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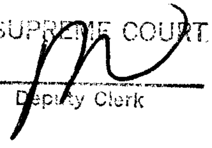
IN THE SUPREME COURT OF THE STATE OF FLORIDA



BILLY WOODS, et al.,

Petitioner,

vs. Case No.: 76,163

STATE OF FLORIDA,

Respondent.

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PETITIONERS' REPLY BRIEF ON THE MERITS

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STATEMENT OF THE CASE AND FACTS

The petitioner would reiterate the Statement of the Facts and Case as contained in their Initial Brief on the Merits.

The Statement of the Facts and Case as contained in the respondent's brief on the merits has little or nothing to do with the issue presented to this court.

We are in the Supreme Court for a resolution of the matter of certiorari jurisdiction of the district courts of appeals within our state. We are not here for a resolution of the claim made by the petitioner that was originally presented to the district court of appeals.

The respondent has filed their Statement of Facts and Case with matters that have nothing to do with the issue presented to this court. It adds nothing in the way of facts to help this court come to the correct ruling. It is nothing more than an attempt to distract the court from performing its duties in the issues that are legally before the court.

In conclusion, the only issue before the court relates to the proper exercise of certiorari by the district court of appeals. The state acknowledges this courts ruling in Fieselman v. State, 566 So.2d 768 (Fla. 1990) invalidates the district court ruling. Thus it would appear the case should be remanded back to the district court for resolution.

ARGUMENT

SINCE THE RESPONDENT AND PETITIONER AGREE THAT FIESELMAN v. STATE, 566 So. 2d 768 (Fla. 1990) IS CONTROLLING, THIS COURT SHOULD REMAND THE CASE BACK TO THE DISTRICT COURT OF APPEALS FOR A DETERMINATION OF WHETHER OR NOT THE CIRCUIT COURT APPLIED THE CORRECT RULE OF LAW WHEN IT REVERSED THE COUNTY COURT.

It appears that no matter how clear a rule of law the state refuses to say "uncle". They agree Fieselman, supra, invalidates the district court decision but go on and request this court leave well enough alone because the right result was reached no matter how obtained.

They argue that the petitioner cannot prevail on the merits anyway so we might as well end the agony here rather than remand the matter back to the district court of appeals.

What they are asking this court to do is do the job of the district court of appeals. Petitioner would be more than happy to continue the debate in this forum rather than the district court of appeals if this court would accept such a procedure.

On the merits of the petitioners claim they argue a violation of separation of powers, the county court exceeded it's authority by ordering an executive branch agency to promulgate rules.

How many times does it have to be said? The county court has never said the agency involved had to do anything, it has ruled that what it has done does not comport with a clear statutory mandate and violative of the defendant's due process rights under the State constitution.

The argument of the state displays a fundamental lack of understanding of administrative law. When administrative agencies exercise administrative rule making functions in carrying out statutory mandates the rules they pass are subject to judicial review. A statute that has been passed by the legislature that requires administrative action to have meaning subjects both the statute and rules promulgated to judicial review.

In State v. Cumming, 365 So.2d 153 (Fla. 1978) this court acknowledged that theory when it affirmed a County Court's dismissal of an information after determining the administrative rules implementing section 372.922, Florida Statutes were vague, indefinite and overbroad.

In Cumming, supra, the defendant was charged with possession of a Class II wildlife without a permit, contrary to section 372.922, Florida Statutes. That statute directs the Florida Game and Fresh Water Fish Commission to pass rules to further define Class II wildlife. The defendant moved to dismiss the information alleging the statute and rules were vague, indefinite and overbroad. The county court judge granted the motion finding the statute and rules vague, indefinite and overbroad. The case was transferred to the Supreme Court by request of the defendant.

The Court disagreed with the trial court with respect to the statute but agreed as it related to the rules. The Court held the rules "do not sufficiently define the standards upon which a permit is to be granted or denied. The inadequacy of the rules in addressing the statutory guidelines of Section 372.922, Florida Statutes, leaves the Commission broad discretion to employ any standard, including the

statutory guidelines themselves, in issuing the permits." If the argument was the trial courts ruling somehow exceeded his authority by ordering the agency to promulgate rules, that it violated the separation of powers prohibition then that argument was soundly rejected. That is the same argument made in this case and hopefully it will be rejected again.

Clearly the trial court in Cumming , supra, and in the instant case had the authority to do what they did. Here the defendant's alleged certain failures in rules promulgated; they presented evidence to prove their point; their motions were granted. They should have the fundamental right to have that decision reviewed by a superior court and have that court apply the right standard of law.

The trial court's decision should be affirmed unless it can be shown the trial judge deviated from the essential requirements of law. This the circuit court never said he did.

CONCLUSION

In the respondents brief on the merits they suggest this court not only decide the issue properly presented relating to the certiorari jurisdiction of the district courts of appeal but proceed with a determination of the issue that was presented to the district court of appeals that lead to this case being brought to the supreme court.

Recognizing the district court of appeals did not see fit to entertain jurisdiction in the first place petitioners do not object to this court deciding the issue that would be presented to the district court of appeals upon remand. Unfortunately petitioner can find no authority for making that argument.

Petitioners would argue the case should be remanded to the district court of appeals for a determination of whether the circuit court sitting in its appellate capacity incorrectly accepted certiorari jurisdiction from the count court and then applied the wrong legal standard when it decided the case on the merits.

Respectfully submitted,

By:

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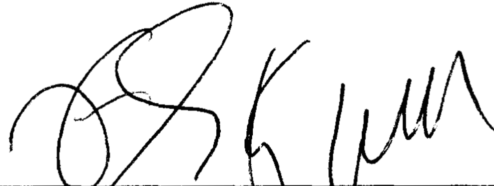
CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to Belle B. Turner, Assistant Attorney General, 210 North Palmetto Avenue, Suite 447, Daytona Beach, Florida, 32114, by mail this 20th day of December, 1990.



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