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CLERK, SUPREME COURT
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IN THE SUPREME COURT OF FLORIDA

JAMES DONALD RAULERSON,

Petitioner,

v.

Case No. 91611

Fifth DCA Case No. 97-710

STATE OF FLORIDA

Respondent.

ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

JURISDICTIONAL BRIEF OF RESPONDENT

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Other Authorities

Art. V, § 3(b)(3), Fla. Const. 3
Section 322.34, Fla. Stat. (1995) 1,3,4
Fla.R.App.P. 9.030(a)(2)(A)(i) 3

STATEMENT OF FACTS

The facts of this case were set forth in the opinion of the district court as follows:

The defendant was charged with the offense of driving while his license was suspended in violation of section 322.34 of the Florida Statutes (1995). The state prosecuted the offense as a felony, relying upon the fact that the defendant had three prior convictions for the same offense. The defendant filed a motion to dismiss the charge, asserting that section 322.34(1) was unconstitutional. The trial court denied the motion, and the defendant thereafter entered a plea of *nolo contendere* after specifically reserving his right to appeal the denial of his dismissal motion. The trial court then adjudicated the defendant guilty of the felony offense of driving while license suspended and imposed sentence.

Raulerson v. State, 22 Fla.L.Weekly D2267 (Fla. 5th DCA September 26, 1997).

Determining that section 322.34 was constitutional, the district court affirmed Raulerson's judgment and sentence. Id. at D2267-69.

SUMMARY OF ARGUMENT

This Court should not accept jurisdiction of this case. While this Court does have discretion to accept jurisdiction of this case because the district court found the statute at issue to be constitutional, jurisdiction is not mandatory. The opinion of the district court addresses the constitutionality of the statute in a concise and accurate manner. As a result, this decision need not be reviewed by this Court.

ARGUMENT

THIS COURT SHOULD NOT ACCEPT
JURISDICTION OF THIS CASE.

The State contends that jurisdiction should not be accepted in this case where the district court determined that section 322.34, Fla. Stat. (1995) was constitutional.

This Court has jurisdiction under article V, section (3)(b)(3) of the Florida Constitution where a decision of the district court "expressly declares valid a state statute." However, this jurisdiction is discretionary pursuant to Fla.R.App.P. 9.030(a)(2)(A)(i), and jurisdiction is not warranted here.

Section 322.34 of the Florida Statutes plainly provides that:

(1) Any person whose driver's license or driving privileges has been canceled, suspended, or revoked as provided by law, . . . and who drives any motor vehicle upon the highways of the state while such license or privilege is canceled, suspended, or revoked, upon:

(a) A first conviction is guilty of a misdemeanor of the second degree, . . .

(b) A second conviction is guilty of a misdemeanor of the first degree, . . .

(c) A third or subsequent conviction is guilty of a felony of the third degree, . . .

* * * *

Thus, this statute clearly and unambiguously provides for enhanced

suspended, canceled, or revoked. This statute has not been declared unconstitutional by any appellate court.

The facts presented here show that Raulerson was convicted of his third or subsequent offense of driving with a suspended, canceled, or revoked license and thus, was guilty of a third degree felony. In so doing, the lower court simply applied the clear terms of the statute to Raulerson.

The district court then engaged in an ordinary, well-reasoned analysis of section 322.24 and affirmed Raulerson's judgment and sentence. As a result, there is no reason for this Court to exercise its jurisdiction to review this case any further.

CONCLUSION

Based on the foregoing argument and authority, the State respectfully requests that this Court decline to accept jurisdiction of this case.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

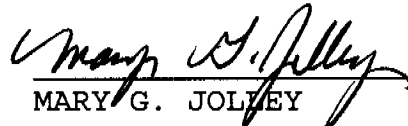


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing brief on jurisdiction has been furnished by delivery to Assistant Public Defender Kenneth Witts, counsel for petitioner, this 5th day of November, 1997.



MARY G. JOLLEY
COUNSEL FOR RESPONDENT