

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v.

DEBRA WRIGHT,

Respondent.

CASE NO. 95,749

PETITIONER'S REPLY BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

Petitioner, the State of Florida, the Appellant in the First District Court of Appeal and the prosecuting authority in the trial court, will be referenced in this brief as Petitioner, the prosecution, or the State. Respondent, Debra Wright, the Appellee in the First District Court of Appeal and the defendant in the trial court, will be referenced in this brief as Respondent or his proper name.

The record relied upon below is set forth in the appendix attached to the Petitioner's Initial Brief; the Petitioner readopts the designation thereto as used in that Brief. "AB" will designate Respondent's Answer Brief, followed by any appropriate page number.

All emphasis through bold lettering is supplied unless the contrary is indicated.

CERTIFICATE OF FONT AND TYPE SIZE

Counsel certifies that this brief was typed using Courier New 12.

STATEMENT OF THE CASE AND FACTS

The Petitioner readopts the statement of the case and facts as set forth in the Initial Brief.

SUMMARY OF THE ARGUMENT

Due to the brevity of the argument presented, no summary of the argument is presented.

ARGUMENT

ISSUE I

WHETHER THE DISTRICT COURT ERRED IN AFFIRMING THE TRIAL COURT'S ORDER DISMISSING A COUNT CHARGING THE DEFENDANT WITH TRAFFICKING IN HYDROCODONE WHEN F.S. 893.135(1)(c)(1) IS VIOLATED BY THE POSSESSION OF FOUR OR MORE GRAMS OF ANY MIXTURE CONTAINING HYDROCODONE?

In her answer brief, the Respondent contends that the First District Court of Appeal was bound by its decision in State v. Holland, 689 So.2d 1268 (Fla. 1st DCA 1997). This contention implies that a District Court of Appeal is forever bound by its own ruling on an issue regardless of the correctness of that prior ruling. District Courts of Appeal are certainly bound by decisions of this Court on the same question of law. Hoffman v. Jones, 280 So.2d 431 (Fla. 973) (district courts of appeal may state their reasons for advocating that the Supreme Court recede from established precedent, but are bound to follow such precedent until overruled). However, they are not bound to follow ruling of other sister courts, as evidenced by the conflict existing in this case, nor are their own decisions etched in stone. This is particularly true where their own prior decisions are based upon an erroneous reading of the statute, violations of principles of statutory construction and are, in fact, inconsistent with rulings of this Court dealing with imposition of enhanced penalties for possession of drugs containing mixtures of controlled substances.

As held by this Court in Smith v. Department of Insurance, 507 So.2d 1080, 1096 (Fla. 1987),

Perpetuating an error in legal thinking under the guise of stare decisis serves no one well and only undermines the integrity and credibility of the Court. This is true whether the prior decision dealt with a common law rule, a question of statutory construction, or an issue of constitutional interpretation.

Thus, the correct approach for the district court to do in this case would have been to reexamine its position in light of the conflicting decisions from other districts to determine if it should recede from Holland. The State maintains, of course, that it should have receded from Holland.

The Respondent in this case does not address **any** of the arguments presented by the Petitioner which show the error of the lower court's ruling and she offers this Court no argument whatsoever in support of her conclusion that "[t]he reasoning of the First District is preferred over that of the Fifth." (AB, 8). Presentation of such an unsupported conclusion by the Respondent as in this case, can only be deemed a recognition of the ultimate correctness of the State's position.

CONCLUSION

Based on the foregoing discussion and the discussion in the Initial Brief, the State respectfully submits that this Court should reverse the lower court in this case, overrule Holland and adopt the rationale of Fifth and Fourth District Courts of Appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing PETITIONER'S REPLY BRIEF ON THE MERITS has been furnished by U.S. Mail to P. Douglas Brinkmeyer, Esq., Assistant Public Defender, Leon County Courthouse, Suite 401, 301 South Monroe Street, Tallahassee, Florida 32301, this _____ day of July, 1999.

Giselle Lysten Rivera
Attorney for the State of Florida

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