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IN THE SUPREME COURT OF FLORIDA

BILLY TURNER,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

_____ /

Case No.: 81519
1st DCA Case No.: 92-406

RESPONDENT'S BRIEF ON JURISDICTION

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STATE OF FLORIDA,

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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, BILLY TURNER, 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.

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 TURNER V. STATE, 18 FLA. L.
WEEKLY D773 (FLA. 1ST DCA MARCH 16,
1993), 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 simply affirmed petitioner's conviction and sentence "[w]ith respect to [his] challenge to the constitutionality of section 893.13(1)(i)," Turner, 18 Fla. L. Weekly at D774, based on Brown v. State, 18 Fla. L. Weekly D173 (Fla. 1st DCA Dec. 30, 1992).¹

Petitioner's brief contention² that the First District's affirmance 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

¹ Brown is pending before this Court in case number 81,189.

² 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 . . .").

Further, petitioner's expansive merits discussion evinces no reason why this Court should exercise its discretionary jurisdiction. As noted in Brown, the statute is consonant with section 893.13(1)(e) (selling drugs within 1,000 feet of a school) and federal statutes on the same subjects.

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:³

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 ed.) ("in direct and unmistakable terms").

There can be no doubt that the only action taken by the First District in "unmistakable terms" was its affirmance of petitioner's conviction for selling cocaine within 200 feet of a public housing project, based on Brown. That court in no way declared section 893.13(1)(i) to be valid "in direct and unmistakable terms."

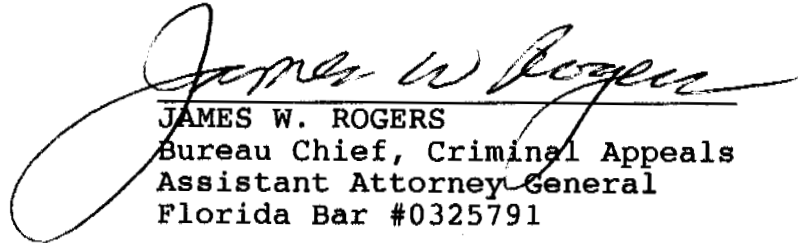
³ The rule currently provides that the discretionary jurisdiction of the Supreme Court may be sought to review decisions of district courts of appeal that "expressly declare valid a state statute." Fla. R. App. P. 9.030(a)(2)(A)(i).


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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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 8th day of April, 1993.



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