

IN THE SUPREME COURT OF FLORIDA

045

FILED

SID J. WHITE

JUN 20 1994

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

RONALD L. PETIT,

Petitioner,

v.

CASE NO. 83,698

STATE OF FLORIDA,

Respondent.

_____ /

ON DISCRETIONARY REVIEW FROM THE
FIFTH DISTRICT COURT OF APPEAL

AMENDED
RESPONDENT'S BRIEF ON JURISDICTION

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THIS COURT MAY EXERCISE ITS
DISCRETIONARY JURISDICTION TO REVIEW
THE PER CURIAM OPINION OF THE FIFTH
DISTRICT COURT OF APPEAL IN THE CASE
SUB JUDICE WHICH CITED B.H. V.
STATE, 622 SO. 2D 615 (FLA. 5TH DCA
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STATEMENT OF THE CASE

Respondent accepts Petitioner's Statement of the Case and Facts, but would add that Petitioner's date of birth is February 10, 1974. Petitioner was committed to HRS at Restrictiveness Level VI by order of the trial court dated March 9, 1992 in Volusia County Juvenile Court Case No. 91-0848 CJC. He left the "Volusia House", a Level VI residential juvenile commitment facility, without permission on September 16, 1992 resulting in the escape charge and conviction now under review.

SUMMARY OF ARGUMENT

B.H. V. State, Florida Supreme Court Case No. 82,361, orally argued before this Court last month, involves the identical issue raised in the instant case. Since the Fifth District Court of Appeal cited to its decision in B.H. in its per curiam affirmance of Petitioner's conviction and sentence and since the pertinent facts of the two cases are identical, this Court may choose to exercise its discretionary jurisdiction to review this case along with B.H. (Appendix -- Petit v. State, Fifth District Court of Appeal Case No. 93-247, Opinion filed April 8, 1994).

ARGUMENT

THIS COURT MAY EXERCISE ITS
DISCRETIONARY JURISDICTION TO REVIEW
THE PER CURIAM OPINION OF THE FIFTH
DISTRICT COURT OF APPEAL IN THE CASE
SUB JUDICE WHICH CITED B.H. V.
STATE, 622 SO. 2D 615 (FLA. 5TH DCA
1993), REVIEW PENDING FSC CASE NO.
82,361.

Petitioner correctly cites Jollie v. State, 405 So. 2d 418 (Fla. 1981), for the proposition that this Court may exercise its discretion to review a per curiam opinion of a District Court which cites as controlling authority another decision which is pending review in this Court. B.H. v. State, 622 So. 2d 615 (Fla. 5th DCA 1993), is presently under review by this Court in its Case No. 82,361.


In both the B.H. case and the instant case, the juveniles involved were adjudicated delinquent in 1992 and committed to "Volusia House" (a juvenile facility with a restrictiveness level VI) as designated by the Volusia County juvenile court judge. B.H. escaped on March 5, 1992 and Petitioner escaped on September 16, 1992. The dates of their commitments and escapes place them in the same category of juvenile delinquents -- those committed after October 1, 1990 (the effective date of Section 5, Chapter 90-208, Laws of Florida) who escaped prior to October 1, 1992 (the effective date of Section 13, Chapter 92-287, Laws of Florida). The pertinent facts and the legal issue in both of these cases are identical and this Court may choose to invoke its discretionary jurisdiction.

CONCLUSION

Based on the arguments and authorities presented herein, Respondent would suggest that this Court might exercise its discretion to review the decision of the District Court of Appeal in this case along with B.H.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

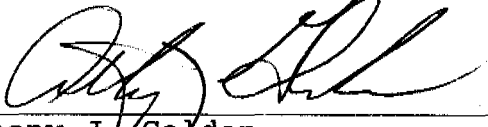


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Respondent's Brief on Jurisdiction has been delivered to Anne Moorman Reeves, Esquire, Office of the Public Defender, Counsel for Petitioner, 112 Orange Avenue, Suite A, Daytona Beach, Florida 32114, this 17th day of June, 1994.



Anthony J. Golden
Assistant Attorney General

APPENDIX

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JANUARY TERM 1994

NOT FINAL UNTIL THE TIME EXPIRES
TO FILE REHEARING MOTION, AND,
IF FILED, DISPOSED OF.

RONALD PETIT,

Appellant,

v.

CASE NO. 93-247

STATE OF FLORIDA,

Appellee.

Opinion filed April 8, 1994

Appeal from the Circuit Court
for Volusia County,
Gayle S. Graziano, Judge.

James B. Gibson, Public Defender, and
Anne Moorman Reeves, Assistant Public Defender,
Daytona Beach, for Appellant.

Robert A. Butterworth, Attorney General,
Tallahassee, and Anthony J. Golden,
Assistant Attorney General,
Daytona Beach, for Appellee.

PER CURIAM.

AFFIRMED.

See *B.H. v. State*, 622 So. 2d 615 (Fla. 5th DCA 1993).

HARRIS, C. J., COBB and GOSHORN, JJ., concur.

RECEIVED

APR 9 1994

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