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PRELIMINARY STATEMENT

Petitioner was the defendant in the Criminal Division of the Circuit Court of the Seventeenth Judicial Circuit, In and For Broward County, Florida, and the appellee in the District Court of Appeal, Fourth District. Respondent was the prosecution and appellant in the lower courts. The parties will be referred to as they appear before this Court.

STATEMENT OF THE CASE AND FACTS

Petitioner, Michael Keirn, was charged by information with felony driving while license suspended (DWLS) in violation of section 322.34(1)(c), misdemeanor possession of marijuana, and misdemeanor driving under the influence of alcohol (R 3-4). The first count alleged that petitioner had been convicted two prior times for driving while license suspended (R 3).

In the trial court, petitioner filed a motion to dismiss the DWLS charge, arguing that section 322.34 contained an unconstitutional delegation of legislative power to the trial court to declare a third offense a felony or misdemeanor by the adjudication or withhold adjudication of guilt (R 21-26). The trial court granted the motion (R 38).

Respondent appealed to the Fourth District Court of Appeal. On May 6, 1998, the district court held that the statute was constitutional and based its decision on the definition of conviction. The court held that a conviction under section 322.34 occurs after a final disposition of a case, as a result of a trial or a plea, regardless of whether the court withholds adjudication or adjudicates the defendant, unless the disposition is pursuant to section 318.14(10), Florida Statutes (1995). See Appendix.

Petitioner filed notice to invoke discretionary jurisdiction on May 26, 1998.

SUMMARY OF THE ARGUMENT

The decision of the Fourth District Court of Appeal expressly declares valid section 322.34(1) Florida Statutes (1995). This Court has discretionary jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030(a)(2)(A)(i). Additionally, this Court has accepted jurisdiction in Raulerson v. State, Case no. 91,611, and Gloster v. State, Case No. 92,235. In those cases the district courts of appeal rejected the same challenge to the statute, but reached its decisions on different grounds.

ARGUMENT

POINT

THE DISTRICT COURT'S OPINION IN THIS CASE EXPRESSLY HOLDS VALID A FLORIDA STATUTE, GIVING THIS COURT DISCRETIONARY JURISDICTION.

The decision of the Fourth District Court of Appeal expressly declares valid section 322.34(1) Florida Statutes (1995). This Court has discretionary jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030(a)(2)(A)(i). In the last sentence of the opinion the court wrote, "[w]e hold that section 322.34(1)(c) is constitutional and reverse the trial court's order of dismissal. State v. Keirn, 23 Fla. L. Weekly D1144, 1147 (Fla. 4th DCA May 6, 1998).

The identical issue has been decided by other district courts of appeal. This Court has accepted jurisdiction in Raulerson v. State, Case no. 91,611, and Gloster v. State, Case No. 92,235. In those cases, as in petitioner's, the district courts of appeal rejected the same challenge to the statute, but reached its decisions on different grounds.

This Court should exercise its discretion and entertain the case on its merits. The importance of the issue has been demonstrated by the numerous cases in which it has been raised, and by this court's decision to accept review in the cases from the

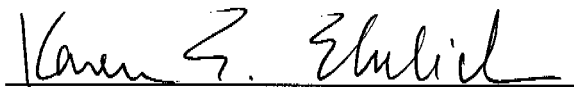
first and fifth districts. In addition to petitioner's case, there are numerous other cases that have the same issue pending in the fourth district. This Court's review of petitioner's case would ensure uniformity on this issue.

CONCLUSION

Based on the foregoing Argument and the authorities cited therein, Petitioner respectfully requests this Honorable Court to exercise discretionary jurisdiction over this case.

Respectfully submitted,

RICHARD JORANDBY
Public Defender
15th Judicial Circuit of Florida
Criminal Justice Building
421 Third Street\6th Floor
West Palm Beach, Florida 33401
(561) 355-7600



KAREN E. EHRLICH
Assistant Public Defender
Florida Bar No. 724221

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to Denise Calegan, Assistant Attorney General, 1655 Palm Beach Lakes Blvd, Third Street, West Palm Beach, Florida 33401 by courier this 2nd day of June, 1998.



Attorney for Michael Keirn