

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,
Appellant/Petitioner,
v.
FORRESTINE SIMS,
Appellee/Respondent.

CASE NO. 91,073

FILED

SID J. WHITE

AUG 18 1997

CLERK, SUPREME COURT

AMENDED JURISDICTIONAL BRIEF OF APPELLANT/PETITIONER Clerk
[FORMERLY: "APPELLANT'S INITIAL BRIEF ON THE MERITS"]

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PRELIMINARY STATEMENT

On August 11, 1997, the State of Florida (State) filed its merits brief in this case, including a section on jurisdiction. However, it has come to the State's attention that a jurisdictional brief, as such, is required.

STATEMENT OF THE CASE AND FACTS

On June 23, 1997, the DCA denied the State's Petition for Writ of Certiorari, citing to another case currently pending in this Court, State v. Ellis, 22 Fla. L. Weekly D1298 (Fla. 1st DCA May 22, 1997). The DCA decision in the instant case is attached to this brief as Appendix A. The DCA decision in Ellis is attached as Appendix B.

Ellis declared Section 837.011(3), Fla. Stat., unconstitutional.

On July 22, 1997, the State filed in the DCA its Notice to Invoke Jurisdiction, resulting in this brief.

SUMMARY OF ARGUMENT

The State seeks review because the DCA, by citing to Ellis and upholding the trial court, declared a State statute invalid.

ARGUMENT

ISSUE: DID THE DCA DECLARE INVALID A STATE STATUTE?

The State seeks non-discretionary review because the DCA decision has "declar[ed] invalid a state statute," Art. V, §

3(b)(1), Fla. Const. Accord Fla. R. App. P.

9.030(a)(1)(A)(ii).

Even if the DCA had affirmed the trial court with no reasoning, this Court would have non-discretionary jurisdiction. In State v. Kirkland, 618 So.2d 230 (Fla. 2d DCA 1993), the entire reported DCA decision reads "Disposition: Aff." This Court held that it had non-discretionary jurisdiction:

We have consolidated for our review three cases in which district courts of appeal considered the constitutionality of section 893.13(1)(i), Florida Statutes (Supp.1990). See State v. Kirkland, 618 So.2d 230 (Fla. 2d DCA 1993); State v. Thomas, 616 So.2d 1198 (Fla. 2d DCA 1993); Brown v. State, 610 So.2d 1356 (Fla. 1st DCA 1992). Section 893.13(1)(i) imposes enhanced penalties on those who sell, purchase, manufacture, deliver, or possess controlled substances within 200 feet of a public housing facility. [footnote omitted]

Because the Second District found the statute unconstitutionally vague in Thomas and Kirkland,² we have mandatory jurisdiction based on article V, section 3(b)(1) of the Florida Constitution. ***

²[footnote in original] The Second District issued a per curiam opinion in Kirkland that affirmed the trial court on the basis of State v. Thomas, 616 So.2d 1198 (Fla. 2d DCA 1993). State v. Kirkland, 618 So.2d 230 (Fla. 2d DCA 1993).

Brown v. State, 629 So.2d 841, 842 (Fla. 1994). Brown is on point concerning jurisdiction. See also State v. Redden, 632 So.2d 68 (Fla. 1994), affirming on merits¹ Redden v. State, 641 So.2d 874 (Fla. 2d DCA 1993) ("Disposition: Aff."). A fortiori,

¹ Admittedly, there is some confusion in Redden because of the opinion's reference to "91-03496" as the Second DCA number in Redden, 632 So.2d 68.

here, unlike the DCA in Brown, the DCA indicated the reason why it was affirming the trial court.

Even without relying upon Brown, logic indicates this Court's jurisdiction. The DCA decision here reads "The Petition for writ of certiorari is denied. State v. Ellis, 22 Fla. L. Weekly D1298 (Fla. 1st DCA May 22, 1997)." (Appendix A) Because the only issue in Ellis was the constitutionality of Section 837.011(3), Fla. Stat. and because the sole reasoning for the decision in the instant case was Ellis, the DCA decision, on its face, here also struck down Section 837.011(3).

Alternatively, just as Jollie v. State, 405 So.2d 418, 421 (Fla. 1981), "grant[ed] review ... and quash[ed] the district court's decision," here the State seeks review and the quashing of a DCA decision. As in Jollie, review is appropriate because "a district court PCA opinion ... cite[d] as controlling a case that is pending review in ... this Court," Id. at 421.

Jollie based its jurisdiction upon a DCA decision that reads: "Affirmed. See Murray v. State (citation)." Id. at 419. Here, as indicated above, the DCA decision reads "The Petition for writ of certiorari is denied. State v. Ellis, 22 Fla. L. Weekly D1298 (Fla. 1st DCA May 22, 1997)." (Appendix A) Just as Jollie accepted jurisdiction because Murray v. State, 378 So.2d 111 (Fla. 5th DCA 1980) quashed 403 So.2d 417 (Fla. 1981), was pending before this Court when the DCA decided Jollie, here the State has requested jurisdiction because

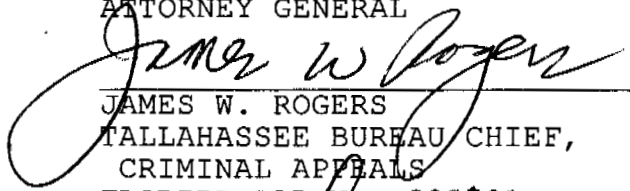
State v. Ellis is currently pending before this Court. A fortiori, here, unlike Jollie, Ellis, as a "decision[] of [a] district court[] of appeal declaring invalid a state statute," Art. V, § 3(b)(1), Fla. Const. Accord Fla. R. App. P. 9.030(a)(1)(A)(ii), involved non-discretionary jurisdiction, whereas review of Murray was based upon discretionary conflict jurisdiction, Art. V, §3(b)(3), Fla. Const.

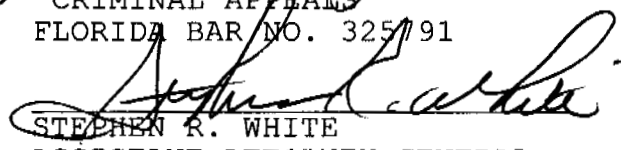
CONCLUSION

Based on the foregoing reasons, the State respectfully requests that this Honorable Court exercise jurisdiction and review the decision of the DCA.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing AMENDED JURISDICTIONAL BRIEF OF APPELLANT/PETITIONER and its Appendix have been furnished by U.S. Mail to Tom Fallis, Esquire, 343 East Bay Street, Jacksonville, Florida 32202, this 13th day of August, 1997.



Stephen R. White
Attorney for the State of Florida/
Appellant/Petitioner

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