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CLERK, SUPREME COURT

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Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

ALBERT GLOSTER,
Petitioner,
v.
STATE OF FLORIDA,
Respondent.

CASE NO. 92,235

JURISDICTIONAL BRIEF OF RESPONDENT

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J

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PRELIMINARY STATEMENT

Respondent, the State of Florida, the Appellee in the District Court of Appeal (DCA) and the prosecuting authority in the trial court, will be referenced in this brief as Respondent, the prosecution, or the State. Petitioner, Albert Gloster, the Appellant in the DCA and the defendant in the trial court, will be referenced in this brief as Petitioner or proper name.

"PJB" will designate Petitioner's Jurisdictional Brief. That symbol is followed by the appropriate page number.

A bold typeface will be used to add emphasis. Italics appeared in original quotations, unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

The pertinent history and facts are set out in the decision of the lower tribunal, attached to the Petitioner's brief. It also can be found at 23 Fla. L. Weekly D32a.

SUMMARY OF ARGUMENT

Although the Petitioner ostensibly challenges the constitutionality of Section 322.34(1)(c), Fla. Stat., his arguments do not relate to the statute, but rather to the constitutionality of the concept of "withheld adjudication" under §948.01 (2), Fla. Stat. Therefore, it is submitted that the facial assertion of a challenge to the constitutionality of §322.34(1)(c) is insufficient to justify discretionary review.

ARGUMENT

ISSUE I

WHETHER THE COURT SHOULD ACCEPT JURISDICTION TO
REVIEW THE CONSTITUTIONALITY OF SECTION
322.34(1)(c), FLA. STAT. (Restated)

Jurisdictional Criteria

Petitioner contends that this Court has jurisdiction pursuant to Article V, §3(b)(3), Fla. Const., providing for review of District Court rulings on the constitutionality of a Florida Statute. While it is true that the First District rejected the petitioner's challenge to the constitutionality of §322.34(1)(c), Fla. Stat., it is submitted that this action does not compel review. In this case, the constitutionality of §322.34 was upheld because the challenge to the statute was based upon a fundamentally flawed premise which overlooked the actual statute in question, §948.01, Fla. Stat.

It is submitted that this Court, in considering whether to grant discretionary review, can look to this finding by the District Court. It is further submitted that the issue of whether withheld adjudications render criminal statutes unconstitutional is essentially moot.

Jurisdiction should not be accepted.

The petitioner alleges that §322.34(1)(c) is "unconstitutional" under a separation of powers theory and a claim that the statute is "vague" since the petitioner has no "certainty" regarding his possible fate.

Discretionary review should not be granted on the assertion that the "separation of powers" clause is violated simply because courts have the authority to enter withheld adjudications. The claim is moot, see Wooten v. State, 332 So.2d 15 (Fla. 1976), and reflects a continuing cognitive inability on petitioner's part to distinguish between a judgment and a statute. Indeed, the challenge to the constitutionality of §322.34(1)(c), being nothing more than a complaint that a "withheld adjudication is possible", is actually a challenge to the constitutionality of an entirely different statute (§948.01). There is no authority for the proposition that "withheld adjudications" are a Legislative function, or that the rendition of a "withheld adjudication" in a particular case is a legislative act.

The petitioner goes on, however, to assert that he will argue that the statute in question (§322.34) is unconstitutionally "vague". According to Mr. Gloster, the statute is "vague" because he might receive the benefit of a withheld adjudication rather than a conviction. This alleged "uncertainty" as to result, he claims, fails to give him sufficient "notice". Again, it is suggested that review should not be granted since this claim, once again, challenges the concept of withheld adjudications rather than the statute outlawing Driving on a Suspended or Revoked License. Furthermore, the crime of "DWLS" is clearly defined by the statute and it does not involve a constitutionally protected activity. Thus, the petitioner's reliance upon Bouters v. State, 659 So.2d 235 (Fla. 1995), is misplaced. Cf. State v. Muller, 693 So.2d 976

(Fla. 1997) (Bouters inapplicable to vagueness challenge not based upon constitutionally protected conduct).

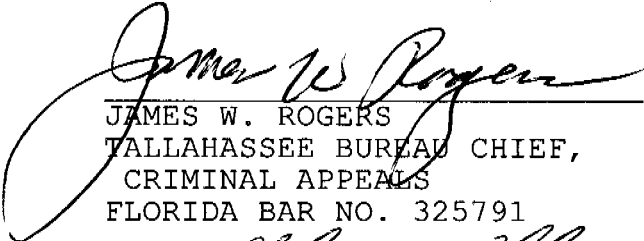
In sum, the Petitioner's claims regarding the DWLS statute are misdirected, since they actually challenge the ability of courts to enter "withheld adjudications" in any criminal case. See Wooten, supra. Review should not be granted on this moot point.


CONCLUSION

Based on the foregoing reason, the State respectfully requests this Honorable Court decline to exercise jurisdiction.

Respectfully submitted,

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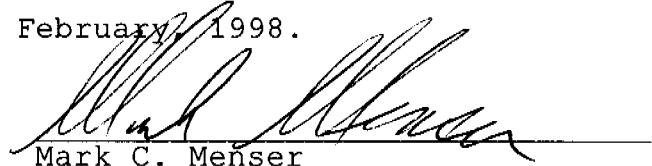

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing JURISDICTIONAL BRIEF OF RESPONDENT has been furnished by U.S. Mail to Glen P. Gifford, Esq., Assistant Public Defender, Leon County Courthouse, Suite 401, 301 South Monroe Street, Tallahassee, Florida 32301, this 17 day of February, 1998.


Mark C. Menser
Assistant Attorney General

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