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FILED

IN THE SUPREME COURT OF THE STATE OF FLORIDA

SID J. WHITE

JAN 30 1997

Eric Ilkanic,
Petitioner,

vs.

City of Fort Lauderdale
and State of Florida,
Respondents.

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

Case No. 89 792

4th DCA No. 95-0169

PETITIONER'S BRIEF ON JURISDICTION

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statement of the Case

Petitioner was the appellee in the Fourth District Court of Appeal and the defendant in the County Court of the 17th Judicial Circuit in and for Broward County, Florida. Respondent, City of Fort Lauderdale, was the appellant in the Fourth District Court of Appeal and the prosecution in the circuit court. The trial court sua sponte declared unconstitutional the Civil Restitution Lien and Crime Victim's Remedy Act and the state appealed. The district court issued an opinion reversing the trial court and denied rehearing, The Notice to Invoke Discretionary Jurisdiction was timely filed.

The Petitioner, Eric Ilkanic, shall be referred to as "petitioner," The Respondent shall be referred to as "respondent." References to the Petitioner's Appendix shall be designated by the symbol "A."

statement of the Facts

The petitioner was arrested for trespass on February 3, 1995, and pled guilty on March 29, 1995. He was sentenced to forty-five days in the Fort Lauderdale City Jail, with credit for time served. The petitioner was not represented by counsel. The city moved for a civil restitution lien order in the amount of \$50.00 a day for each day of the petitioner's sentence. The trial court denied the city's motion and *sua sponte* declared unconstitutional the civil restitution lien act. (A 1)

The trial court declared unconstitutional the liquidated damages schedule and the incarceration assessment portion of the statute. The court held that "the liquidated damages of \$50.00 per day incarceration costs set forth in Section 5(2)¹ bears no rational relationship to actual costs of incarceration or other correctional costs." (A 2) The court further held that the statute violates equal protection because it is particularly onerous when applied to clients of the public defender, "as they are by definition indigent and it (the act) is designed to ensure that they remain indigent." (A 3) The trial court also found the statute to be unconstitutionally vague, Specifically, the court ruled:

The Act is unconstitutional for vagueness because of inherent contradictions and ambiguities within the law. For example, Section 5(2) states that "a convicted offender shall be liable to the State and its local subdivisions for damages and losses for incarceration costs and other correctional costs" and yet in section 5(2)(b) the Act states that "if the conviction is for an offense other than (sic) a capital or life felony, a liquidated damage amount of \$50.00 per day of the convicted offender's sentence shall be assessed against the convicted offender and in favor of the State or its local subdivisions without specifying whether such assessment shall be made only against those offenders who are incarcerated, The Act is unconstitutional due to vagueness because, while Section 5(2)(b) provides that \$50.00 per day incarceration costs be assessed against the offender and "in favor of the State or its local subdivision," the statute fails to provide a mechanism for payment of such assessment to the State or

¹ Said provision is now codified in section 960.293(2)(b) Fla.Stat. (1996).

its local subdivisions. . . . The Act is unconstitutional for vagueness because it does not define the circumstances under which the incarceration costs are to be imposed. The Act is unconstitutional for vagueness in that it distorts the definitions of “convicted” and “victims,” among others, so that neither word connotes its generally accepted meaning,

(A 4-5) The trial court also found the act unconstitutional because it violates the prohibition against excessive fines. (A 5) The city filed a notice of appeal.

The district court reversed the trial court and held “that a liquidated damage of \$50 per day, pursuant to subsection two, is reasonable compensation to the state for costs incurred in incarcerating convicted offenders and bears a reasonable relationship to the valid legislative purpose of alleviating the burden of incarcerating criminal offenders.” City of Fort Lauderdale v. Ilkanic, 21 Fla.L. Weekly (Fla. 4th DCA November 1, 1996) (A 7) The court also found that the petitioner had both actual and constructive notice of the state’s intent to seek costs and remanded the case for a determination of the petitioner’s ability to pay. Id. The court denied rehearing, but stayed issuance of its mandate pending this Court’s disposition of this case or of Nevels v. State, case no. 87,194, rev, 675 So, 2d 121 (Fla. 1996). (A 8) The petitioner filed a Notice to Invoke Discretionary Jurisdiction.

Summary of Argument

This Honorable Court has jurisdiction over the instant case pursuant to Article V, Section 3(b)(3) of the Florida Constitution. This section empowers the Court to review any decision of a district court which expressly declares valid a state statute. *Sub judice*, the Fourth District Court of Appeal reversed the trial court and expressly declared valid Florida Statute 960.07, et. seq. (1994).

Argument

Article V, Section 3(b)(3) of the Constitution of the State of Florida empowers this Honorable Court to review any decision of a district court which expressly declares valid a state statute. This Court has repeatedly accepted discretionary jurisdiction to review such decisions, Cuda v. State, 639 So. 2d 22 (Fla. 1994); Gilbreath v. State, 650 So. 2d 10 (Fla. 1995); Bouters v. State, 659 So. 2d 235 (Fla. 1995).

In addition, this Court has already accepted jurisdiction in a case challenging the constitutionality of the civil restitution lien act. In Nevels v. State, 20 Fla.L.Weekly (Fla. 2d DCA December 13, 1995), the district court held that the defendant had not preserved for appeal his challenge to the constitutionality of the statute, This Court granted review. Nevels v. State, 675 So. 2d 121 (Fla. 1996) However, should this Court **affirm** the district court, the constitutionality of the statute may not be addressed. Moreover, if this Court reverses the district court, it may simply remand the case for a determination on the merits. In the instant case, the Fourth District Court of Appeal expressly found constitutional Florida Statute 960.07 et. seq. Thus, this Court can adjudicate the constitutionality of the statute without any procedural obstacles.

It is important that the civil restitution lien act be reviewed by this Court. The statute

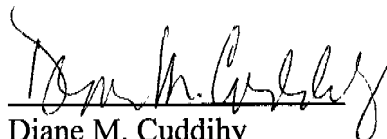
mandates the assessment of liquidated damages against persons convicted² of any crime. This assessment applies in cases regardless of whether the defendant is incarcerated and results in a windfall to the state and its local subdivisions. Furthermore, the statute does not provide a defendant an opportunity to contest the amount of damages. A defendant is thereby denied the procedural due process afforded civil litigants.

CONCLUSION

This Honorable Court has jurisdiction pursuant to Article V, Section 3(b)(3) of the Florida Constitution. Petitioner respectfully requests this Court to exercise its discretionary jurisdiction and accept this case for review.

Respectfully submitted,

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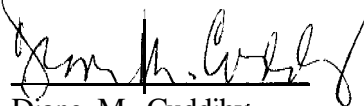


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² Section 960.291(3) defines a conviction as a “guilty verdict by a jury or judge, or a guilty or nolo contendere plea by a defendant, regardless of adjudication of guilt.” Section 960.291(3) Fla.Stat. (1996).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief was delivered by U.S. Mail to David M. Schultz, Assistant Attorney General, Department of Legal Affairs, 1655 Palm Beach Lakes Blvd, Suite 300, West Palm Beach, Fl., 33401, this 29th day of January, 1997.


Diane M. Cuddihy