

IN THE SUPREME COURT OF FLORIDA

**FILED**

SID J. WHITE

OCT. 20 1998

CLERK, SUPREME COURT

By \_\_\_\_\_  
Chief Deputy Clerk

**RENIEL SANTIAGO,**

**Petitioner/Appellee,**

vs.

**Case no. 93, 822**

**DCA no. 96-2818**

**STATE OF FLORIDA,**

**Respondent/Appellant.**

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**Discretionary Appeal from the Fourth District Court of Appeal**

**JURISDICTIONAL BRIEF OF PETITIONER**

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**For Reniel Santiago**

**Certificate of Interested Persons**

The undersigned counsel for the Petitioner, Reniel Santiago, hereby certifies that the following persons and entities have or may have an interest in the outcome of this case.

Amy Ardman - Assistant State Attorney

Denise Calegan - Assistant Attorney General

Honorable Stanton S. Kaplan -presiding judge

Reniel Santiago - Petitioner

Michael J. Satz - State Attorney

H. Dohn Williams Jr. - Petitioner's trial and appellate counsel

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## STATEMENT OF THE CASE AND FACTS

The Petitioner, Reniel Santiago (Santiago), was charged with the felony offense of driving with a suspended license contrary to s. 322.34(1)(c), Fla. Stat. (1995). The trial court granted Santiago's motion to dismiss on the grounds the statute was unconstitutional. The State appealed. On July 29, 1998, the Fourth District Court of Appeal issued an opinion declaring the statute constitutional; thereby reversing the trial court's order. On August 25, 1998, Santiago filed his notice to invoke the discretionary jurisdiction of this Court.

In November 1995, Santiago was stopped for the traffic infraction of speeding. A records check revealed Santiago had a suspended license. He was arrested for the offense of driving on a suspended license. An Information was filed charging Santiago with the offense of driving with a suspended license. Effective the month before (October 1, 1995), the driving with a suspended license statute was amended to provide, "... (a) third or subsequent conviction, is guilty of a felony of the third degree..." s. 322.34(1)(c), Fla. Stat. (1995). The Information charged that Santiago had two prior convictions for the offense of driving on a suspended license. For purposes of his motion to dismiss, it was stipulated that he had two prior "adjudications of guilt" (convictions) of the offense of driving with a suspended license. Based on this stipulation, the trial court considered Santiago's

challenge to the statute, and found it unconstitutional.

### **SUMMARY OF ARGUMENT**

Santiago contends that the statute requires three adjudications of guilt (convictions) for the conduct to be punishable as a felony. However, the statute does not mandate an adjudication of guilt each time an offender is sentenced after trial, or pleads guilty or nolo contendere to the offense. In other words, unlike the DUI statute that mandates an adjudication of guilt, this statute allows the trial court to withhold adjudication of guilt, which means a violator can avoid a "conviction." Santiago contends that by being able to withhold adjudication of guilt (conviction), the trial court, in exercising this discretion, has the unbridled discretion to make a violator's conduct a felony or a misdemeanor. This unbridled discretion is an unconstitutional delegation of power, because it is the legislature that determines whether unlawful conduct will be a misdemeanor or a felony.

### **JURISDICTIONAL STATEMENT**

The Florida Supreme Court has discretionary jurisdiction to a review a decision of a district court of appeal that expressly declares a state statute valid. Article V, Section 3 (b) (3) of the Florida Constitution, and Fla.R.App. 9.030(a)(2)(A)(i).

## **ARGUMENT**

### **IN DECLARING THE STATUTE CONSTITUTIONAL, THE DISTRICT COURT'S DECISION CONFLICTS WITH AND EMASCULATES OTHER DECISIONS AND RULES INTERPRETING THE TERM "CONVICTION."**

In declaring the statute unconstitutional, the District Court held the term "conviction" does not require an adjudication of guilt. Santiago opines that when a criminal statute is susceptible to more than one meaning, the statute must be construed in favor of the accused.

In this case, when the legislature substantially amended the driving with a suspended license statute, it sought to enact a statute that provided for progressively harsher sentences, and that escalated the severity of the offense from a second degree misdemeanor, to a first degree misdemeanor, to a third degree felony for a third "conviction." However, unlike the DUI statute, the statute has no mandatory "adjudication of guilt" (conviction); so, the trial court may withhold adjudication of guilt. The District Court says no matter, because the term "conviction" means a disposition, regardless whether adjudication of guilt is withheld; so, it does not matter whether adjudication of guilt of guilt is withheld.

The statute provides, "a third or subsequent conviction is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084."

The statute does not define the term "conviction;" it does not prohibit the withholding of adjudication of guilt, like the DUI statute; and it does not contain all-encompassing language, such as, "(b)eing convicted or found guilty, regardless of adjudication."

Past case law, statutes and court rules have established a common understanding in Florida jurisprudence that the term "conviction" means an adjudication of guilt. The case law interpreting the offense of possession of a firearm by a "convicted" felon, defines the term to mean an adjudication of guilt; an offender who has received a withheld adjudication is not a "convicted" felon. Castillo v. State, 590 So.2d 458 (Fla. 3<sup>rd</sup> DCA 1991); U.S. v. Gispert, 864 F.Supp. 1193 (S.D. Fla. 1994) (judgment of acquittal granted for the offense of possession of a firearm by a convicted felon; the defendant was not adjudicated guilty of the prior felony offense, and under Florida law a "conviction" requires an adjudication of guilt); U.S. v. Lester, 785 F.Supp. 976 (S.D. Fla. 1991) (the court held that a plea of nolo contendere, with adjudication withheld, in a prior Florida proceeding is not a "conviction" for purposes of the Federal Firearms Statute, relating to possession of a firearm by a convicted felon); U.S. v. Thompson, 756 F.Supp. 1492 (N.D. Fla. 1991) ["(u)nder Florida law, a nolo plea, with adjudication withheld, was not equivalent to a conviction].



The DUI statute avoids the problem raised by this appeal, because it works in conjunction with a related statute, which provides, “(n)otwithstanding the provisions of s. 948.01, no court may suspend, defer, or withhold adjudication of guilt or imposition of sentence for any violation of s. 316.193...” s. 316.656(1), Fla. Stat. (1995).

The Florida sentencing guidelines statute defines “conviction” to mean, “a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld.” s. 921.0011(2), Fla. Stat. (1993). If the common perception were that a “conviction” was merely a disposition, the definition would not include the additional language, “regardless of whether adjudication is withheld.”

Rule 6.560, titled, “Conviction of Traffic Infraction,” provides, “(a)n admission or determination that a defendant has committed a traffic infraction shall constitute a **conviction** as that term is used in Chapter 322, Florida Statutes, and section 943.25, Florida Statutes, **unless adjudication is withheld.**” Rule 6.291(d), titled “convictions,” provides, “(e)lections under section 318.14(10), Florida Statutes, **when adjudication is withheld, shall not constitute convictions** as that term is used in chapter 322, Florida Statutes.” (emphasis added)

Whether it be case law, statutes or court rules, the term "conviction" means

adjudicated guilty.

**CONCLUSION**

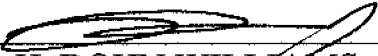
This Court has discretionary jurisdiction to review the decision below. This Court should exercise that jurisdiction to consider the merits of Santiago's argument.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing was mailed and/or hand-delivered and/or faxed on the 22 day of September, 1998, to:

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