IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

vs.

ROBERT LEE DOZIER,

Respondent.

Case No. 86,956

RESPONDENT'S BRIEF IN OPPOSITION TO JURISDICTION

On petition for review from
The District Court of Appeal, Fourth District

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PRELIMINARY STATEMENT

Respondent was the defendant in the Criminal Division of the Circuit Court of the Nineteenth Judicial Circuit, In and For Indian River county, Florida and the appellant in the Fourth District Court of Appeal. Petitioner was the prosecution and the appellee below.

In the brief, the parties will be referred to as they appear before this Honorable Court. The following symbols will be used:

R = Record on Appeal

T = Transcript of pre-trial, trial, post-trial and sentencing proceedings

A = Appendix

STATEMENT OF THE CASE AND FACTS

Respondent was convicted of burglary of a structure [Count I] and petit theft [Count II] Respondent was sentenced as a habitual felony offender to ten years imprisonment [Count I] and to one year concurrent imprisonment [Count II] (R 4-5, 57, 74-80, T 217-218, 72-73, 232-234).

Prior to trial, during trial, and post trial, Petitioner unsuccessfully (R 32-39, 61-63, 68, 84-85, T 3, 13, 223-224) moved for and renewed motions to disqualify the trial judge, Honorable County Court Judge Joe A. Wild due to lack of jurisdiction.

On appeal, the Fourth District Court of Appeal reversed, finding the judicial assignment was unconstitutional and Petitioner's motion to disqualify should have been granted (A-1). On November 22, 1995, the District Court denied Petitioner's motions for rehearing and to stay mandate (A-5).

SUMMARY OF ARGUMENT

This Court should decline to exercise its jurisdiction in the instant case. The issue presented here is one which the district court was fully capable of answering and did answer. Unlike Dozier v. Wild, 659 So. 2d 1103 (Fla. 4th DCA 1995) review pending (Case No. 85,050 Fla. January 24, 1995) cited by Petitioner as a basis for jurisdiction, the Fourth District's decision at bar does not certify a question to be of great public importance. Hence there is no jurisdictional basis to review the decision in Respondent's case under Article V, Section 3(b)(4) of the Florida Constitution. This Court should therefore decline to accept jurisdiction in this case and instead allow the district court to function as it was intended, as a court of final appeal.

ARGUMENT

THIS COURT SHOULD NOT ACCEPT JURISDICTION HEREIN WHERE THE DISTRICT COURT OF APPEAL DOES NOT PASS UPON A QUESTION CERTIFIED BY IT IN THIS CASE TO BE OF GREAT PUBLIC IMPORTANCE.

This Court should not exercise its jurisdiction herein. The decision of the Fourth District Court of Appeal does not pass upon a question certified by it to be of great public importance. Article V, Section 3(b)(4), Florida Constitution; see also Fla. R. App. P. 9.030(a)(2)(A)(v). On this basis alone, jurisdiction should be denied.

Additional grounds to deny jurisdiction are present. In Lake v. Lake, 103 So. 2d 639 (Fla. 1958), this Court detailed the history of the creation of district courts of appeal and the resulting limits placed on this Court's jurisdiction to prevent the district court from "becoming way stations on the road to the Supreme Court." Id. at 641-642. Though the Lake court was addressing a different avenue to Supreme Court review[1], the theme behind the decision is applicable sub judice:

> They (district courts) are and were meant to be courts of final, appellate jurisdiction. Diamond Berk Insurance Agency, Inc. v. Goldstein, Fla., 100 So. 2d 420; Ansin v. Thurston, Fla., 101 So. 2d 808. If they are not considered and maintained as such the system will fail. Sustaining the dignity of decision of the district courts of appeal must depend largely on the determination of the Supreme Court not to venture beyond the limitations of its own powers by arrogating to itself the right to delve into a decision of a district court of appeal primarily to decide whether or not the Supreme Court agrees with the district court of appeal about the disposition of a given case.

Id. at 642.

Understandably, the loser in the district court wants one more shot, and requests certification. But as the Lake court noted,

> ...(W)hen a party wins in the trial court he must be prepared to face his opponent in the appellate court, but if he succeeds there, he should not be compelled the second time to undergo the expense and delay of another review.

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[1] The Court's power to accept jurisdiction by looking behind a per curiam affirmed decision, has of course since been limited by further constitutional amendment.

The requested review sub judice is nothing more than a second appeal but more importantly there is no necessity to preclude implementation of the district court decision. The legal issue in Dozier v. Wild, 659 So. 2d 1105 (Fla. 4th DCA 1995) review pending Wild v. Dozier, Case No. 85,050 (Fla. January 24, 1995) may well be resolved by this Court. Significantly, this Court postponed resolution of the jurisdictional issue in that case and ordering briefing and oral argument.[2]

Should this Court ultimately accept jurisdiction in Wild v. Dozier, supra, the legal question will be resolved in that case. In the interim, there is no necessity to preserve the status quo in the present cause. As a practical matter, Petitioner will suffer no harm should jurisdiction be denied.

This Court, which addresses the need for judicial manpower annually, has not certified the need for an additional judge in the circuit at issue since January 27, 1993. In Re Certification for Need For Additional Judges, 20 Fla. L. Weekly S100 (Fla. 1995); In Re: Certification of Need for Additional Judges, 631 So. 2d 1988 (Fla. 1994); In Re: Certification of Judgeships, 611 So. 2d 1244 (Fla. 1993); In Re: Certification of Judicial Manpower, 592 So. 2d 241 (Fla. 1992). Circuit Court Judge Charles E. Smith has been assigned to all felonies in Indian River County since 1995 (A-6-7). In light of the lack of certification of any additional need for manpower and the assignment of a circuit court judge to felonies is in the circuit in issue, there is a complete lack of showing that there is a greater need for judicial manpower in the Nineteenth Judicial Circuit than elsewhere in the State of Florida. On the contrary the District Court's decision in the present cause can be fully implemented.

While Petitioner would suffer no prejudice since the District Court's decision can be fully implemented without disruption to the administration of justice in the circuit at issue, Respondent would suffer should certification be granted. Respondent would remain incarcerated on the charge serving a ten year habitual offender sentence with the District Court

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[2] Respondent takes issue with Petitioner's erroneous assertion that this Court has "accepted jurisdiction" in Wild v. Dozier (Petitioner's Brief on Jurisdiction at 5).

has determined that he has the right to reversal of his felony conviction and sentence because the procedure below was unconstitutional. Respondent would never be able to remedy the loss of months or even years of time served unnecessarily should implementation of the District Court's decision be delayed. One of the primary goals of the 1989 revision of article V section 3 of the Florida Constitution was "to eliminate delay in the finality of appellate proceedings." England and Williams, Florida Appellate Reform One Year Later, 15 Fla. Bar Journal, 704 (Nov. 1981). Respondent therefore urges this Court to exercise its discretion by declining jurisdiction here.

CONCLUSION

Based on the foregoing arguments and the authorities cited therein, Respondent respectfully requests this Court to deny review.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished by courier to Melynda Melear, Assistant Attorney Generals, 1655 Palm Beach Lakes Boulevard, Suite 300, West Palm Beach, Florida 33401-2299 this 30th day of November, 1995.

Ellen Morris
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Counsel for Respondent