

IN THE SUPREME COURT OF
FLORIDA

CASE NUMBER: 74,509

DANIEL E. REMETA,

Petitioner

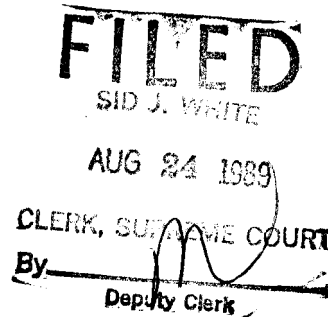
vs .

STATE OF FLORIDA,

Respondent.

PETITION FOR REVIEW OF
FIFTH DISTRICT COURT OF
APPEALS

CASE NUMBER: 89-26



IV JURISDICTIONAL BRIEF

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CITATIONS	ii
STATEMENT OF THE CASE AND THE FACTS	1
SUMMARY OF ARGUMENT	2
ARGUMENT	3
CERTIFICATE OF SERVICE	6

TABLE OF CITATIONS

<u>FLORIDA STATUTES</u>	<u>Page</u>
Section 925.035(4)	2. 3. 4
Section 925.036	2. 3. 4
 <u>FLORIDA RULES OF APPELLATE PROCEDURE</u>	
Rule 9.030(a) (2)(A)(i) and (ii).....	2

STATEMENT OF CASE AND FACTS

Respondent adopts in its entirety the Statement of Case and Facts within Petitioner's Jurisdictional Brief at Page one.

SUMMARY OF ARGUMENT

Respondent contends that the Florida Supreme Court does not have discretionary jurisdiction to review the decision of the Fifth District Court of Appeals pursuant to Rule 9.030 (a)(2)(A)(i) and (ii), Florida Rules of Appellate Procedure, in that the District Court did not expressly declare a state statute valid, nor did it expressly construe a provision of the state or federal constitutions. It merely ruled that the application of §925.035(4) was mandatory in this type proceeding, (a point never at issue herein), and that 5925.036, Florida Statutes and the Fifth and Sixth Amendments to the United States Constitution were inapplicable in the context of executive clemency proceedings.

Even assuming the Supreme Court has discretionary jurisdiction to consider the matter herein, contrary to Petitioner's statement that such jurisdiction should be exercised in this case since it involves the basic rights to adequate counsel, Respondent contends, and the District Court ruled, that these basic rights do not arise in the context of executive clemency proceedings but rather in criminal judicial proceedings.

The District Court has simply read and applied the pertinent statute to the facts of this case. It's ruling does not constitute a departure from the essential requirements of law justifying invocation of discretionary jurisdiction. Petitioner's request should be denied.

ARGUMENT

The mandatory application of Section 925.035(4), Florida Statutes, to the facts of this case was never an issue before the lower tribunal, rather Petitioner contended that said provision should be construed in accordance with cases addressing the wholly separate provision of 5925.036. Petitioner thus sought from the lower tribunal a ruling that §925.035(4) exclusively providing for attorney fee awards in executive clemency proceedings should be read in *pari materia* with 5925.036, dealing with attorney fee awards in criminal judicial proceedings.

The District Court noted the two distinct subject matters contained within the respective statutes, and thus declined to read the provisions in *pari materia*. It specifically ruled that in the context of executive clemency proceedings, 5925.036 and the cases construing said provision were inapplicable, and that the application of §925.035(4) was mandatory as the controlling statute. This ruling is in accordance with the express language of those statutory provisions.

The court's inherent power to over-ride attorney fee limitations as discussed in the case law construing 5925.036 was found lacking in the context of attorney fee awards in

executive clemency proceedings in that §925.035(4) involves no constitutional rights giving rise to the court's inherent power. As stated by the District Court:

The clemency power to commute a death penalty is vested in the executive branch of the government. The constitutional right of indigent defendants to appointed counsel as guaranteed by the sixth amendment to the federal constitution or the fifth amendment due process clause, relates to criminal judicial proceedings and does not extend to a collateral executive clemency proceeding. (Emphasis supplied.)

The court acknowledged the troublesome aspects of §925.035(4), nonetheless determined that:

...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.

It is thus apparent that the District Court did not rule on the validity of a state statute or construe a federal constitutional provision. It simply considered the subject matter contained within each statute, and the constitutional provisions and ruled:

1) that §925.035(4) should not be read in pari materia with 8925.036, as the two statutes are substantively separate and distinguishable; and


2) that the Fifth and Sixth Constitutional Amendments are irrelevant in construing §925.035(4) as that provision does not involve the basic right to counsel in judicial proceedings.

For the foregoing reasons Petitioner's request for discretionary jurisdiction should be denied.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail 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 Attoreny, Fifth Judicial Circuit of Florida, County Office Building, 19 N.W. Pine Avenue, Ocala, Florida 32670 and to Edward L. Scott, Esquire, Special Assistant Public Defender, Laurel Run Professional Center, 2100 S.E. 17th Street, Suite 802, Ocala, Florida 32671, this 22nd day of August, 1989.

Respectfully submitted,


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