

FILED

SID J. WHITE

OCT 22 1994

CLERK SUPREME COURT
By [Signature]
Chief Deputy Clerk

IN THE SUPREME COURT OF THE STATE OF FLORIDA

Case No: 93,801

State of Florida

Petitioner,

vs.

Era Gregersen,

Respondent.

RESPONDENT'S BRIEF

Law Offices of Neal R. Lewis
II Datan Center - Suite 1609
9130 S. Dadeland Boulevard
Miami, Florida 33156
Telephone: (305) 254-2285
Florida Bar No: 249599
Attorney for Respondent

TABLE OF CONTENTS

TABLE OF CITATIONS ii

REQUEST TO ADOPT COMPANION BRIEFS iii

SUMMARY OF THE ARGUMENT iv

ARGUMENT 1

The Court of Appeal for the Fourth District, properly determined that Coram Nobis is the appropriate remedy for a non-custodial defendant as was found in the instant case.

CONCLUSION 2

CERTIFICATE OF SERVICE 3

ADOPTION OF BRIEFS

Respondent, ERA GREGERSEN, respectfully requests this Court consider the briefs of Appellants from their denial of the Writ of Coram Nobis in the Third District Court of Appeal as if filed on behalf of the Respondent. The Appellant's briefs have been submitted to this Court in its exercise of conflict jurisdiction upon certification. The same are requested to be adopted on behalf of your Respondent in as much as they do not conflict with the instant brief.

TABLE OF AUTHORITIES

Hellman v. State, 371 So.2d 482 (Fla. 1971) 1

Nickels v. State, 98 So. 508 (Fla. 1923) 1

Peart v. State, 705 So.2d (3rd D.C.A. 1998) 1

SUMMARY OF THE ARGUMENT

In her appeal, Respondent ERA GREGERSEN, raised the issue of whether the proper procedure to obtain relief from a factual determination upon discharge from custody by way of Writ of Coram Nobis was appropriate. The trial court determined that the writ was not the permitted procedure and that the doctrine of laches applied. On appeal, the Fourth District Court of Appeal determined that the writ was the only means by which the respondent could proceed. The Court found, however that the doctrine of laches barred her from obtaining relief.

The only issue for determination is whether the appellate court ruled correctly in finding that the Writ of Coram Nobis was the vehicle under which relief could be sought. It is respondent's position that the appellate court ruled correctly on this issue. As there is conflict in the jurisdictions, this issue is ripe for resolution.

I. THE ISSUE AS TO WHETHER
CORAM NOBIS APPLIED TO
RESPONDENT WAS PROPERLY
DETERMINED BY THE
APPELLATE COURT.

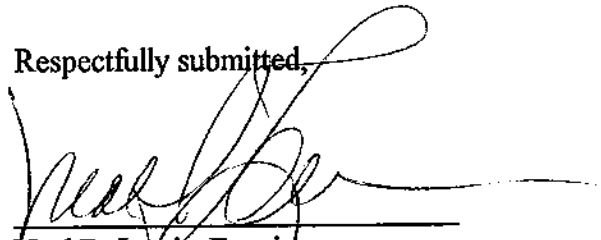
This Court has previously been asked to consider the use of the Writ of Coram Nobis in an instance when, as in this case, the prisoner is no longer in custody, (Hellman v. State, 371 So.2d 482, (Fla. 1971)). While the State has now alleged new issues and where there is nothing to substantiate the new issues on appeal, the same are not being addressed in this brief. As to the sole issue for review, the appellate court, in its ruling reached the heart of the matter based upon existing case law and found that respondent, Era Gregersen, had properly raised the issue by way of this writ. Nickels v. State, 98 So. 502 (Fla. 1923). In making its determination, the appellate court determined that the plea, as a matter of fact, was entered in error. Although the case of Peart v. State, 705 So.2d 1059 (3d D.C.A. 1998), found contrary, no reference to Nickels v. State, *supra*, was made by the Third District in its determination. Under *stare decise*, as no change in statute or law has occurred to negate this writ, the viability of Coram Nobis remains in tact.

Respondent also relies upon and requests the Court to consider as adopted, the briefs of the appellants from the denial of their appeals by the Third District Court of Appeals, in so far as the same do not conflict with this brief, including Peart v. State, *supra*.

CONCLUSION

For the above and foregoing reasons, the Fourth District Court of Appeals correctly applied the law to the Respondent with respect to the law as it now exists. While the legislature may be free to change the same, unless or until it does, the Writ of Coram Nobis remains a remedy in cases such as this.

Respectfully submitted,


A handwritten signature in black ink, appearing to read "Neal R. Lewis", is written over a horizontal line. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Neal R. Lewis, Esquire
II Datan Center - Suite 1609
9130 S. Dadeland Boulevard
Miami, Florida 33156
Telephone (305) 254-2285
Fl. Bar No. 249599
Attorney for Respondent Gregersen

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief of the Respondent was mailed, postage pre-paid this 19th day of October, 1998 to :

Sarah B. Mayer, Esquire
Office of the Attorney General
1655 Palm Beach Lakes Boulevard
Suite 300
West Palm Beach, Florida 33401



Neal R. Lewis, Esquire