT

Petitioner contends that the Florida Supreme Court has jurisdiction to review the decision of the Fifth District Court of Appeals in that the lower appellate court expressly declared valid Section 925.035(4), Florida Statutes, and because that court expressly construed the Fifth and Sixth Amendments of the United States Constitution in deciding that those Amendments did not apply to this factual situation. Petitioner urges that the Supreme Court should exercise its discretionary jurisdiction since this case involves the basic rights to adequate counsel for defendants who are under sentence of death and because the lower courts are likely to need guidance in this area.

ARGUMENT

POINT I - THE COURT HAS JURISDICTION

The Petitioner contends that pursuant to Article V, Section 3(b)(3), Florida Constitution (1980) and Rule 9.030(a)(2)(A)(i) and (ii), Florida Rules of Appellate Procedure, this court has jurisdiction.

The Fifth District Court of Appeals was concerned with the validity of Section 925.035(4), Florida Statutes, and the contention of counsel for respondent below (Petitioner here) that that Section should be read in connection with Section 925.036, Florida Statutes. The lower appellate court was presented with the cases that provided that Section 925.036 was unconstitutional when the statutory maximum fees were applied to extraordinary cases as in Makemson v. Martin County, 491 So.2d 1109 (Fla. 1986) cert. denied, 479 U.S. 1043, 107 S.Ct. 908, 93 L.Ed.2d 857 (1987) (Appendix 2).

The Fifth District Court of Appeals said:

"While sympathetic to the trial judge in this case who did not want to provide token compensation to an attorney he appointed, we find the statutory maximum fee provided in Section 925.035(4), Florida Statutes, is mandatory, and distinguish this case from Makemson and Lyons, supra. We grant the petition and quash the order which exceeded the statutory maximum fee. . ." (Appendix 5).

Therefore, based on the authorities cited and the express declaration of the Fifth District Court of Appeals as to the validity of Section 925.035(4), Florida Statutes, and the statutory maximum fee set therein the Florida Supreme Court has jurisdiction. Additionally, the lower appellate court's opinion expressly construes the Fifth Amendment and Sixth Amendment of the U.S. Constitution in deciding that they do not apply to this factual situation. This construction also serves as a basis for discretionary review by the Florida Supreme Court. The Florida Supreme Court has jurisdiction.

POINT 11-THE COURT SHOULD EXERCISE ITS
DISCRETIONARY JURISDICTION IN THIS CASE

Petitioner contends that jurisdiction should be entertained in this case, in that this matter concerns a very basic right to adequate counsel for defendants under the Fifth and Sixth Amendments of the United States Constitution and whether or not those basic rights apply to clemency proceedings.

It would appear to be an issue of general concern as to whether the distinction made by the Fifth District as to executive proceedings and judicial proceedings is a valid consideration as to appointment of counsel to represent defendants under sentence of death. The concern of the lower appellate court herein is evident from its expression:

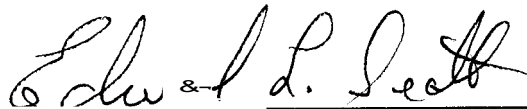
"Nevertheless, because counsel in clemency proceedings is a statutory right, and no constitutional right is involved, the appointment of counsel in an executive clemency proceeding is not a "sensitive area of judicial concern" and it is within the province of the legislature to set a statutory maximum fee for such legal representation. The legislature, though, should realize that by imposing this financial limitation, it is not assuring effective assistance of counsel, only that legal representation that \$1,000.00 will buy." (Appendix 5).

It is apparent that while there is no conflict in the appellate decisions at this time on these issues, this would appear to be an area ripe for such conflict and the lower courts would benefit from a resolution of this matter by the Florida Supreme Court.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail and/or hand delivery to FRANK J. HABERSHAW, CLERK, Fifth District Court of Appeal, 300 South Beach Street, Daytona Beach, Florida 32014; HONORABLE CARVEN D. ANGEL, Post Office Box 2075, Ocala, Florida 32678; REGINALD BLACK, Assistant State Attorney, Fifth Judicial Circuit of Florida, County Office Building, 19 N.W. Pine Avenue, Ocala, Florida 32670; and to ANN M. CHITTENDEN, Assistant General Counsel, Department of Corrections, 1311 Winewood Boulevard, Tallahassee, Florida 32399-2500, this _____ day of August, 1989.

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