

IN THE SUPREME COURT OF FLORIDA

045
FILED

CLERK OF THE

AUG 26 1997

CLERK, SUPREME COURT

Clara Raygo Clark

STATE OF FLORIDA,

Petitioner,

v.

CASE NO. 91,161

BRYAN JOSEPH RAYDO,

Respondent.

ON REVIEW FROM THE DISTRICT COURT OF APPEAL
FIRST DISTRICT OF FLORIDA

JURISDICTION BRIEF OF RESPONDENT

NANCY A. DANIELS
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

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IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

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CASE NO. 91,161

BRYAN JOSEPH RAYDO,

Respondent.

JURISDICTIONAL BRIEF OF RESPONDENT

Respondent, Bryan Joseph Raydo, requests this Court deny jurisdiction in this cause, and responds to the State's jurisdictional brief as follows:

STATEMENT OF THE CASE AND FACTS

Petitioner and Respondent are in general agreement as to the case and facts.

SUMMARY OF THE ARGUMENT

There are no grounds for jurisdiction. In response to Petitioner's brief:

Ground I: There is no conflict apparent on the face of the opinions.

Ground II: The lower appellate court did not construe the constitution to reach its decision. It applied the letter of the **law** contained in Section 90.410, Florida Statutes.

ARGUMENT

ISSUE

DOES THIS COURT HAVE GROUNDS FOR DISCRETIONARY
JURISDICTION IN THE CASE BEFORE IT? (RESTATED)

The First District Court of Appeal's well reasoned opinion should stand because it rests on state grounds, Article 1, section 16 of the Florida Constitution and Section 90.410, Florida Statutes. Ravdo v. State, 22 Fla. L. Weekly D1395a (Fla. 1st DCA June 2, 1997), p.3, n.2, cited hereafter as Opinion. As the 1st DCA noted, the Florida legislature has created a statute that supports its ruling, Section 90,410, Florida Statutes, provides that "[e]vidence of a . . . plea of nolo contendere . . . is inadmissible in any civil or criminal proceeding." Cited Opinion, p. 4. Furthermore, the opinion is not in conflict with other decisions in this state.

The Florida decisions the state argues are in conflict are distinguishable. In Parker v. State, 563 So. 2d 1130 (Fla. 5th DCA 1990), cause dismissed, 569 So. 2d 1280 (Fla. 1990), the defendant had been found guilty by a jury in a felony trial a few months earlier, and the trial court had deferred both adjudication and sentencing until after the trial which was the subject of the review. Parker at 1131. Here, there is no jury verdict, no finding of guilt--there is only a plea of nolo contendere without adjudication or sentencing, a totally different circumstance. Section 90.410 specifically covers nolo contendere pleas, but not jury verdicts. Additionally, in

Parker, the issue was not preserved, and here it was well preserved.

The state argues State v. Wilson, 509 So. 2d 1281 (Fla. 3d DCA 1987) as being in conflict, but again, the case relied on is distinguishable. In Wilson, a stabbing case, the issue involved a ruling in limine allowing impeachment of character witnesses concerning a specific act of violence--the defendant's stabbing to death of his wife twenty-five years prior to the trial. Here, it is the defendant himself who is to be impeached, not character witnesses as in Wilson. Here, there was a nolo plea without adjudication or sentencing, and in Wilson the issue was a specific and similar act of violence.

Additionally, Wilson relies on federal law--Lute v. United States, 469 U.S. 38, 41 (1989), and the First District followed state law. Even the reliance upon Luce is misplaced because it (and Wilson) involved character witnesses and here we are dealing with the testimony of the defendant himself, Wilson is not on point, there is no conflict.

Finally, the Lower Court did no more than apply the law to this case. Here, the Florida Legislature specifically addressed the matter in question and created a law stating that a plea of Nolo Contendere cannot be used in a criminal proceeding. Section 90.410, Florida Statutes. Thus, the state's remedy does not lie in review by this Court.

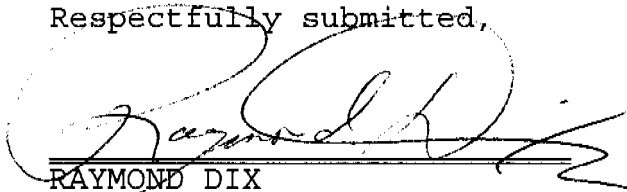
CONCLUSION

Respondent, Bryan Joseph Raydo, respectfully requests this Court to deny review of this matter for lack of jurisdiction.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by delivery to Carolyn J. Mosley, Assistant Attorney General, Criminal Appeals Division, The Capitol, Plaza Level, Tallahassee, Florida, 32301, on this 26th day of August, 1997.

Respectfully submitted,



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