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Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

GENE SALSER,

Petitioner,

v.

439
CASE NO. 78,438

STATE OF FLORIDA,

Respondent.

_____ /

JURISDICTIONAL BRIEF OF RESPONDENT

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SUMMARY OF ARGUMENT

This honorable court should not exercise its discretionary jurisdiction because the majority opinion, which implicitly construes the sixth amendment right to counsel, is in accord with established case law. Moreover, the instant decision does not conflict with this court's decision in *State v. Tait*, 387 So.2d 338 (Fla. 1980).

ARGUMENT

THIS COURT SHOULD NOT EXERCISE ITS
DISCRETIONARY JURISDICTION.

Although the instant decision implicitly construes **the** sixth amendment right to counsel, this court should not exercise its discretionary jurisdiction. The Fifth District Court of Appeal held that the trial **court**, which **had** stricken all *pro se* motions, correctly **refused** to discharge the appellant who **was** represented by counsel on speedy trial grounds. *Salser v. State*, 582 So.2d 12 (Fla. 5th DCA 1991).

The decision below is in accord with Florida **case** law. See *Beverley v. State*, 516 So.2d 30 (Fla. 1st DCA 1987); *Johnson v. State*, 501 So.2d 94 (Fla. 1st DCA 1987). Other jurisdictions have **held** as well that *pro se* pleadings **are** invalid when the defendant is **represented** by counsel. see 582 So.2d at 14.

The **defense** mistakenly contends that "[t]he **issue** in this case is what does the word 'both' means in our state constitution." (B 7). **Art. I, 1316, Fla. Const.** In *State v. Tait*, 387 So.2d 338 (Fla. 1980), this held in material part:

The guaranty of the Declaration of Rights of the Florida Constitution, that "[i]n all criminal prosecutions the accused . . . shall have the right . . . to be heard in person, by counsel, or both . . .," has been interpreted to include a qualified, not an absolute, right to self-representation. When the accused is represented by counsel, affording **him** the privilege of addressing the court or **the** jury in person is a matter for **the** sound discretion of the court.

Id., citing *Powell v. State*, 206 So.2d 47 (Fla. 4th DCA 1968); *Thompson v. State*, 194 So.2d 649 (Fla. 2d DCA 1967); in accord *Whitfield v. State*, 517 So.2d 23 (Fla. 1st DCA 1987); *Sheppard v. State*, 391 So.2d 346, 347 (Fla. 5th DCA 1980); *United States v. LaChance*, 817 F.2d 1491, 1498 (11th Cir.); *cert. denied*, 484 U.S. 928, 108 S.Ct. 295, 98 L.Ed.2d 255 (1987); *United States v. Tarantino*, 846 F.2d 1384, 1420 (D.C. Cir.), *cert. denied* 488 U.S. 840, 109 S.Ct. 108, 102 L.Ed.2d 83 (1983).

The defense is also incorrect in its assertion that the instant decision expressly and directly conflicts with the decision of this court in *Tait*. The issue in that case was whether the defendant had a right to proceed *at trial* as co-counsel. The instant case, on the other hand, was limited to the issue whether or not the defendant, who was represented by counsel, had a right to file *pretrial* pleadings while represented. These are two entirely separate, albeit related, issues. Even if one accepts that the same issues are involved, the holdings are consistent. This court approved the *Tait* trial court's **refusal** to permit the defendant to **proceed as** co-counsel during trial. The Fifth District upheld the striking of the *pro se* pleadings because the defendant was represented by counsel. Hence, both defendants were precluded from proceeding in hybrid fashion.

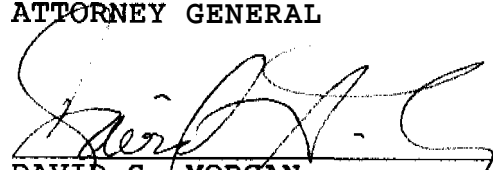
In short, this court should decline to exercise its discretionary jurisdiction because Florida courts have uniformly rejected constitutional claims of the sort advanced. Also, there simply is no conflict between this **case** and *Tait*.

CONCLUSION

This court should decline to exercise its discretionary jurisdiction in this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to Paolo G. Annino, Assistant Public Defender, 112-A Orange Ave. Daytona Beach, FL 32114, by interoffice delivery on this 9th day of September, 1991.



DAVID S. MORGAN
ASSISTANT ATTORNEY GENERAL