IN THE SUPREME COURT OF FLORIDA

JERRY WESLEY GOSBY,
PETITIONER,

vs.

SUPREME COURT CASE NO:
76,417

THE THIRD JUDICIAL CIRUCIT COURT, et al.,
RESPONDENT.
/

DCA CASE NO: 90-1141

Orig

DISCRETIONARY REVIEW OF DECISION OF THE
DISTRICT COURT OF APPEAL OF FLORIDA
FIRST DISTRICT

INITIAL BRIEF OF PETITIONER ON THE MERITS

JERRY WESLEY GOSBY #038533
CROSS CITY CORRECTIONAL INST
P.O. BOX 1500--MAIL BOX #280
CROSS CITY, FLORIDA 32628-1500

PETITIONER PRO-SE, UNLEARNED IN LAW AND ANY APPLICATION THEREOF. THIS MERIT BRIEF PREPARED AT THE CROSS CITY CORRECTIONAL INSTITUTION LAW LIBRARY.

R.R. "BOB" BARNES LAW CLERK

TOPIC: TABLE OF CONTENTS PAGE NO:

TOPIC | TABLE OF CITATIONS | PAGE NO:

OTHER AUTHORITY

PRELIMINARY STATEMENT

The Petitioner herein was the applicant in the lower circuit court and the petitioner in the District Court, First District.

The Petitioner, Jerry Wesley Gosby, in this brief will be referred to as the Petitioner.

The Third Judicial Circuit Court below was the respondent in the circuit court and the respondent in the District Court, First District. The Third Judicial Circuit in this brief will be referred to as the Respondent.

Due to the record not being forwarded as yet by the District Court, the Petitioner will attach an appendix hereto and all of the references will be made by "A" followed by the appropriate page number in parentheses.

In this brief when the Petitioner wishes to point up to something in a certain motion etc, it will be referred to as (Please see whatever the item is) in parentheses. When the record is received in this Court a reference can be easily made thereto.

JURISDICTIONAL STATEMENT

Jurisdiction is properly invoked pursuant to Article V, Section 3(b)(4) of the Florida Constitution. Also, jurisdiction is properly invoked pursuant to Fla.App.P. 9.030(a)(2)(A)(iv) or (vi); The district court having stated that "conflict does exist."

STATEMENT OF THE CASE AND FACTS

During May of 1989, the Petitioner herein filed a Motion for Name Change in the Third Judicial Circuit Court, Dixie County, Florida. Petitioner filed his name change motion pursuant to Florida Statute 68.07 (1989); Petitioner also followed all of the sub numerical paragraphs under the above mentioned statute. Petitioner also cited authority giving rise to Petitioner's right to a name change. (App. pp. 1-3)

Due to not receiving any rule by August 1989, the Petitioner wrote a letter to Judge Royce Agner, Circuit Judge, Third Judicial Circuit, inquiring if anything else was required in the furtherance of the name change motion and the notice of hearing filed in the lower circuit court to please tell the Petitioner so the proper papers could be filed. (App. pp. 4-5)

On August 8. 1989, Judge Royce Agner did respond to Petitioner's letter of August 7, 1989. The Judge informed the Petitioner that due to Petitioner being incarcerated for a crime that it would by difficult if not impossible for the Petitioner to obtain any type of hearing on the name change motion. (App. p. 6)

Subsequent to the letter from the Judge, On August 29, 1989, the Department of Corrections responded, through General Counsel, to Petitioner's name change motion. Attached to the response was an affidavit sworn and subscribed to by Trisha Redd, Assistant Admissions and Release for the Department.

The response filed by the General Counsel and, the affidavit

filed by Trisha Redd, both basically agreed that Petitioner could obtain a name change. But, due to security reasons, the much paper work involved, that the name change should not be granted. (App. pp. 9-10)

On October 17, 1989, Petitioner filed a reply to the response to the name change motion filed by General Counsel. Petitioner pointed out that there were no fraudulent or wrongful reasons for the Petitioner's request for name change. Petitioner pointed out the request for name change was based solely on biblical factors. Also, in keeping with the common law tradition, the Petitioner had/has a right to change his name. Both state and federal authority was cited to by the Petitioner in his reply motion. (App. pp. 11-14)

On September 13, 1989, Petitioner filed a motion to consolidate another inmate who also requested his name changed for biblical reasons; The motion to consolidate was denied by the circuit court. Petitioner has since the filing of the motion to consolidate, although denied, withdrawn the idea whereas the inmate has transferred from Cross City Correctional Inst. (App. at pp. 15-16)

On January 30, 1990, Petitioner having received no ruling from the circuit court concerning the name change motion, Petitioner filed a writ of mandamus to the First District Court of Appeal requesting an order compelling the lower circuit court to enter a ruling on the name change motion filed by Petitioner. (App. p. 17)

Petitioner explained to the District Court that his motion for name change had been pending before the lower court for 9 months and no ruling had yet been entered. Petitioner also indicated that a notice of hearing was filed in the lower court concerning the name change motion. (App. p. 18)

Under the relief requested in the mandamus, the Petitioner asked the District Court to issue an order compelling the circuit court to issue a ruling on the name change motion. (App. pp. 17-21)

The District Court received and filed the mandamus on February 1, 1990, and subsequently, denied same on February 13, 1990. The reason for denial was said to be because the Petitioner failed to file a notice of hearing and set his name change motion for a hearing. (App. pp. 22-23) Obviously, the District Court of Appeal missed the notice of hearing which had already been filed in the lower court. (App. p. 18)

After the Petitioner received the order denying the writ of mandamus, Petitioner not understanding his alleged failure to set the name change motion for hearing, filed a second notice of hearing in the lower circuit court. This was filed on February 19, 1990. (App. p. 24)

In the second notice of hearing the Petitioner stated that: as soon as the Petitioner or his name change motion may be heard, CLEARLY the Petitioner expressed his desire to be present for said proceedings. (App. p. 24)

Even after the second notice of hearing to the lower court,

Third Judicial Circuit, no ruling came concerning Petitioner's name change motion. Again the Petitioner filed another writ of mandamus to the District Court asking for an order compelling the lower circuit court to rule on Petitioner's name change motion. (See appendix reference infra)

On April 16, 1990, Petitioner filed his second mandamus to the District Court. This time however, a cover letter to the clerk was carefully written. Petitioner explained that he had already once filed a notice of hearing in the lower court; That now there were two notice of hearings filed with respect to the name change. (See appendix reference infra)

In the second mandamus to the District Court Petitioner used the same facts as were employed in the first mandamus except to amend them somewhat to indicate that now two notice of hearings had been filed in the lower court. The relief requested was the same as that of the first mandamus and that was to compel the lower circuit court to enter a ruling on Petitioner's motion for name change. (App. pp. 25-31)

On April 23, 1990, Petitioner's second mandamus was received and filed in the District Court. (App. p. 32)

The District Court on the second mandamus, rather than denying same, issued an opinion. The District Court saw the Peoblems the Petitioner was having in receiving a ruling from the lower circuit court. The District Court held however in it's opinion that the Petitioner was not entitled to the relief he was

he was seeking because the Petitioner did not allege that he (Petitioner) actually scheduled a hearing with the judge's office. Furthermore, the District Court held that even if a hearing were conducted, Petitioner failed to state whether he or his representative would attend such hearing. Absent these allegations, whether Petitioner or his representative would appear at the hearing, the District Court concluded that the circuit court was not obligated to rule on Petitioner's name chnage motion.

In denying Petitioner's second mandamus the District Court based it's ruling on the dissent in Lane vs. Kaney. In Lane vs. Kaney, District Judge Goshorn stated: The Petitioner has failed to allege that he has requested the court to schedule a hearing on his petition for name change or that he would be available to appear at the hearing when one is scheduled. Judge Goshorn said: I would deny the petition for writ of mandamus. The majority in Lane stated that the lower circuit court should enter a ruling on petitioner Lane's name change one way or the other. The First District Court of Appeal in Gosby's mandamus, upon denying same, noted that conflict between their ruling in Gosby and the majority decision in Lane which majority decision in Lane reversed to the lower court for action on the mandamus. The District Court did certify to this Court that conflict exists in their decision of Gosby and the majority decision in Lane. (App. pp. 33-34)

On May 30, 1990, the Petitioner filed a motion for rehearing pursuant to Florida Appellate Rule 9.330(a) with the District Court.

In the motion for rehearing the Petitioner pointed out among other things, that conflict was said to exist by the District Court in it's own opinion; That the Petitioner did file notice of hearing was also pointed out in the rehearing motion. Petitioner further pointed out in the rehearing motion that it would seem futile to leave the opinion of the District Court stand as it is where the Petitioner is entitled to the relief he seeks and other opinions were cited to in the name change motion giving rise to Petitioner's right to name change. (App. pp. 35-39)

On July 31, 1990, the District Court denied the motion for rehearing/clarification filed by Petitioner. (App. p. 40)

On July 30, 1990, the Petitioner filed a notice to invoke discretionary jurisdiction in the Supreme Court of Florida.

This merit brief now follows on the issue of apparent conflict.

SUMMARY OF THE ARGUMENT

The Petitioner having filed a motion for name change and subsequent thereto, having filed a notice of hearing, having not received any ruling from the circuit court on said name change motion, Petitioner did file a writ of mandamus to the First District Court of Appeal requesting an order be issued directing the circuit court to enter a ruling on Petitioner's name change motion.

The First District Court of Appeal denied Petitioner's mandamus; Said denial was based on a dissenting opinion from a Fifth District Court of Appeal case. The majority decision in the Fifth District case held that the circuit court would enter a ruling one way or the other on petitioner Lane's name change motion.

Due to the Petitioner in the case at bar filing not one but, two notice of hearings in the circuit court, the denial of the Petitioner's mandamus by the First District denies Petitioner a ruling on his name change motion and, furthermore, denies the Petitioner access to the courts in contravention of both Florida and United States Constitutions; And, Article I, Sections 9 and 21 of the Florida Constitution.

The First District Court of Appeal itself certifies to this Court, the Florida Supreme Court, that conflict exists between their ruling in Gosby, the Petitioner herein, and in the majority decision in Lane.

ARGUMENT PRESENTED

ISSUE I

THE FIRST DISTRICT COURT OF APPEAL COMMITTED PREJUDICIAL ERROR IN DENYING PETITIONER'S MANDAMUS PETITION, SAID MANDAMUS REQUESTED THE DISTRICT COURT TO ENTER ORDER INSTRUCTING LOWER CIRCUIT COURT TO ENTER RULING ON NAME CHANGE MOTION, TWO NOTICE OF HEARINGS WERE FILED, PETITIONER WAS PREJUDICIALLY DENIED ACCESS TO THE COURTS IN CONTRAVENTION OF THE FLORIDA AND UNITED STATES CONSTITUTIONS, THE DISTRICT COURT CERTIFIED CONFLICT IN THEIR OPINION OF GOSBY VS. THE THIRD JUDICIAL CIRCUIT

The necessity of a long drown argument regarding the First District Court of Appeal's substantial error where it denied Petitioner's writ of mandamus is not needed; The District Court clearly admits to conflict between Gosby vs. The Third Judicial Circuit Court, et al., 15 FLW p. D1454 (Fla. 1st DCA June 1, 1990); and Lane vs. Kaney, 557 So. 2d 210 (Fla. 5th DCA 1990).

In short, Petitioner filed a name change motion and a notice of hearing regarding the motion for change of name in the Third Judicial Circuit Court, Dixie County, Florida, requesting a name change for biblical reasoning. The Petitioner filed his name change pursuant to Florida Statute 68.07 (1989).

Without a show cause order the Respondent, General Counsel for the Department of Corrections, responded to Petitioner's name change motion in the circuit court. A reply thereto was filed by the Petitioner. However, Petitioner's name change motion was never ruled on circuit level. In fact, to date, the circuit court has entered no ruling on the name change motion pending therein.

After waiting for approximately (9) nine months for the circuit court to rule on Petitioner's motion for name change, Petitioner felt nine months was a substantial amount of time to enter said ruling, Petitioner filed a writ of mandamus to the First District Court of Appeal. The relief saught regarding the mandamus was that the First District Court of Appeal issue an order directing the lower circuit court to enter a ruling on Petitioner's name change motion. The District Court having received Petitioner's first mandmamus denied same holding that Petitioner failed to set his name change for hearing in the lower circuit court. Petitioner receiving the District Courts denial for the reasons set forth above, Petitioner filed another notice of hearing in the circuit court. Again, no action came from the circuit court.

Petitioner again filed a second mandamus in the First District Court of Appeal. This time Petitioner amended his "facts" from the first mandamus. The fact that a second notice was filed in the circuit court was brought to the District Courts attention again. Regarding the second mandamus, the District Court of Appeal issued an opinion. Gosby supra. The District Court denied Petitioner's second mandamus by the use of a dissenting opinion from another district court of appeal case. The dissent in Lane vs. Kaney supra, was used by the First District Court of Appeal in Gosby in order to deny Petitioner's mandamus.

Point of argument is: In Lane supra, Lane also an inmate in Florida, filed a mandamus in the fifth district court of appeal

requesting an order from the district court issue directing the circuit court to rule on his name change petition. A significant difference in Lane's case is that he filed his name change petition in the wrong county. Even though Lane was domiciled in one county and his name change filed in another, the fifth district court of appeal majority opinion ordered the circuit court to rule "one way or the other" on Lane's petition.

In Lane, the dissent by judge Goshorn holds that because Lane failed to request the lower court to hold a hearing and, even if a hearing were scheduled, Lane failed to allege whether he or his representative would attend said hearing. For these two reasons in Lane, judge Goshorn's dissent held that he would deny Lane's request to have the fifth district court of appeal issue an order directing the lower circuit court to act. It was this dissent which was used to deny Petitioner Gosby's second mandamus.

The difference between Lane and Gosby are easily discerable. Lane filed his name change in the wrong county, Gosby did not. Lane did not file any notice of hearing, Gosby filed not one but, two such notices. Petitioner Gosby also wrote a letter to the circuit court judge; Enclosed with the letter was a copy of a notice of hearing, the original thereof being filed with the clerk of the circuit court. A response to Petitioner's letter by the judge indicates that Petitioner would not be called to court due to the Petitioner being incarcerated for a crime. Naturally, a ruling of some type should have entered on the name change motion pending in

the circuit court. It matters not whether the Petitioner or a representative is present for the circuit court to enter a ruling. The Petitioner is, as a matter of right, entitled to chnage his name whether incarcerated or not; Petitioner is further entitled to the lower circuit court entering a ruling on his motion. The Petitioner cited both state and federal authority giving rise to Petitioner's entitlement to change his name; Any citizen may change his name, any citizen has a right to file for such name change and, has a right to expect a ruling be entered thereon.

Clearly, applying the dissent in Lane to the set of facts in Gosby as opposed to the majority in Lane to Gosby, was error of a substantial magnitude. The circuit court should have been instructed to enter a ruling in Petitioner's case.

The decision of the First District Court of Appeal in Gosby supra, should be reversed and vacated, remanded with instructions to issue the mandamus filed by Petitioner and subsequently, instructed to issue an order directing the Third Judicial Circuit Court to enter a ruling on Petitioner's name change motion.

Petitioner has been denied access to the courts both state circuit level and district level in contravention of Article I, Section 9 and 21 of the Florida Constitution.

CONCLUSION/NOTARY CERTIFICATE

Because the Petitioner is entitled to have his name change motion ruled on one way or the other, Petitioner requests this Court reverse and remand the district courts decision and instruct the district court to issue the mandamus filed by Petitioner and subsequent thereto, order the lower circuit court to rule on Petitioner's name chnage motion.

Jerry Wesley Gosby #038533
Cross City Correctional Inst
P.O. Box 1500--Mail Box #280
Cross City, Florida 32628-1500

STATE OF FLORIDA
SS
COUNTY OF DIXIE

Sworn and Subscribed to before me, the undersigned authority, this 14 day of August 1990.

NOTARY PUBLIC, STATE OF FLORIDA
My commission expires Mar. 4, 1994

My Commission Expires

R. D. Ingram
Notary Public of Florida

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing "Jurisdictional Brief" has been furnished via U.S. Mail to these following parties of record: The Attorney General of Florida, Department of Legal Affairs, The Capital, Tallahassee, Florida 32399-1050; and to the General Counsel, Department of Corrections, 1311 Winewood Blvd, Tallahassee, Florida 32399-2500; both mailed on this 14 day of August 1990.

Jerry Wesley Gosby

PETITIONER, PRO-SE