

IN THE SUPREME COURT OF FLORIDA

CASE NO. 75,302

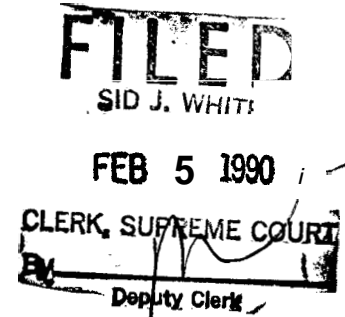
THE STATE OF FLORIDA,

Petitioner,

vs .

NARCISCO RODRIGUEZ,

Respondent .



ON PETITION FOR DISCRETIONARY REVIEW

JURISDICTIONAL BRIEF

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TABLE OF CONTENTS

TABLE OF CITATIONS	ii
INTRODUCTION	1
STATEMENT OF THE CASE AND FACTS	1
QUESTION PRESENTED	3
ARGUMENT	4
THE DECISION OF THE THIRD DISTRICT COURT OF APPEAL IN RODRIGUEZ V. STATE, NO. 89- 939 (FLA. 3D DCA DECEMBER 13, 1989), EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF THE FIRST DISTRICT COURT OF APPEAL IN <u>PRITCHARD V. STATE</u> , 528 SO.2D 1272 (FLA. 1ST DCA 1988).....	4
CONCLUSION	5
CERTIFICATE OF SERVICE	5

TABLE OF CITATIONS

CASES

PAGE

Pritchard v. State,
528 So.2d 1272 (Fla. 1st DCA 1988)..... 2, 4

OTHER AUTHORITY

Section 316.193(2)(b), Fla. Stat. (1988), 1

INTRODUCTION

Petitioner, the State of Florida, was Appellee in the District Court of Appeal of Florida, Third District, and the prosecution in the trial court, the Circuit Court of the Eleventh Judicial Circuit, in and for Dade County, Florida. Respondent, Narcisco Rodriguez, was the defendant/appellant.

All parties will be referred to in this brief as they appear before this Honorable Court. Petitioner may also be referred to as the State and Respondent may also be referred to as Defendant.

The symbol "A" will be utilized to designate the Appendix to this Brief.

All emphasis is supplied unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

Respondent was charged by information in the Circuit Court of driving under the influence in violation of Section 316.193(2)(b), Fla. Stat. (1988), which makes a fourth or subsequent DUI charge a felony offense. However, specific reference to the actual number of Respondent's prior DUI violations was not included in the information. (A. 1)

On appeal, inter alia, Respondent challenged the jurisdiction of the Circuit Court based upon the State's failure to allege specific prior violations in the information, arguing that, absent specific reference to the prior violations, the instant offense was only a misdemeanor properly brought before the County Court. (A. 2)

The State relied upon Pritchard v. State, 528 So.2d 1272 (Fla. 1st DCA 1988) to support its contention that citation to Section 316.193(2)(b) was sufficient to invoke the felony jurisdiction of the Circuit Court. (A. 2)

The District Court held that identifiable prior convictions should have been included in the charging document, specifically declining to follow Pritchard and recognizing conflict therewith. (A. 2)

A notice invoking the discretionary review jurisdiction of this Court was filed on January 4, 1990.

QUESTION PF I

WHETHER THE DECISION OF THE THIRD DISTRICT COURT OF APPEAL IN RODRIGUEZ V. STATE, NO. 89-939 (FLA. 3D DCA DECEMBER 13, 1989), EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF THE FIRST DISTRICT COURT OF APPEAL IN PRITCHARD V. STATE, 528 SO.2D 1272 (FLA. 1ST DCA 1988).

ARGUMENT

THE DECISION OF THE THIRD DISTRICT COURT OF APPEAL IN RODRIGUEZ V. STATE, NO. 89-939 (FLA. 3D DCA DECEMBER 13, 1989), EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF THE FIRST DISTRICT COURT OF APPEAL IN PRITCHARD V. STATE, 528 SO.2D 1272 (FLA. 1ST DCA 1988).

In Pritchard v. State, 528 So.2d 1272 (Fla. 1st DCA 1988), the First District Court held that it was sufficient to cite Section 316.193(2)(b) when charging a defendant with a fourth or subsequent charge of driving under the influence. The Court reasoned that the defendant would be prejudiced if the previous convictions were listed in the charging document. The proper procedure, therefore, was held to be to cite Section 316.193(2)(b) in the charging document and then to prove the prior convictions during a post-trial hearing. 528 So.2d 1273-1274

In the instant case, the Third District held that the proper procedure was to include identifiable prior convictions in the charging document.

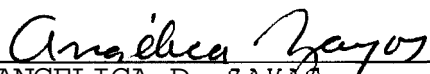
The decision of the Third District Court in the case sub judice is in direct and express conflict with the decision in Pritchard. Therefore, the exercise of discretionary review is warranted.

CONCLUSION

Based upon the foregoing, Petitioner respectfully requests that this Court grant discretionary review in this cause.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing JURISDICTIONAL BRIEF was furnished by mail to L. MICHAEL RUFFINO, P.A., 2151 LeJeune Road, Suite 305, Coral Gables, Florida 33134 on this 1st day of ~~January~~^{February}, 1990.



ANGELICA D. ZAYAS

/bf