

IN THE SUPREME COURT OF FLORIDA

CASE NO. 84,412

FILED

SID J. WHITE

OCT 10 1994

VINCENT ANTHONY SAIYA,

Petitioner,

-vs-

THE STATE OF FLORIDA,

Respondent.

CLERK, SUPREME COURT

By

Chief Deputy Clerk

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ON PETITION FOR DISCRETIONARY REVIEW

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RESPONDENT'S BRIEF ON JURISDICTION

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## INTRODUCTION

The Petitioner, VINCENT ANTHONY SAIYA, was the Appellant below. The Respondent, the STATE OF FLORIDA, was the Appellee below. The parties will be referred to as they stand before this Court. The symbol "A" will designate the Appendix to this brief.

STATEMENT OF THE CASE AND FACTS

The Respondent accepts the Petitioner's statement of the case and facts as a substantially accurate account of the proceedings below.

QUESTION PRESENTED

WHETHER THIS COURT SHOULD ACCEPT JURISDICTION  
HEREIN WHERE THE DISTRICT COURT SPECIFICALLY  
UPHELD THE VALIDITY OF SECTION 748.048(3),  
FLORIDA STATUTES.

SUMMARY OF THE ARGUMENT

The Fourth District held that Florida's Stalking Statute is constitutional. Although this Court has discretionary jurisdiction hereon, the State submits that this Court should not exercise it. By refusing jurisdiction, this Court will implicitly be affirming the Fourth District's holding herein.

ARGUMENT

THIS COURT SHOULD NOT ACCEPT JURISDICTION  
HEREIN WHEN THE DISTRICT COURT OF APPEAL  
SPECIFICALLY UPHELD THE VALIDITY OF SECTION  
748.048(3), FLORIDA STATUTES.

This Court has the discretionary jurisdiction to hear cases where the District Court specifically held a statute constitutional. Rule 9.030(2)(A)(i) Fla. R. App. P. However, the State submits that this Court should not exercise its jurisdiction herein. The Fourth District found the statute to be facially constitutional without detailing its reasoning. The reason for such an opinion is that the stalking statute does not suffer any infirmity. Therefore, the State submits that this Court should decline jurisdiction and by so doing this Court will implicitly be affirming the Fourth District.

The foregoing position is buttressed by the Third District's opinion in Pallas v. State, 636 So. 2d 1358 (Fla. 3d DCA 1994) whereat, in a detailed opinion, the Court held that the Stalking Statute is constitutional. Said opinions' analysis clearly establishes that the present attack on the Statute's constitutionality is spurious. As such, by not accepting jurisdiction herein, this Court will implicitly signal that the Fourth and Third District Courts' of Appeal are correct and the Statute is constitutional.



CONCLUSION

Based on the foregoing, Respondent requests this Court to decline to exercise its discretion and deny jurisdiction.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **RESPONDENT'S BRIEF ON JURISDICTION** was furnished by mail to **ANTHONY CALVELLO**, Attorney for Petitioner, Criminal Justice Building, 421 3rd Street, 6th floor, West Palm Beach, Florida 33401 on this 6 day of October, 1994.



MICHAEL J. NEIMAND  
Assistant Attorney General

mls/

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CASE NO. 84,412

VINCENT ANTHONY SAIYA,

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THE STATE OF FLORIDA,

Respondent.

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APPENDIX TO RESPONDENT'S BRIEF ON JURISDICTION

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94-130231-E

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT  
JULY TERM 1994

VINCENT ANTHONY SAIYA,  
Appellant,  
v.  
STATE OF FLORIDA,  
Appellee.

CASE NO. 93-2690.  
L.T. CASE NO. 93-2539 CF10A.

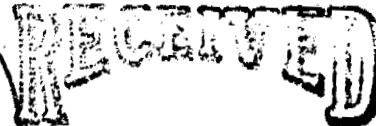
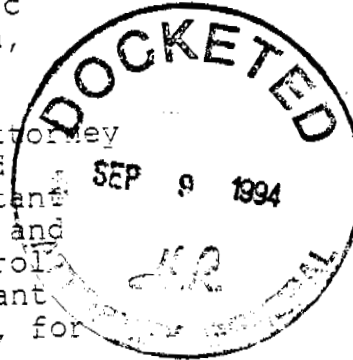
Opinion filed September 9, 1994

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

Appeal from the Circuit Court  
for Broward County; Stanton  
S. Kaplan, Judge.

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ATTORNEY GENERAL  
MIAMI OFFICE

PER CURIAM.

Affirmed. See State v. Kahles, No. 93-0957 (Fla. 4th DCA  
August 24, 1994); Blount v. State, No. 93-0461 (Fla. 4th DCA  
August 24, 1994); Kostenski v. State, No. 93-1630 (Fla. 4th DCA  
August 24, 1994); Pallas v. State, 636 So. 2d 1358 (Fla. 3d DCA  
1994); Bouters v. State, 634 So. 2d 246 (Fla. 5th DCA 1994),  
review granted, No. 83,558 (Fla. June 21, 1994).  
WARNER, POLEN, and FARMER, JJ., concur.

Handwritten initials