

D.A. 1-5-94

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CLERK, SUPREME COURT

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IN THE SUPREME COURT OF THE STATE OF FLORIDA

JAMES CUDA a/k/a JAY CUDA,

Petitioner,

vs.

CASE NO.: 82,203

STATE OF FLORIDA,

District Court of Appeal
5th District - No. 92-1950

Respondent.

PETITIONER'S REPLY TO RESPONDENT'S
BRIEF ON THE MERITS

FLEM K. WHITED, III
724 S. Beach Street, Suite 2
Daytona Beach, Florida 32114
(904) 253-7865

ATTORNEY FOR PETITIONER

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OTHER AUTHORITIES CITED:

Florida Statute 415.111(5) 1

ARGUMENT

In their Answer, the Respondents offer as justification for upholding s. 415.111(5) the following arguments:

1. Other states have passed similar laws, therefore, Florida's must be O. K..
2. The Fifth District was correct because
 - a. the common usage of the word "illegal" is the commission of a criminal act
 - b. any construction different from the one legislated by the Fifth District would be absurd and surely the legislature did not intend an absurd result.

The argument that other states have passed similar laws, therefore, the one passed in Florida is constitutional is so outrageous that it does not deserve a response.

Their reliance on the reasoning of the District Court is similarly misplaced. The Respondents and the District Court say that words that are not defined in the statute should be given their common meaning but then do not do it. As we argued in the Initial Brief, illegal has one general meaning "not authorized by law". Things that are not authorized by law can either result in criminal violations thus possible imprisonment or they may not and only subject the violator to civil penalties.

The construction given the statute by the District Court is the only one that could save the statute. In fact, just prior to holding "illegal" to mean an act that subjects one to criminal penalties the District Court said "The word 'illegal', in contrast, involves the more objective criteria of any behavior that is

proscribed by law."

Who can say the legislature intended this statute to apply only to violations of criminal laws in the use or management of an aged persons funds? Clearly the violation of any criminal law is going to subject the violator to criminal penalties. Why did we need a new law to say that? If this is what the legislature intended, then all the criminal laws now existing should cover the perceived problem.

The dictionary definition of illegal is the only one that is consistent with their legislative intent and that is what caused the problem. The only way to read the statute is to say that it prohibits any act that is improper or not authorized by law in the use or management of the persons funds. It is then vague beyond repair. See Locklin v. Pridgeon, 158 Fla. 737, 30 So.2d 102 (Fla. 1947) and State v. Rodriguez, 365 So.2d 157 (Fla. 1978).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand delivery to: Belle B. Turner, Assistant Attorney General, 210 North Palmetto Avenue, Suite 447, Daytona Beach, Florida 32114 on this 15th day of November, 1993.

By: 

FLEM K. WHITED, III
724 S. Beach Street, Suite 2
Daytona Beach, Florida 32114
(904) 253-7865
Florida Bar No.: 0271071