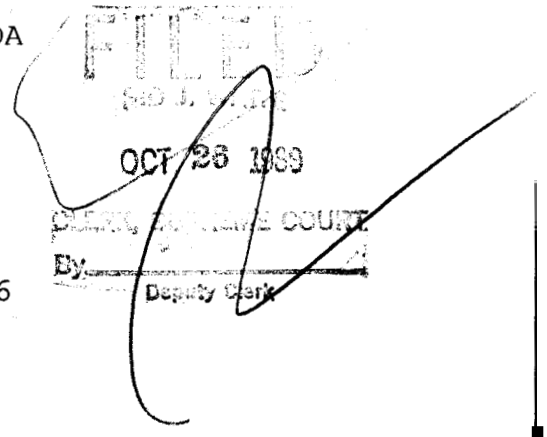
IN THE SUPREME COURT OF FLORIDA



WILLIAM LEGGETT,

Petitioner,

vs. CASE NO. 74,856

STATE OF FLORIDA,

Respondent.

RESPONDENT'S BRIEF ON JURISDICTION

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STATEMENT OF THE CASE AND FACTS

Respondent accepts petitioner's statement of the case and facts with the exception of that portion which relies on the contents of petitioner's petition for rehearing below. (A3-All of petitioner's appendix.) The relevant facts here are those within the four corners of the decision below.

SUMMARY OF ARGUMENT

There is no direct and express conflict on which to base jurisdiction.

ARGUMENT

ISSUE

LEGGETT V. STATE, 14 F.L.W. 1348 (FLA. 1ST DCA JUNE 2, 1989) AND 14 F.L.W. 2106 (DENIAL OF PETITION FOR REHEARING FILED SEPTEMBER 7, 1989) DO NOT EXPRESSLY AND DIRECTLY CONFLICT WITH GLENDENING V. STATE, 536 SO.2D 212 (FLA. 1988) AND JAGGERS V. STATE, 536 SO.2D 321 (FLA. 2D DCA 1988).

Petitioner's appendix contains a copy of his petition for rehearing, pages A3-All. This extraneous and improper matter from the record below should be stricken or ignored as the arguments on the merits and the facts alleged therein cannot be the basis for this Court's conflict jurisdiction. Conflict must be shown "within the four corners of the majority decision[s]" on which conflict is claimed. Reaves v. State, 485 So.2d 829 (Fla. 1986).

Petitioner first argues that the decision below conflicts with Glendening. In its initial opinion, the district court, under the facts presented, which were not recited, affirmed on the authority of Glendening. In its opinion denying rehearing, the court rejected petitioner's argument that it had overlooked issues, pointing out they had been considered and rejected without comment as meritless. On this point, Glendening simply mirrors section 92.53, Fla. Stat. (1987) by holding that the trial judge must make "an individual determination for each child witness that the use of videotaped testimony is necessary to prevent the child from suffering emotional or mental harm."

Glendening, 536 So.2d at 218. The decision below reflects, like Glendening and unlike Coy v. Iowa, 108 S.Ct. 2798 (1988), that the trial court made an individual determination that there was a substantial likelihood that the specific child witness would suffer moderate emotional or mental harm if required to testify in court. There is no express and direct conflict with Glendening.

Section 92.53(1) permits videotaping if the underage victim or witness: (1) would suffer at least moderate emotional or mental harm if required to testify in open court, or (2) is otherwise unavailable under section 90.804(1), Fla. Stat. (1987). Section 90.804(1) provides five conditions under which a witness is unavailable. Section 92.53(7) requires the trial court to make specific findings of fact, on the record, as to the basis for its ruling. Nothing in the opinions below suggest that the trial court ruling was not specifically based on the substantial likelihood of moderate emotional or mental harm to the victim or witness. The distinction between Jaggers and the case here, as the district court below pointed out, is that here, unlike Jaggers, there is competent, substantial evidence to support the trial court's finding of a substantial likelihood of moderate emotional or mental harm to the child witness.

CONCLUSION

There is no direct and express conflict on which to base jurisdiction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Carl S. McGinnes, Assistant Public Defender, Leon County Courthouse, Tallahassee, Florida 32301, this 26th day of October, 1989.

JAMES W. ROGERS