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IN THE SUPREME COURT OF FLORIDA

JAMES BROWN,

Petitioner,

v.

Case No.: 81,189

STATE OF FLORIDA,

Respondent.

_____ /

RESPONDENT'S BRIEF ON JURISDICTION

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RESPONDENT'S BRIEF ON JURISDICTION

Preliminary Statement

Respondent, the State of Florida, the prosecuting authority in the trial court and appellee below, will be referred to in this brief as the state. Petitioner, JAMES BROWN, the defendant in the trial court and appellant below, will be referred to in this brief as petitioner.

STATEMENT OF THE CASE AND FACTS

The state accepts petitioner's statement of the case and facts as reasonably supported by the record, with the following additions.

1. In its December 22, 1992, opinion, the First District held: "We reject appellant's argument that the subject statute is unconstitutional" Slip op. at 2.

2. On March 3, 1993, the state moved to strike petitioner's jurisdictional brief because it did not address the issue of jurisdiction and addressed only the merits. On March 4, 1993, this Court denied the motion to strike and the accompanying motion to toll time.

JURISDICTIONAL STATEMENT

The Supreme Court of Florida has jurisdiction to review a decision of a district court of appeal that expressly declares a state statute constitutional. Fla. Const. art. V, § 3(b)(3); Fla. R. App. P. 9.030(a)(2)(A)(i).

SUMMARY OF THE ARGUMENT

The instant decision does not expressly declare a state statute valid. Thus, this court should decline to exercise its discretionary jurisdiction in this matter.

ARGUMENT

ISSUE

WHETHER BROWN V. STATE, CASE NO. 91-2436
(FLA. 1ST DCA DEC. 22, 1992), EXPRESSLY
DECLARES A STATE STATUTE VALID.

The decision of the First District clearly shows that the court did not expressly declare a state statute valid. Rather, the court rejected petitioner's arguments on the constitutionality of section 893.13(1)(i).

Petitioner's brief contention¹ that the First District's rejection of his constitutionality arguments is an express declaration that section 893.13(1)(i) is constitutional might have had merit if made before the 1980 amendments to Fla. R. App. P. 9.030. Under the pre-1980 rule, a petitioner could invoke this Court's jurisdiction if a lower tribunal "inherently" declared a statute valid. Harrell's Candy Kitchen v. Sarasota-Manatee Airport Auth., 111 So.2d 439 (Fla. 1959). However, since 1980, the rule has required an express declaration:²

¹ Petitioner's jurisdictional argument is relegated to the issue heading and the first sentence of his brief. The rest of his brief is devoted to a merits discussion, and as such, should be disregarded by this Court pursuant to the express language of Fla. R. App. P. 9.120(d) (briefs on jurisdiction shall be "limited solely to the issue of the Supreme Court's jurisdiction . . .").

² The rule currently provides that the discretionary jurisdiction of the Supreme Court may be sought to review decisions of district courts of appeal that "expressly declare valid a state statute." Fla. R. App. P. 9.030(a)(2)(A)(i).

The pertinent language of section 3(b)(3), as amended April 1, 1980, leaves no room for doubt. This Court may only review a decision of a district court of appeal that *expressly* [declares a state statute constitutional]. The dictionary definitions of the term "express" include: "to represent in words"; "to give expression to." "Expressly" is defined: "in an express manner." *Webster's Third New International Dictionary*, (1961 ed. unabr.)

Jenkins v. State, 385 So.2d 1356, 1359 (Fla. 1980) (emphasis in original). See also Webster's Third New International Dictionary Expressly, at 803 (1981) ("in direct and unmistakable terms").

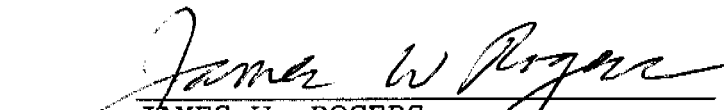
There can be no doubt that the only action taken by the First District in "unmistakable terms" was its rejection of petitioner's argument. That court in no way declared section 893.13(1)(i) to be valid "in direct and unmistakable terms."

CONCLUSION


Based on the above cited legal authorities and arguments, the state respectfully requests this Honorable Court to decline to exercise its discretionary jurisdiction in this matter.

Respectfully submitted,

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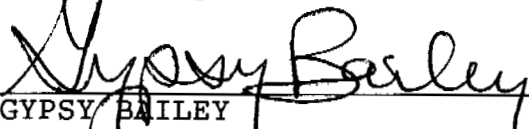
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been forwarded by U.S. Mail to P. DOUGLAS BRINKMEYER, Assistant Public Defender, Leon County Courthouse, Fourth Floor North, 301 South Monroe Street, Tallahassee, Florida 32301, this 4th day of March, 1993.


GYPSY BAILEY
Assistant Attorney General