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CLERK, SUPREME COURT

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IN THE SUPREME COURT OF FLORIDA

PATRICE RATCLIFFE,

Petitioner,

vs.

DCA No. 93-04054

Case No. _____

STATE OF FLORIDA,

Respondent.

_____ /

DISCRETIONARY REVIEW OF DECISION OF THE
DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

BRIEF OF PETITIONER ON JURISDICTION

JAMES MARION MOORMAN
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

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784.048, Florida Statute 3
9.030 (a) (2) (A) (i), Florida Statute 3

STATEMENT OF THE CASE AND FACTS

The State Attorney for the Sixth Judicial Circuit, Pinellas County, Florida, filed an information charging Petitioner, Patrice J. Ratcliffe, with Aggravated Stalking. Petitioner subsequently filed a motion to dismiss based upon the unconstitutionality of the anti-stalking statute.

A hearing on petitioner's motion was held on June 21, 1993, before the Honorable Claire Luten, Circuit Judge. After hearing the argument of counsel, the court denied petitioner's motion to dismiss.

On October 25, 1993, appellant entered a plea of nolo contendere conditioned on the agreement that she would receive five years probation and a withhold of adjudication, plus reserving the right to appeal the denial of the motion to dismiss. The court imposed the agreed upon sentence.

On November 8, 1993, appellant filed a Notice of Appeal to the District Court of Appeal, Second District for review. On February 1, 1995, the Second District Court of Appeal issued its opinion affirming the decision of the lower court on the authority of State v. Tremmel, 664 So. 2d 102 (Fla. 2d DCA 1994). Petitioner has filed a Notice to Invoke Discretionary Review with the District Court of Appeal, Second District. Petitioner's Brief on Jurisdiction is now before this court.

SUMMARY OF THE ARGUMENT

The constitutionality of Florida's Anti-Stalking Statute has been challenged in numerous cases on both the trial and district court level. ¹ The question is now pending before this court. ²

¹ Pallas v. State, 636 So. 2d 1358 (Fla. 3d DCA 1994); Varney v. State, 638 So. 2d 1063 (Fla. 1st DCA 1994); State v. Kahles, 19 Fla. L. Weekly D1778 (Fla. 4th DCA August 24, 1994); State v. Tremmel, 664 So. 2d 102 (Fla. 2d DCA 1994); Steffa v. State, 19 Fla. L. Weekly D2438 (Fla. 2d DCA November 16, 1994).

² Bouters v. State, 634 So. 2d 246 (Fla. 5th DCA 1994), review granted 640 So. 2d 1106 (Fla. 1994).

ARGUMENT

This court has discretionary jurisdiction pursuant to 9.030

(a) (2) (A) (i) specifically:

- (a) Jurisdiction of Supreme Court
- (2) Discretionary Jurisdiction. The discretionary jurisdiction of the supreme court may be sought to review
- (A) decisions of district courts of appeal that
- (i) expressly declare valid a state statute;

The District Court's opinion cites to State v. Tremmel, 664 So. 2d 102 (Fla. 2d DCA 1994) as authority for its decision. In Tremmel, id. the Second District reversed a lower court determination that 784.048 Florida Statute was unconstitutional, finding instead that the statute was not subject to constitutional infirmities of vagueness, overbreadth nor violative of due process. This issue is currently pending before this court in cases from other districts, as well as, Tremmel.

CONCLUSION

As the question of the constitutionality of 784.048 Fla. Stat. is currently before this court, and this court has the discretionary jurisdiction to review decisions of district courts of appeal declaring valid a state statute, petitioner asks this court to grant discretionary review in this case.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy has been mailed to Michael Neimand, Assistant Attonrey General, 401 N.W. 2nd Avenue, Suite N921, Miami, FL and Patrice Ratcliffe, 6455 Mariana Drive, Pensacola, FL 32504 this 16th day of February, 1995.

Respectfully submitted,

JAMES MARION MOORMAN
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

Allyn Giambalvo

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APPENDIX

1. Opinion of the Second District Court of Appeal rendered on February 1, 1995.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

PATRICE RATCLIFFE,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

CASE NO. 93-04054

Opinion filed February 1, 1995.

Appeal from the Circuit Court
for Pinellas County, Claire K.
Luten, Judge.

James Marion Moorman, Public Defender,
Bartow, and Allyn Giambalvo, Assistant
Public Defender, Clearwater, for
Appellant.

Robert A. Butterworth, Attorney
General, Tallahassee, and Michael J.
Neimand, Assistant Attorney General,
Parker D. Thomson and Carol A. Licko,
Assistant Attorney Generals, Miami,
for Appellee.

PER CURIAM.

Affirmed. See State v. Tremmel, 644 So. 2d 102 (Fla.
2d DCA 1994).

PATTERSON, A.C.J., and BLUE and FULMER, JJ., Concur.