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IN THE SUPREME COURT OF FLORIDA

ROGER D. CHURCHILL, JR.,

Petitioner, CASE NO.: SC16-654

vs.

STATE OF FLORIDA, L.T. Case No.: 5D14-1081

Respondent.

_____/

PETITIONER'S REPLY BRIEF

On Discretionary Review from the District Court of Appeal,
Fifth District, State of Florida

EAKIN & SNEED

ROCCO J. CARBONE, III

599 Atlantic Boulevard, Suite 6
Atlantic Beach, Florida 32233
Telephone: (904) 247-6565
Email: rocco.carbone@comcast.net
Florida Bar No. 0095544
Attorney for Petitioner

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PRELIMINARY STATEMENT

Petitioner, ROGER D. CHURCHILL, JR., will be referred to herein by name or as "Petitioner." Respondent, State of Florida, will be referred to herein by name or as "Respondent." References to the record on appeal will be designated by reference to the record on appeal page number, as set forth in parentheses. Petitioner's initial brief will be referenced by the abbreviation I.B. followed by the page number. Respondent's answer brief will be referenced by the abbreviation R.A.B. followed by the page number.

SUMMARY OF REPLY ARGUMENT

Petitioner was informed by his trial counsel, the Assistant State Attorney, the trial judge and his appellate counsel the issue he was appealing was dispositive. The Fifth District disagreed. In essence, due the Fifth District's dismissal of the Petitioner's appeal, there are two issues before this Court: First, may an appellate court reject a clear stipulation of dispositiveness between the parties, that was clearly accepted by the trial judge, regarding a legal issue the parties believe would end the case; and second, if an appellate court rejects this stipulation, what is the proper remedy for a defendant who believed the issue he was appealing (and entered a plea of *nolo contedere* to appeal) was dispositive?

First, to resolve the issue of whether an appellate court must accept a stipulation between the parties, this Court should adopt the holding in *Finney v.*

State, 420 So. 2d 639 (Fla. 3d DCA 1982). In *Finney*, the Third District held, "Where a stipulation has been entered into by both sides, the court will not be called upon to hear testimony as to the dispositive nature of the evidence. A stipulation is the parties' recognition that, for whatever reason, they have presented all of the evidence that they care to and each is willing to abide the appellate consequences regarding the grant or denial of the motion[.]" *Id.* at 642. As detailed more fully below, this Court should adopt this holding in the case at bar.

Second, the parties agree about what the proper remedy should be in this case and similar cases. The Fifth District dismissed the Petitioner's appeal because the court held the issues were not dipositive. Both the Petitioner and Respondent agree the Fifth District's decision should be reversed and remanded with directions allowing the Petitioner to file a motion to withdraw his plea based on the principles of fairness, due process, and judicial economy.

Due to the reasons set forth more fully below, Petitioner requests this Court hold when a stipulation has been entered into by both sides regarding the dispostiveness of a legal issue, the appellate court must accept the stipulation by approving and adopting the holding in *Finney*. Petitioner also requests this Court quash the decision of the Fifth District Court and remand to the trial court with direction to authorize Petitioner to file a motion to withdraw is plea.

REPLY ARGUMENT

I. This Court should adopt the holding and reasoning in *Finney v. State*, 420 So. 2d 639 (Fla. 3d DCA 1982) requiring an appellate court to accept the stipulation between the parties that a legal issue is dispositive.

The Respondent argues that this Court should hold that the "issue of dispositiveness is a legal question that can be reviewed on appeal no matter what the parties have stipulated to in the trial court." (R.A.B. 8-9). Alternatively, Petitioner argues that appellate courts should defer to the parties and trial courts determination that a legal issue is dispositive based on the cases *Jackson v. State*, 382 So. 2d 749 (Fla. 1st DCA 1980), *aff'd*, 392 So. 2d 1324 (Fla. 1981); *Finney*, 420 So. 2d at 639, *Ziegler v. State*, 471 So. 2d 172 (Fla. 1st DCA 1985), and *Beermunder v. State*, 191 So. 3d 1000 (Fla. 1st DCA 2016). In relying on these cases, Respondent argued that the position advocated by Petitioner "eviscerate" the holdings of *State v. Ashby*, 245 So. 2d 225 (Fla. 1971) and *Brown v. State*, 376 So. 2d 382 (Fla. 1979). (RAB. 4). However, Petitioner is merely advocating for the Third District's holding in *Finney*, and the above cited cases application of *Finney*.

The full Third District, after extensively reviewing *Ashby* and *Brown*, and considering *Jackson*, held that stipulations must be accepted and reviewed by the trial court prior to finalizing the stipulation for dispositiveness holding:

> Where a stipulation has been entered into by both sides, the court will not be called upon to hear testimony as to the dispositive nature of the

> evidence. *A stipulation is the parties' recognition that,* for whatever reason, they have presented all of the evidence that they care to and *each is willing to abide the appellate consequences regarding the grant or denial of the motion to suppress.* Because this case falls squarely in line with *Jackson* ... we must conclude that by virtue of the stipulation, the present motion to suppress is dispositive of the issue on appeal.

Finney, 420 So. 2d at 643 (emphasis added). In discussing its decision, Judge Pearson aptly noted in his special concurrence the confusion that arises between what a trial court considers dispositive and what an appellate court considers dispositive when he stated:

> Today's [en banc] decision should put an end to the unseemly spectacle of the State, having agreed through its representative at the trial level (the State Attorney) that a matter is dispositive, later arguing, through its representative in the appellate court (the Attorney General) that the matter is not dispositive and that we are without jurisdiction to hear the defendant's appeal. This difference in position was never, in my view, attributable to an act of bad faith by the State. Instead, the difference in position is accounted for by the difference between *Jackson v. State, supra,* and *Brown v. State, supra.* Thus, when the State Attorney said "dispositive," he was talking *Jackson*—that is, committing the State not to prosecute further in the event the defendant prevailed on appeal; when the Attorney General said "not dispositive," he was talking *Brown*—that is, contending that even if the defendant prevailed on appeal, it was still *legally* possible for the State to continue with the prosecution. But what the Attorney General ignored is that where there is an agreement on dispositiveness, *Brown's* "legal dispositiveness" is, by definition in *Jackson,* irrelevant.
>
> *Jackson* is a welcome retreat from *Brown.* The concern in *Brown* that the expeditious resolution of the controversy would be thwarted by permitting a defendant to appeal legally nondispositive pre-plea rulings is obviated where the parties agree that the appellate court's decision will end the case one way or another. When they so agree, the defendant does *not* face the prospect of a trial if he prevails on appeal; the appellate decision concludes the matter, and the precious resources of

> the courts are saved by not forcing the defendant to go through a trial for the singular purpose of preserving an issue for review.

420 So.2d at 643–44 (Pearson, J., specially concurring) (emphasis added) (footnotes omitted). This decision, and this line of reasoning, was further continued in the First District's decision in *Ziegler*, and *Beermunder*, as well as several other district courts. *See, e.g.*, *Ruilova v. State*, 125 So. 3d 991, 996 (Fla. 2d DCA 2013); *Weber v. State*, 492 So. 2d 1166, 1167 (Fla. 4th DCA 1986); *Freeman v. State*, 450 So. 2d 301, 303 (Fla. 5th DCA 1984). This is consistent with this Court's decision in *Ashby* because, as noted by this Court, entering a *nolo contendere* plea is conceptually similar to a stipulation. *Ashby*, 245 So. 2d at 228 ("[t]he practice [of entering a nolo contendere plea and reserving one's right to appeal] is conceptually similar to that of stipulation of facts or law, not uncommon in civil and criminal trials."). The party centric focus should control over an appellate court's determination the issue is not dispositive.

Allowing the appellate court to override the parties' agreement and send the case back for continued litigation unnecessarily intervenes into what is at the center of the criminal justice system - plea negotiations. The trial court's dispositive determination is a question of finality between the parties, and a willingness to acknowledge that based on the evidence before both sides, the parties do not want to proceed, and will accept with an appellate court's decision determining the issue on appeal. *Finney*, 420 So.2d at 643–44 (Pearson, J., specially concurring);

Beermunder, 191 So. 3d at 1001-02 (Makar, J. concurrence) ("The parties have agreed the case is over and that there will be no trial thereby establishing the finality necessary for review."). The parties have accepted that they may either win or lose on appeal. Deciding the merits of the appeal, resulting in the appellate court either affirming or denying the stipulated issue, expedites litigation and resolves the matters appropriately based on the parties' bargain. (I.B. 22-7; 31-3).

Petitioner's argument is based on *Finney*'s interpretation of *Ashby* and *Brown*, rather than an evisceration of these cases, this holding is a natural extension of this Court's jurisprudence. When deciding whether to agree to a stipulation, the parties have identified the strengths and weakness of their case, come to terms, and finalized an agreement. (I.B. 31-3). The parties are not trying to turn an "apple into an orange" by saying a nondispositive issues is dispositive. (R.A.B. 5). Rather, both parties are saying they have a lemon and are willing to forego a trial to review what both sides agree is the crux of the case that the parties, and trial court, believe will lead to finality of the case.

Respondent argues that adopting the *Finney* "holding would allow the parties to stipulate that any issue is dispositive, even discovery issues or evidentiary questions on collateral matters, just for the sake of securing an opinion from the district court of appeal." (R.A.B. 5-6). However, this argument underestimates trial judges' ability to clearly identify to a defendant, his counsel, and the Assistant State

Attorney whether an issue is legally dispositive. (I.B. 27-31). As noted by this Court, the trial court has "wide discretion to accept or reject an *Ashby* nolo plea based upon his [or her] perception of the dispositive nature Vel non of the legal issue reserved for appeal." *Brown*, 376 So. 2d at 385. Many district courts' have already clearly emphasized the burden on the trial court to determine the dispositiveness of an appealable issue. *Everett v. State*, 535 So. 2d 667, 669 (Fla. 2d DCA 1988); *Hawk v. State*, 848 So. 2d 475, 478 (Fla. 2d DCA 2003); *Ramsey v. State*, 766 So. 2d 397, 397 n. 1 (Fla. 2d DCA 2000). This type of inquiry is not the province of the appellate court, and beyond the scope or focus of the appellate judiciary all together. *See Zeigler*, 471 So. 2d at 177 (Zehmer, J., concurrence) ("The rule preventing us from engaging in selective disapproval of stipulations made by the state and the accused is necessary to assure that appellate courts are not thrust into the position of reviewing acts of the parties or their attorneys instead of judicial acts of the court below.").

In reviewing the cases where stipulations have been allowed, Respondent argues the rationale for these decisions "is not that the appellate court *cannot go* behind a stipulation, but rather that there was no basis for doing so *on those facts*." (R.A.B. 5) (emphasis maintained). However, Respondent goes on to state that, "The trial court, and the parties themselves, are often in the best position to judge the essential nature of a confession and whether a conviction would be impossible in the

absence of such evidence." (R.A.B 5). Petitioner agrees, and this is the very basis why the trial court should make the determination whether a legal issue is in fact dispositive. (I.B. 27-31). Petitioner asserts that trial judges, rather than appellate courts, are in a better position to evaluate whether a legal issue is in fact dispositive.

Additionally, Respondent argues that "accepting Petitioner's position would require the district courts to address *any* questions chosen by the parties through stipulation. Parties cannot stipulate to appellate jurisdiction in any other context, and they should not be allowed to do so here." (R.A.B. 6) (emphasis maintained). However, Petitioner, and the parties at the time a stipulation is made, are not asking for *any* question unrelated to the ultimate finality of the case to be decided. Rather, the parties' stipulation directly relates to the *legal issue* that the parties believe *creates finality* in the case. The parties are *not stipulating to jurisdiction*, the parties are stipulating that the issue, per the parties understanding, and accepted by the trial judge, *will bring an end to the parties' case*.

Finally, Respondent admittedly states that "some district courts, post-*Brown*, have allowed appeals of confessions where the parties stipulate that the State would be unable to proceed in the absence of this key evidence." (R.A.B. 4). However, "some district courts" include all five district courts in the State of Florida, as well as various legal issues, not just those related to confessions. (I.B. 33-5).

In conclusion, the parties have accepted that they may either win or lose on appeal. Deciding the merits of the appeal, resulting in the appellate court either affirming or denying the stipulated issue, expedites litigation and resolves the matters appropriately based on the parties' bargain. Based on the arguments put forth in the initial brief, and this reply to the Respondent's answer brief, Petitioner respectfully requests this Court adopt the holding in *Finney*.

II. This Court should reverse and remand allowing Petitioner to withdraw his plea because of the principles of due process, fairness, judicial economy, and the parties' agreement.

Both the Petitioner and Respondent agree that a defendant should have an opportunity to withdraw his plea in a case such as the one before this Court. (I.B. 37-8; R.A.B. 10) ("Here, Petitioner was told that the issue was dispositive, even though it was not, and a remand should be ordered to allow Petitioner the opportunity to file a motion to withdraw his plea."). In essence, both parties agree that where there is a clear stipulation between the parties that an issue is dispositive, and the trial court accepts this stipulation, fairness requires that a defendant who has entered a plea with the understanding the plea is dispositive should have an opportunity to withdraw his or her plea if the appellate court determines the issue is not dispositive. *Id*. If the Court accepts the parties' agreement that the Fifth District's decision in this case dismissing the appeal should be rejected, then this Court should reverse the case

at bar and remand with directions that Petitioner has leave to file a motion to withdraw his plea.

Petitioner humbly requests the Court reverse the Fifth District's decision in this case and allow Petitioner the opportunity to withdraw his plea based on the agreement of the parties, and the arguments in both briefs regarding fairness, due process, and judicial economy.

Conclusion

Petitioner requests this Court quash the decision of the Fifth District Court in the case at bar and remand to the trial court with direction to authorize Petitioner to file a motion to withdraw is plea. Additionally, Petitioner requests this Court adopt the holding in *Finney*, requiring that "Where a stipulation has been entered into by both sides, the court will not be called upon to hear testimony as to the dispositive nature of the evidence." 420 So. 2d at 642.

Respectfully submitted,

s/ Rocco J. Carbone, III
Rocco J. Carbone, III
EAKIN & SNEED
599 Atlantic Boulevard, Suite 6
Atlantic Beach, Florida 32233
Telephone: 904 247 6565
Email: rocco.carbone@comcast.net
Florida Bar No. 0095544
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished, via electronic mail on this 18th day of October 2016.

PAMELA JO BONDI
ATTORNEY GENERAL
Tallahassee, Florida

KRISTEN L. DAVENPORT
ASSISTANT ATTORNEY GENERAL
Florida Bar # 909130
444 Seabreeze Boulevard Fifth Floor
Daytona Beach, FL 32118
(386) 238-4990
(386) 238-4997 (FAX)
CrimmAppWPB@MFloridaLegal.com

Counsel for Respondent

CERTIFICATE OF COMPLIANCE

I HEREBYCERTIFY that this brief has been prepared with Times New Roman 14 point type and complies with the font requirements of Rule 9.210.

Respectfully submitted,

s/ Rocco J. Carbone, III
Rocco J. Carbone, III