

IN THE SUPREME COURT OF FLORIDA

RONALD COTE, :
 :
 Petitioner, :
 :
 vs. : Case No. SC00-1327
 :
 STATE OF FLORIDA, :
 :
 Respondent. :
 :
 _____ :

DISCRETIONARY REVIEW OF DECISION OF THE
DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

INITIAL BRIEF OF PETITIONER ON THE MERITS

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TOPICAL INDEX TO BRIEF

	<u>PAGE NO.</u>
PRELIMINARY STATEMENT	1
STATEMENT OF THE CASE	1
STATEMENT OF THE FACTS	5
SUMMARY OF THE ARGUMENT	11
ARGUMENT	13
ISSUE I	
WHETHER THE SECOND DISTRICT COURT OF APPEAL'S DECISION IN <u>COTE V. STATE</u> , 760 SO. 2D 162 (FLA. 2D DCA), <u>REH'G DENIED</u> , (MAY 8, 2000), (2-1 DECISION)(FULMER, ACJ, DISSENTING), EXPRESSLY AND DIRECTLY CONFLICTS WITH THE FIFTH DISTRICT COURT OF APPEAL'S DECISION IN <u>N.T. V. STATE</u> , 682 SO. 2D 688 (FLA. 5TH DCA 1996) ON THE SAME QUESTION OF LAW AS TO WHETHER PROSECUTION AND PUNISHMENT FOR BOTH INDIRECT CRIMINAL CONTEMPT IN THE CIRCUIT COURT, JUVENILE DIVISION, AND A VIOLATION OF COMMUNITY CONTROL IN THE CIRCUIT COURT, CRIMINAL FELONY DIVISION, BASED ON THE SAME CONDUCT VIOLATED CONSTITUTIONAL GUARANTEE AGAINST DOUBLE JEOPARDY SUCH THAT THE TRIAL COURT ERRED BY DENYING THE DEFENSE MOTION TO DISMISS?	13
CONCLUSION	44
APPENDIX	attached
CERTIFICATE OF SERVICE	

TABLE OF CITATIONS

<u>CASES</u>	<u>PAGE NO.</u>
<u>Cobb v. State ex. rel. Hornickel</u> , 134 Fla. 315, 187 So. 151 (Fla. 1939)	28, 41
<u>Cote v. State</u> , 760 So. 2d 162 (Fla. 2d DCA 2000)	4-6, 11, 13-15, 17-20, 23, 24, 27-30, 35, 41, 43-45
<u>E.G. v. State</u> , 709 So. 2d 122 (Fla. 5th DCA 1998)	35
<u>Griffith v. State</u> , 654 So. 2d 936 (Fla. 4th DCA 1995)	27
<u>Haddock v. State</u> , 129 Fla. 701, 176 So. 782 (1937)	25, 26
<u>Malone v. Meres</u> , 91 Fla. 709, 109 So. 677 (1926)	26
<u>Miller v. State</u> , 702 So. 2d 617 (Fla. 4th DCA 1997)	40
<u>N.T. v. State</u> , 682 So. 2d 688 (Fla. 5th DCA 1996)	4, 11, 13, 15, 17, 18, 20, 23, 29-31, 35, 42-45
<u>Rodriguez v. State</u> , 622 So. 2d 1084 (Fla. 4th DCA 1993)	33
<u>Sawyer v. State</u> , 94 Fla. 60, 113 So. 736 (Fla. 1927)	25, 27
<u>State v. Balezon</u> , 765 So. 2d 819 (Fla. 4th DCA 1999)	33
<u>State v. Fitzpatrick</u> , 430 So. 2d 444 (Fla. 1983)	26
<u>State v. Goodson</u> , 403 So. 2d 1337 (Fla. 1981)	27
<u>State v. Griffith</u> , 675 So. 2d 911 (Fla. 1996)	14, 15, 19, 20 22-24, 26, 28-30, 40, 41
<u>State v. J.S.</u> , 716 So. 2d 865 (Fla. 5th DCA 1998)	40

TABLE OF CITATIONS (continued)

<u>State v. King</u> , 426 So. 2d 12 (Fla. 1982)	22, 23, 25-29, 40-42
<u>State v. Woodland</u> , 602 So. 2d 554 (Fla. 4th DCA 1992)	16
<u>Tillman v. State</u> , 58 Fla. 113, 50 So. 675 (1909)	25, 26
<u>Turner v. State</u> , 769 So. 2d 1108 (Fla. 2d DCA 2000)	40
<u>United States v. Dixon</u> , 509 U.S. 688, 113 S. Ct. 2849, 125 L. Ed. 2d 556 (1993)	16, 34
<u>Williams v. State</u> , 737 So. 2d 1141 (Fla. 4th DCA 1999)	15, 19, 22
<u>Worley v. State</u> , 396 So. 2d 1153 (Fla. 2d DCA 1981)	15, 19-21

OTHER AUTHORITIES

Fla. R. App. P. 9.030(a)(2)(A)(iv)	4, 12, 14, 18, 31, 43, 44
Fla. R. App. P. 9.120(b)	4
§ 26.012(2)(c), Fla. Stat. (1997)	18, 29, 41
§ 26.012(2)(d), Fla. Stat. (1997)	18, 29, 41
§ 26.012(2)(d), Fla. Stat. (1981)	25, 26
§ 39.0145, Fla. Stat. (1995)	39
§ 39.022(1), Fla. Stat. (1997)	27, 37
§ 39.052, Fla. Stat. (Supp. 1996)	38
§ 39.054, Fla. Stat. (1995)	38
§ 39.059, Fla. Stat. (1997)	38, 39
§ 39.059(1), Fla. Stat. (1995)	38
§ 39.059(2), Fla. Stat. (1995)	38
§ 39.059(3), Fla. Stat. (1995)	38
§ 39.059(4), Fla. Stat. (1995)	38
§ 39.059(6), Fla. Stat. (1995)	38
§ 39.059(7)(d), Fla. Stat. (1995)	38
§ 39.059(7)(e), Fla. Stat. (1995)	38
§ 39.22, Fla. Stat. (1997)	18, 29, 41
§ 810.02(1)(a), Fla. Stat. (1997)	1, 7
§ 985.201, Fla. Stat. (1997)	14, 15, 18, 19, 29, 37, 41
§ 985.210(1), Fla. Stat. (1997)	27
§ 985.216, Fla. Stat. (1997)	39
§ 985.233(4)(e), Fla. Stat. (1997)	6, 8, 21, 23, 36, 38, 39

STATEMENT CERTIFYING SIZE AND STYLE OF TYPE

Undersigned counsel certifies the size and style of type used in this brief is Courier 12 point, a font that is not spaced proportionally.

PRELIMINARY STATEMENT

Petitioner, RONALD COTE, defendant at the trial court level and Appellant at the district court level, shall be referred to as Petitioner or by name in this merit brief. The State of Florida, as Respondent, represented by the State Attorney for the Twelfth Judicial Circuit at the trial court level and now represented by the Florida Attorney General's office at the appellate level, shall be referred to as Respondent or the state. Citations to the record shall be designated by (V1 or SV2-4, R__) referring to volume or supplemental volume number and record page number.

STATEMENT OF THE CASE

Appellant, RONALD COTE, a juvenile at the time of the alleged crime (DOB 3-31-80), was charged in a direct felony information, case number 97-670-F filed on March 7, 1997, with one count of burglary of a dwelling with assault or battery, pursuant to § 810.02(1)(a), Fla. Stat. (1997), alleged to have occurred on February 19, 1997, in Manatee County, Florida. (V1, R01-02). On July 24, 1997, Mr. Cote entered a plea of no contest to the charge after which the trial court, withheld adjudication

as an adult, and, instead, in the juvenile division, adjudicated him delinquent, and sentenced him as a juvenile to be committed to the Department of Juvenile Justice, level 8 facility, with aftercare probation not to exceed his nineteenth birthday. (V1, R20-21, 22-26, 29-30).

Subsequently, on August 3, 1998, three petitions and orders to show cause, ## 2-4, were filed against Mr. Cote in open juvenile court for indirect criminal contempt alleging various violations of a community control order as to case numbers 97-670-F; 97-698-JD; 95-1753-JD; 95-1009-JD; and 94-2941-JD. (V1, R31-44). At that same hearing, on August 3, 1998, Mr. Cote, in open juvenile court, pleaded guilty to the three petitions of indirect criminal contempt, ## 2-4 filed in case number 97-670-F, albeit, the written plea shows ## 1-4. (V1, R47, SV4, R140, 143). On August 3, 1998, orders of indirect criminal contempt were entered in case number 97-670-F as to ##2 and 3 after which Cote was sentenced to fifteen days in juvenile detention as to indirect criminal contempt # 2. (V1, R46, 47, 50, SV4, R143). On August 6, 1998, Cote was additionally sentenced to served fifteen days in secure detention commencing August 17, 1998 as to indirect criminal contempt order #3, while disposition on the indirect criminal contempt order #4 was set for August 31, 1998. (V1, R51, SV2, R127). Before orders of indirect criminal contempt, ##2 and 3, were rendered, an initial order of indirect criminal contempt, #1, had been rendered against Cote in open court on June 9, 1998. (SV3, R130-33). See Amended Written

Directions to the Clerk requesting Order to Show Cause #1 and memorandum supporting same, if such exist. (SV3, R135).

On August 7, 1998, a petition for violation of community control/post commitment community control, with attached affidavit for revocation of aftercare/re-entry, was filed in case number 97-670-F in the trial court. (V1, R54-55). Subsequently, a motion to dismiss petition for violation of community control/post-commitment community control was filed in the adult division of the circuit court on September 28, 1998, alleging that Mr. Cote previously had pleaded guilty in the juvenile division of the circuit court to four petitions and orders to show cause, ## 1-4, filed in case number 97-670-F and had been sentenced to fifteen days in secure detention, such that, the filing of the additional petition of violation based factually on the same alleged violations, effectively, constituted double jeopardy under the 5th and 14th Amendments to the United States Constitution and Article I, section 9 of the Florida Constitution. (V1, R65-66). On October 6, 1998, a hearing was held on Mr. Cote's motion to dismiss which the trial court, after hearing argument, summarily denied. (V1, R104-07). Mr. Cote, then, on October 29, 1998, in open court, admitted the violations and filed a written plea to the violations contained in the petition reserving the right to appeal the trial court's denial of his motion to dismiss, found by the trial court to be dispositive. (V1, R71, 110-14, 118). The trial court then revoked Mr. Cote's juvenile sanctions, withheld adjudication of

guilt, and sentenced him as an adult to another downward departure sentence of six years (72 mos.) in prison suspended, in lieu, of the youth successfully completing two years of community control followed by five years of probation. (V1, R120).

A notice of appeal was filed on November 17, 1998, as to the judgment and sentence rendered on October 29, 1998, in case number 97-670-F from which Cote's direct appeal ensued. (V1, R72). On March 17, 2000, the Second District Court of Appeal, with Acting Chief Judge Fulmer dissenting, ruled against Mr. Cote and denied his direct appeal based on the juvenile division, being without "divisional authority jurisdiction" to act upon Mr. Cote's alleged violations of indirect criminal contempt, not having jurisdiction to legally impose sanctions such that constitutional prohibition against double jeopardy was not implicated when the felony division judge imposed sentence. Cote v. State, 760 So. 2d 162 (Fla. 2d DCA 2000). Mr. Cote, then, filed a motion for rehearing wherein he requested the Second District Court of Appeal to certify the double jeopardy and jurisdictional questions presented by this case either as questions of great public importance, or, alternatively, as in direct conflict with N.T. v. State, 682 So. 2d 688 (Fla. 5th DCA 1996) which was denied without opinion May 8, 2000. See Appendix-B, copy of Order Denying Motion for Rehearing.

Petitioner filed his notice to invoke discretionary jurisdiction, pursuant to Fla. R. App. P. 9.030(a)(2)(A)(iv), was filed June 7, 2000, and his brief on jurisdiction filed shortly

thereafter. See Fla. R. App. P. 9.120(b) and (d). On January 12, 2001, this Court issued an order accepting jurisdiction and setting oral argument, in case number SC00-1327, wherein Petitioner was ordered to serve his brief on the merits on or before February 6, 2001, with oral argument set before this Court on June 5, 2001.

STATEMENT OF THE FACTS

The relevant facts as set out in the Second District Court of Appeal's decision, Cote v. State, 760 So. 2d 162 (Fla. 2d DCA), reh'g denied, (May 8, 2000), (2-1 decision)(Fulmer, ACJ, dissenting), were as follows:

Mr. Cote appeals the denial of his motion to dismiss a petition alleging that he violated the terms of his community control. He contends that his sentence violated his constitutional right to be protected against double jeopardy. We affirm.

While a juvenile, Mr. Cote entered a plea to a felony in case number 97-670, a case in which he was exposed to adult sanctions. Rather than imposing adult penalties, the trial court opted for the juvenile sanction of commitment to a Level 8 facility to be followed by community control that was not to extend beyond his 19th birthday. After Mr. Cote's sentencing hearing on August 26, 1997, a written order of commitment to the Department of Juvenile Justice (to be followed by aftercare probation) was entered in the felony case on September 18, 1997. Erroneously, the juvenile commitment order indicated that it was entered in the juvenile division and reflected that Mr. Cote had entered a plea to a juvenile petition rather than to a felony information in felony division.

Subsequently, Mr. Cote was brought before the juvenile court judge for a contempt citation arising out of violations of his community control order. The juvenile judge indicated that the enforcement of Mr. Cote's juvenile sentence had been referred to the juvenile division of circuit court. Thus, upon a plea to the violations, Mr. Cote was held in indirect criminal contempt and was sentenced to serve a period of time in juvenile detention. Later, in this unique factual scenario, Mr. Cote was brought before the original felony division sentencing judge for violations of his community control order. The violations cited by the State were identical to those considered by the juvenile court judge. Mr. Cote argued that the violation hearing was prohibited by double jeopardy. The motion was denied and, upon plea, the court revoked the juvenile community control, withheld adjudication of guilt, and imposed a downward departure sentence of six years in prison, which was suspended on the condition that he successfully complete two years of community control followed by five years on

probation.

. . . .

FULMER, Acting Chief Judge, Dissenting

. . . .

It is clear from the following comments made by the juvenile court judge at the beginning of the contempt proceeding that everyone was aware that Mr. Cote's juvenile sanction had been originally imposed in a felony proceeding filed in adult court:

[H]e was actually filed on in adult court and Judge Dubensky or Dunnigan one gave him juvenile sanctions. So, the enforcement of juvenile sanction comes here. If, in fact, they choose to violate it, it will go up there. But right now we're just doing contempt so we're kind of enforcing the sanctions here.

The State responded, "Okay," and the proceeding continued. Neither the State nor Mr. Cote objected.

At the hearing on Mr. Cote's motion to dismiss, the State argued that the juvenile court did not have jurisdiction to conduct the contempt proceeding because section 985.233(4)(e), Florida Statutes (1997), provides that once a child has been sentenced to juvenile sanctions in an adult court proceeding, "further proceedings involving those sanctions shall continue to be heard in the adult court." Therefore, the State argued, "whatever [the juvenile court judge] did is null and void." The trial court agreed and denied the motion.

Cote v. State, 760 So. 2d at 163, 164-165; see Appendix-A, copy of Second District Court of Appeal decision in Cote v. State, 760 So. 2d 162 (Fla. 2d DCA), reh'g denied, (May 8, 2000), (2-1 decision)(Fulmer, ACJ, dissenting). While the Second District Court of Appeal's opinion rendered March 17, 2000, concisely set out the relevant facts, Petitioner recites the following facts to insure full understanding of the facts underlying his case.

Petitioner, RONALD COTE, a juvenile at the time of the alleged crime (DOB 3-31-80), was charged in a direct felony information, case number 97-670-F filed on March 7, 1997, with

one count of burglary of a dwelling with assault or battery, pursuant to § 810.02(1)(a), Fla. Stat. (1997), alleged to have occurred on February 19, 1997 in Manatee County, Florida. (V1, R01-02). On July 24, 1997, Mr. Cote entered a plea of no contest to the charge after which the trial court, withheld adjudication as an adult, and, instead, in the juvenile division, adjudicated him delinquent, and sentenced him as a juvenile to be committed to the Department of Juvenile Justice, level 8 facility, with aftercare probation not to exceed his nineteenth birthday. (V1, R20-21, 22-26, 29-30).

A petition for violation of community control/post commitment community control in case number 97-670-F was filed on August 7, 1998, together with affidavit for revocation of aftercare/re-entry attached which listed the following violations in paragraph 2:

- a) 06-06-80 violated his commitment order by consuming an alcoholic beverage. Blood alcohol level was .23%
Violated commitment by leaving residence breaking curfew and consuming alcohol.
- b) 07--24-98 violating commitment by leaving residence (curfew violation)
Driving his mothers vehicle without possessing a valid Driver License.
- c) 07-31-98 violated commitment leaving house after curfew and getting intoxicated from the consumption of alcohol.
- d) Continuous rule violations in the program which are attached to this packet.

(V1, R54-55). Apparently, the date was incorrectly noted as 06-06-80, in that the date of the alleged violation regarding Cote having consumed alcoholic beverage was 06-04-98, not 06-06-80 as incorrectly noted in the affidavit, although the incident was

written up on June 6, 1998, 06-06-98. (SV3, R130-133).

Previously, on June 9 and August 3, 1998, in open court, Mr. Cote had pleaded guilty to four petitions and orders to show cause for indirect criminal contempt, ## 1-4. (V1, R47, SV3, R130-33). An order of indirect criminal contempt, #1, had been imposed in chambers against Mr. Cote on June 6, 1998 for the violation of curfew and drinking that had occurred on June 4, 1998, albeit, the order was not filed until June 9, 1998 in open court. (SV3, R133).

On October 6, 1998, the trial court held a hearing Mr. Cote's motion to dismiss. (V1, R104-07). At that hearing, the defense argued that Cote had pleaded guilty, in juvenile court before Judge Brownell, to four petitions and orders to show cause, each alleging a separate violation of aftercare probation and was sentenced to fifteen days of secure detention on each of two of the orders of indirect criminal contempt. (V1, R104-5). Accordingly, Mr. Cote had been placed in jeopardy twice as to the alleged violations of aftercare probation, including those as related to case number 97-670-F, such that the filing of an additional petition for violation of community control/post commitment community control in case number 97-670-F constituted double jeopardy. (V1, R105).

The prosecutor argued to the trial court that the juvenile court did not have jurisdiction to hear the petitions and orders to show cause, citing § 985.233(4)(e), Fla. Stat. (1997) to the effect that, "any further proceedings, once a child has been to

adult court and sentenced as a juvenile, any further proceedings shall be heard in the adult court." (V1, R106). According to the state, Judge Brownell, in the juvenile division of the circuit court, did not have jurisdiction to hear anything further as to case number 97-670-F so that what the juvenile court did with respect to that case was null and void. The defense attorney pointed out that any jurisdiction problem was not the fault of Mr. Cote who had been hauled in front of the juvenile court where he pleaded guilty and was sentenced. (V1, R106).

The trial court summarily denied Mr. Cote's motion:

THE COURT: Well, I'll consider that Judge Brownell was aware of or should have been aware of the rule that, or the statute that prohibited him from exercising jurisdiction in 97-670, and merely disposed of the juvenile cases over which he did have jurisdiction. So the motion's denied.

(V1, R106). The defense attorney pointed out to the trial court that the paperwork on the case indicated that Mr. Cote had entered a plea of guilt in front of Judge Brownell, the juvenile court, as to the felony case number 97-670-F. (V1, R106).

Undeterred, the trial court reiterated it was denying the motion to dismiss on jurisdictional grounds:

THE COURT: Motion denied. I agree, Judge Brownell had no jurisdiction, and the sentence that was imposed on Mr. Cote is going to be treated by this Court as the sentence for the cases for which Judge Brownell did have jurisdiction.

(V1, R106-07).

Subsequently, on October 29, 1998, Mr. Cote entered a plea of guilt, admitting to violating the conditions as alleged in the additional petition for violation of community control/post

commitment community control filed in case number 97-670-F, and reserving the right to appeal the trial court's denial of Cote's motion to dismiss, found to be dispositive. (V1, R110-14, 118). The trial court then revoked the juvenile sanctions initially imposed on Cote, withheld adjudication, and sentenced him to 72 months in prison which was suspended in lieu of two years of community control followed by five years of probation. (V1, R120).

With regard to the previous orders of indirect criminal contempt, ##1-4, imposed against Mr. Cote in case number 97-670-F, the record on appeal, after being supplemented, shows that an indirect criminal contempt order #1 had been rendered against Mr. Cote in case number 97-670-F in open court on June 9, 1998 by Judge Brownell in the Juvenile Division of the Circuit Court of the Twelfth Judicial Circuit in and for Manatee County, Florida, relating to breaking curfew and drinking alcoholic beverage violations dated June 6, 1998, alleged to have occurred on June 4, 1998. (SV2, R130-33). Further, in case number 97-670-F, Mr. Cote pleaded guilty to petitions and orders to show cause ##2-4 on August 3, 1998. (V1, R31-53, SV2, R127, SV4, R138-143).

At the August 3, 1998 proceedings in juvenile court, the juvenile court accepted the guilty pleas of Mr. Cote as to the petitions and orders to show cause ##2-4, in filed in case number 97-670-F, while acknowledging that an indirect contempt order had already been entered a few weeks earlier, an apparent reference to the indirect criminal contempt order #1 previously rendered

against Mr. Cote in case number 97-670-F in open court on June 9, 1998:

THE COURT: All right, Ronald Cote, please.
Mr. Cote, here's what we've got here. We've got three orders to show cause. Let's see if I've got any copies here. No. I'll show you the originals if you give them back to me. We'll got make some copies and I'll give them to you.

We've got the three orders to show cause here which, one of which says that you violated curfew while you were on -- aftercare. One says you left your residence without permission, the aftercare deputy -- which violates the rules. And one of them says that you were found intoxicated. You want to read those over.

THE COURT: I'm going to make copies for everybody.

What this is, for your benefit, since this is going to be confusing, he was actually filed on in adult court and Judge Dubensky or Dunnigan one gave him juvenile sanctions. So, the enforcement of juvenile sanctions comes here. If, in fact, they choose to violate it, it will be going up there. But right now we're just doing contempt so we're kind of enforcing the sanctions here.

THE COURT: I show that we had another case that he had, we've already done a contempt on his once for another case that we had a few weeks ago.

Let's see, this is 97-670F, 97-670F. So this actually will be two, three and four. That's right.

Okay, if you'll raise your right hand, please?

(SV4, R138-40). See indirect criminal contempt order #1 entered and filed in open court on June 9, 1998 (SV3, R133); see also documents as to the indirect criminal contempt, including a letter from the program director of the Juvenile Justice Division to Judge Brownell as to Mr. Cote's alleged violations in case numbers 97-670F; 94-2941JD; 95-1009JD; 95-1753JD; and 97-698JD. (SV3, R130-32).

SUMMARY OF THE ARGUMENT

The Second District Court of Appeal's decision in Cote v. State, 760 So. 2d 162 (Fla. 2d DCA), reh'g denied, (May 8, 2000), expressly and directly conflicts with the Fifth District Court of Appeal's decision in N.T. v. State, 682 So. 2d 688 (Fla. 5th DCA 1996) on the same question of law as to whether prosecution and punishment for both indirect criminal contempt in the circuit court, juvenile division, and a violation of community control in the circuit court, criminal felony division, based on the same conduct violated constitutional guarantees against double jeopardy contained in the double jeopardy clauses of the Florida and federal constitutions. The trial court, in Petitioner's case, by ruling that the circuit court, juvenile division, did not have jurisdiction to enter petitions and orders to show cause and orders of indirect criminal contempt in case number 97-670-F, fundamentally erred in denying Cote's motion to dismiss, which was based on double jeopardy grounds. As a result, Petitioner was substantially prejudiced since he was prosecuted and pleaded guilty twice on separate occasions, once in the circuit court, juvenile division, in indirect contempt proceedings and a second time in the circuit court, criminal felony division, in violation of community control proceedings, to having committed the same acts in violation of his community control/post commitment community control order and was punished twice for these violations, in violation of constitutional prohibitions against double jeopardy.

Thus, this Court should exercise discretionary jurisdiction,

pursuant to Fla. R. App. P. 9.030(a)(2)(A)(iv), quash the Second District Court of Appeal's decision and review Petitioner's case on the merits, thereafter, reversing the trial court's orders denying Petitioner's motion to dismiss, revoking his community control, and sentencing him to 72 months in prison suspended in lieu of 2 years community control followed by 5 years of probation, after which his original juvenile adjudication of delinquency and disposition should be reimposed in case 97-670-F, together with credit for any time served on community control and probation in the interim.

ARGUMENT

ISSUE I

WHETHER THE SECOND DISTRICT COURT OF APPEAL'S DECISION IN COTE V. STATE, 760 SO. 2D 162 (FLA. 2D DCA), REH'G DENIED, (MAY 8, 2000), (2-1 DECISION)(FULMER, ACJ, DISSENTING), EXPRESSLY AND DIRECTLY CONFLICTS WITH THE FIFTH DISTRICT COURT OF APPEAL'S DECISION IN N.T. V. STATE, 682 SO. 2D 688 (FLA. 5TH DCA 1996) ON THE SAME QUESTION OF LAW AS TO WHETHER PROSECUTION AND PUNISHMENT FOR BOTH INDIRECT CRIMINAL CONTEMPT IN THE CIRCUIT COURT, JUVENILE DIVISION, AND A VIOLATION OF COMMUNITY CONTROL IN THE CIRCUIT COURT, CRIMINAL FELONY DIVISION, BASED ON THE SAME CONDUCT VIOLATED CONSTITUTIONAL GUARANTEE AGAINST DOUBLE JEOPARDY SUCH THAT THE TRIAL COURT ERRED BY DENYING THE DEFENSE MOTION TO DISMISS?

Yes. The Second District Court of Appeal's decision in Cote v. State, 760 So. 2d 162 (Fla. 2d DCA), reh'g denied, (May 8, 2000), expressly and directly conflicts with the Fifth District Court of Appeal's decision in N.T. v. State, 682 So. 2d 688 (Fla. 5th DCA 1996) on the same question of law as to whether prosecution and punishment for both indirect criminal contempt in the juvenile division of the circuit court and a violation of community control in the criminal felony division of the circuit court based on the same conduct violated constitutional guarantee against double jeopardy. The trial court, in Petitioner's case, by ruling that the juvenile court did not have jurisdiction to enter petitions and orders to show cause and orders of indirect criminal contempt in case number 97-670-F, fundamentally erred in denying Cote's dispositive motion to dismiss which was based on double jeopardy grounds. As a result, Petitioner was substantially prejudiced since, effectively, he was prosecuted and pleaded guilty twice on separate occasions to having

committed the same acts based on the same conduct in violation of his community control/post commitment community control order and had been punished twice for these violations, in violation of constitutional prohibitions against double jeopardy. Thus, this Court should exercise discretionary jurisdiction, pursuant to Fla. R. App. P. 9.030(a)(2)(A)(iv), quash the Second District Court of Appeal's decision and review Petitioner's case on the merits, thereafter, reversing the trial court's orders denying Petitioner's motion to dismiss, revoking his juvenile delinquency adjudication and disposition, and sentencing Petitioner to 72 months in prison suspended in lieu of two years community control followed by five years of probation, after which his original juvenile adjudication of delinquency and disposition should be reimposed in case 97-670-F, together with credit for any time served on community control and probation in the interim.

The Second District Court of Appeal, in Cote v. State, 760 So. 2d 162 (Fla. 2d DCA), reh'g denied, (May 8, 2000), (2-1 decision)(Fulmer, ACJ, dissenting), in its majority opinion, held:

Despite the "juvenile division" misnomer appearing on the order of commitment, the felony case remained in felony division. No court order transferring divisions or consolidating the felony case with other pending juvenile cases was entered. We conclude that the juvenile division was without divisional authority jurisdiction to act upon Mr. Cote's alleged violations. Jurisdiction of a court is frequently invoked by statutory law. Section 985.201, Florida Statutes (1997), confers in the circuit courts exclusive original jurisdiction of proceedings "in which a child is alleged to have committed a delinquent act or violation of law." As stated by our supreme court in State v. Griffith, 675 So. 2d 911, 913 (Fla. 1996),

"[t]he Juvenile Justice Act vests the juvenile division with exclusive jurisdiction over all proceedings in which a child allegedly violates the law unless ... juvenile jurisdiction is waived." Here, juvenile jurisdiction was waived because the information against Mr. Cote was direct filed in the felony division. Accordingly, the juvenile proceeding did not come within the specified grant of jurisdictional authority awarded by section 985.201, Florida Statutes (1997), see Williams v. State, 737 So. 2d 1141 (Fla. 4th DCA 1999), nor could the parties confer jurisdiction upon the court by stipulation or by failure to object to its action, see Worley v. State, 396 So. 2d 1153 (Fla. 2d DCA 1981). Although juvenile court and criminal court are divisions of the circuit court, defense counsel cannot fail to object to the juvenile court judge's exercise of authority and then, when the client is convicted, seek a remedy later. The trial court's resources are not to be consumed in such a manner. See Griffith, 675 So. 2d at 913-914. Here, in fairness, we must also point out that the error went unnoticed by the State.

We conclude that the juvenile division was without divisional authority jurisdiction to act upon Mr. Cote's alleged violations. Therefore, the juvenile court judge could not legally impose sanctions, and the constitutional prohibition against double jeopardy was not implicated when the felony division judge imposed sentence.

Cote v. State, 760 So. 2d at 163-164.

On the same question of law regarding whether prosecution for both indirect criminal contempt in the circuit court, juvenile division, and a violation of community control in the circuit court, felony criminal division, based on the same conduct violated constitutional guarantee against double jeopardy, the Second District Court of Appeal's decision in Cote v. State, 760 So. 2d 162 (Fla. 2d DCA), reh'g denied, (May 8, 2000), (2-1 decision)(Fulmer, ACJ, dissenting) is in express and direct conflict with N.T. v. State, 682 So. 2d 688 (Fla. 5th DCA 1996), wherein the Fifth District Court of Appeal held:

N.T. was placed on community control for the offense of grand theft. The community control order required that he keep scheduled appointments with his community control officer and continue to reside with his mother. A short time later, he violated these conditions and was placed back on community control. Subsequently, a second petition for violation of community control alleging similar violations was filed. The trial court, sua sponte, issued an order to show cause why N.T. should not be held in indirect criminal contempt. At the show cause and violation of community control hearing, defense counsel moved to dismiss the order to show cause on double jeopardy grounds. The trial court denied the motion, found that N.T. had violated the conditions of his community control, and adjudicated him guilty of indirect criminal contempt of court.

The issue in this case is whether N.T.'s prosecution for both the violation of community control and indirect criminal contempt violated his constitutional guarantee against double jeopardy. In United States v. Dixon, 509 U.S. 688, 113 S. Ct. 2849, 125 L. Ed. 2d 556 (1993), the United States Supreme Court held that the double jeopardy protections apply to both criminal contempt proceedings and criminal prosecutions.

....

A similar result was reached in State v. Woodland, 602 So. 2d 554 (Fla. 4th DCA 1992), wherein the defendant entered a plea of guilty to the charge of driving under the influence causing serious bodily injury. She was sentenced to five years' probation with a special condition that she serve one year in the county jail. When she failed to surrender herself to the county jail as ordered by the trial court, the state filed an affidavit of violation of probation. Three years later, Woodland was extradited from Mexico and, upon her return, the state filed a petition for rule to show cause why she should not be held in contempt of court for disobeying the court order. The trial court dismissed the contempt action finding that prosecution for both the violation of probation and the contempt of court charge was a violation of the double jeopardy clause. In affirming, the fourth district applied the Blockburger test and determined that the elements of the action for contempt were identical to the elements of the violation of probation. Specifically, the court reasoned that the state was required to prove that the defendant disobeyed the same court order in order to establish the violation of probation and the offense of criminal contempt and thus, the contempt charge was subsumed within the

violation of probation action. Id. at 555.

. . . .

In our view, this provision seeks to ensure that trial judges consider alternative sanctions before placing juveniles in secure detention facilities for contempt of court and in no way authorizes the imposition of cumulative punishments. Accordingly, we hold that N.T.'s prosecution for contempt of court arising out of his violation of community control is barred as violating the double jeopardy clause. U.S. Const. Amend. V; Fla. Const., Art. I, § 9. In so holding, we acknowledge the problems confronting trial judges presiding over juvenile delinquency proceedings who, day in and day out, do their best to help children and to protect society. They are required to carry out these responsibilities without having the benefit of adequate tools. In this regard, current programs for juvenile offenders are too few and too crowded. Even when adequate programs are available, delays in placement diminish their potential effectiveness.

The trial court in the instant case had previously adjudicated N.T. guilty of violating his community control when confronted with a second petition to violate community control. The court's other options were (1) to reward the juvenile for violating the order of community control by terminating the supervision and freeing him from legal constraints; (2) to order that he be committed to a Department of Juvenile Justice; or (3) to place the juvenile back in community control and await a third violation. The trial court, having a much better vantage point than our own, thought that a short but tough and quick response was best for the juvenile. However, notwithstanding the trial court's good intentions, the prosecution for indirect criminal contempt constituted a violation of N.T.'s Fifth Amendment protection against double jeopardy. We are therefore constrained to reverse.

N.T. v. State, 682 So. 2d at 689-91. While recognizing that the facts in N.T. v. State, wherein the prosecution and punishment of the violation of community control and the indirect criminal contempt based on the same alleged conduct occurred in the same juvenile division of the circuit court, are distinguishable from the facts in Cote v. State, wherein the prosecution and punishment for the indirect criminal contempt occurred in the

juvenile division while the prosecution and punishment of the violation of community control subsequently occurred in the criminal felony division of the circuit court, both based on the same conduct, the factual distinction regarding whether both prosecutions occurred in the juvenile division of the circuit court as opposed to one occurring in the juvenile division while the other occurred in the criminal felony division of the circuit court was of no material legal consequence to whether prosecution and punishment for both indirect criminal contempt and violation of community control in the circuit court based on the same conduct violated Petitioner's constitutional prohibition against double jeopardy, inasmuch as the circuit court had subject matter jurisdiction over the matter irrespective of whether prosecuted and punished in the juvenile division or the criminal felony division of the circuit court. See Art. V, § 3, 20, Fla. Const.; § 985.201, Fla. Stat. (1997); § 39.22, Fla. Stat. (1997); § 26.012(2)(c), (2)(d), Fla. Stat. (1997). Thus, this Court should accept discretionary jurisdiction to review the Second District Court of Appeal's decision in Cote v. State, 760 So. 2d 162 (Fla. 2d DCA), reh'g denied, (May 8, 2000), (2-1 decision)(Fulmer, ACJ, dissenting) on the basis of express and direct in conflict with the Fifth District Court of Appeal's decision in N.T. v. State, 682 So. 2d 688 (Fla. 5th DCA 1996) on the same question of law, pursuant to Art. V, § 3(b)(3), Fla. Const.; Fla. R. App. P. 9.030(a)(2)(A)(iv).

In Cote v. State, 760 So. 2d 162 (Fla. 2d DCA), reh'g

denied, (May 8, 2000), (2-1 decision)(Fulmer, ACJ, dissenting), the majority ruled that the juvenile division of the circuit court did not have "divisional authority jurisdiction" to act upon Ronald Cote's alleged violations of his community control, noting jurisdiction of the circuit court had been invoked by § 985.201, Fla. Stat. (1997), which conferred in the circuit courts exclusive original jurisdiction of proceedings "in which a child is alleged to have committed a delinquent act or violation of law." Cote v. State, 760 So. 2d at 163-164. In doing so, the majority relied on this Court's statement, in State v. Griffith, 675 So. 2d 911, 913 (Fla. 1996), that "[t]he Juvenile Justice Act vests the juvenile division with exclusive jurisdiction over all proceedings in which a child allegedly violates the law unless ... juvenile jurisdiction is waived." See Cote v. State, 760 So. 2d at 164. Noting that juvenile jurisdiction had been waived because the information against Mr. Cote had been direct filed in the felony division, the majority concluded that the juvenile proceeding did not come within the specified grant of jurisdictional authority awarded by § 985.201, Fla. Stat. (1997), citing Williams v. State, 737 So. 2d 1141 (Fla. 4th DCA 1999), while observing that parties could not confer jurisdiction upon the court by stipulation or by failure to object to its action, citing Worley v. State, 396 So. 2d 1153 (Fla. 2d DCA 1981). See Cote v. State, 760 So. 2d at 164. While recognizing that juvenile court and criminal felony court are divisions of the circuit court, the majority held defense counsel could not fail

to object to the juvenile court judge's exercise of authority and then, when the client was convicted, seek a remedy later and, further, remarked that the trial court's resources were not to be consumed in such a manner, again, citing Griffith, 675 So. 2d at 913-914. See Cote v. State, 760 So. 2d at 164. Without distinguishing whether "divisional authority jurisdiction" was subject matter jurisdiction or personal jurisdiction, while appearing to attach similar attributes of subject matter jurisdiction such as not being capable of being waived or conferred by agreement, see Worley v. State, 396 So. 2d at 1154, the majority concluded that the juvenile division was without "divisional authority jurisdiction," to act upon Cote's alleged violations. See Cote v. State, 760 So. 2d at 164. Therefore, the majority concluded that the juvenile division court judge could not have legally imposed sanctions such that the constitutional prohibition against double jeopardy was not implicated when the criminal felony division judge in the circuit court imposed Petitioner's sentence after having found him to have violated his juvenile disposition, i.e., community control, pursuant to Cote's plea. Id. Plainly, the majority's decision was in express and direct conflict with the Fifth District Court of Appeal's decision in N.T. v. State, 682 So. 2d 688 (Fla. 5th DCA 1996), on the same question of law regarding whether prosecution and punishment for both indirect criminal contempt in the circuit court, juvenile division, and a violation of community control in the circuit court, criminal felony division, based on the same

conduct violated constitutional guarantee against double jeopardy, albeit, the majority in Cote v. State apparently misapplied this Court's decisions in State v. Griffin and Worley v. State in constructing the hybrid jurisdiction named "divisional authority jurisdiction" which, like subject matter jurisdiction, could not be waived or conferred by agreement.

As Judge Fulmer, ACJ, made clear in her dissent¹, the

¹Acting Chief Judge Fulmer wrote the following dissent:

I respectfully dissent because I believe the majority improperly concludes that "the juvenile court judge could not legally impose sanctions, and the constitutional prohibition against double jeopardy was not implicated when the felony division judge imposed sentence."

It is clear from the following comments made by the juvenile court judge at the beginning of the contempt proceeding that everyone was aware that Mr. Cote's juvenile sanction had been originally imposed in a felony proceeding filed in adult court:

[H]e was actually filed on in adult court and Judge Dubensky or Dunnigan one gave him juvenile sanctions. So, the enforcement of juvenile sanction comes here. If, in fact, they choose to violate it, it will go up there. But right now we're just doing contempt so we're kind of enforcing the sanctions here.

The State responded, "Okay," and the proceeding continued. Neither the State nor Mr. Cote objected.

At the hearing on Mr. Cote's motion to dismiss, the State argued that the juvenile court did not have jurisdiction to conduct the contempt proceeding because section 985.233(4)(e), Florida Statutes (1997), provides that once a child has been sentenced to juvenile sanctions in an adult court proceeding, "further proceedings involving those sanctions shall continue to be heard in the adult court." Therefore, the State argued, "whatever [the juvenile court judge] did is null and void." The trial court agreed and denied the motion.

Prior to the enactment of section 985.233(4)(e), there was no statutory provision specifying in which

division the violation of a juvenile sanction imposed in adult court should be prosecuted. However, the addition of this provision does not alter my conclusion that the second prosecution and imposition of sentence on Mr. Cote violated the Double Jeopardy Clause. The majority concludes that "the juvenile division was without divisional authority jurisdiction to act upon Mr. Cote's alleged violations," and cites to the Juvenile Justice Act's provision regarding the jurisdiction of the juvenile division of the circuit court. Citing to Worley v. State, 396 So. 2d 1153 (Fla. 2d DCA 1981), [FN1] the majority also refers to the rule that parties cannot confer jurisdiction upon the court by stipulation or by failure to object to its action, and thereby suggests that "divisional authority jurisdiction" is subject matter jurisdiction. Furthermore, although the majority never expressly characterizes "divisional authority jurisdiction" as subject matter jurisdiction, it has treated it as such by affirming the trial court's denial of the motion to dismiss and upholding Mr. Cote's second prosecution and second sentence for the same law violation.

I am of the opinion that the jurisdiction of the juvenile division referred to in the Juvenile Justice Act is not subject matter jurisdiction, a view which the Fourth District also holds in Williams v. State, 737 So. 2d 1141 (Fla. 4th DCA 1999), and which finds support in State v. Griffith, 675 So. 2d 911, 913 (Fla. 1996), a decision cited by the majority. The majority cites to Griffith to explain that the Juvenile Justice Act vests the juvenile division with exclusive jurisdiction over all proceedings in which a child allegedly violates the law unless juvenile jurisdiction is waived. Because Mr. Cote was initially prosecuted by information filed in the felony division, the majority concludes that the juvenile proceeding did not come within the specified grant of jurisdictional authority awarded by the Act. I agree with this conclusion. However, the lack of statutory authority does not divest the juvenile court of subject matter jurisdiction, as Griffith demonstrates.

In Griffith, the district court reversed the conviction of a defendant who was prosecuted in the criminal division of the circuit court for offenses that occurred when the defendant was under the age of sixteen. The district court's reversal was based on a finding that the criminal division lacked jurisdiction. The supreme court reversed the district court and began its discussion by acknowledging that the Juvenile Justice Act vests the juvenile division with exclusive

jurisdiction over all proceedings in which a child allegedly violates the law unless juvenile jurisdiction is waived or a statutory exception applies. However, the court concluded that there was "no jurisdictional problem" that required reversal because "the juvenile court and the criminal court are both divisions of the circuit court." 675 So. 2d at 913. It cited to State v. King, 426 So. 2d 12 (Fla. 1982), as a case directly on point.

. . . .

The case before us is the reverse of the scenarios in Griffith and King, but the same rules should apply. When Mr. Cote was prosecuted for violating his juvenile sanctions, the proceeding, arguably, should have been conducted in the felony division, not the juvenile division. However, both the juvenile division judge and the felony division judge are circuit judges, and it is the circuit court that has subject matter jurisdiction over felony proceedings. Therefore, I conclude that the juvenile court judgment of contempt and sentence are not void for lack of subject matter jurisdiction. They may very well be voidable, in which case a timely objection is required. But, unlike Griffith and King, in this case, the State, not the defendant, seeks to set aside the voidable judgment. In Griffith and King, there was a single prosecution and conviction and it was the defendant who was seeking to overturn the conviction. That is not the case before us. What Mr. Cote seeks to set aside here is the second prosecution and second sanction imposed on him for a single offense, which are both contrary to the protections promised by the Double Jeopardy Clause, under which Mr. Cote timely asserted his right in the trial court. Therefore, I also disagree with the majority's conclusion, relying on Griffith, that it was incumbent on Mr. Cote to object to the initial contempt proceeding in the juvenile division.

I am of the opinion that it was incumbent on the State to object to the juvenile contempt proceeding in order to preserve its authority to prosecute Mr. Cote's alleged violation of his juvenile sanction in the felony division. Thus, I would hold that the State waived its challenge to the juvenile contempt judgment by failing to object to the proceeding in the juvenile division and, therefore, the otherwise voidable contempt judgment and sentence should stand. Consequently, Mr. Cote's prosecution for both indirect criminal contempt in the juvenile division and a violation of community control in the felony division violated his constitutional guarantee against double

majority improperly concluded that the juvenile court judge could not legally impose sanctions, being without "divisional authority jurisdiction," such that no constitutional prohibition against double jeopardy was implicated when the criminal felony division judge imposed Petitioner's sentence. See Cote v. State, 760 So. 2d at 164-167. Although no statutory provision existed in Florida law which specified in which division of the circuit court the violation of a juvenile sanction imposed in adult court should be prosecuted prior to the enactment of § 985.233(4)(e), Fla. Stat. (1997), that provision did alter the legal conclusion that the second prosecution and imposition of sentence in Cote's case based on the same conduct violated the double jeopardy clause in both Florida state and federal constitutions. See U.S. Const. amend. V; Art. I, § 9, Fla. Const.; Cote v. State, 760 So. 2d at 165. The majority's conclusion that "the juvenile division was without divisional authority jurisdiction to act upon Mr. Cote's alleged violations," suggested that "divisional authority jurisdiction" was synonymous with subject matter jurisdiction and, moreover, although never expressly characterized as subject matter jurisdiction, the majority plainly treated "divisional authority jurisdiction" as such by affirming the trial court's denial of the motion to dismiss and upholding Mr. Cote's second prosecution and second sentence for the same law violation based

jeopardy. See N.T. v. State, 682 So. 2d 688 (Fla. 5th DCA 1996). I would reverse.

Cote v. State, 760 So. 2d at 164-167 (footnote 1 omitted).

on the first prosecutions for indirect criminal contempt and sentences imposed by the circuit court, in the juvenile division thereof, being void. See Cote v. State, 760 So. 2d at 164, 165. As Judge Fulmer observed in her dissent, the jurisdiction of the juvenile division of the circuit court referred to in the Juvenile Justice Act was not subject matter jurisdiction. See Cote v. State, 760 So. 2d at 165. In State v. Griffith, 675 So. 2d 911, 913 (Fla. 1996), cited by the majority to explain that the Juvenile Justice Act vested the juvenile division of the circuit court with exclusive jurisdiction over all proceedings in which a child allegedly violates the law unless juvenile jurisdiction is waived, this Court held:

While the age of the defendant when the offense was committed rather than when the charges are filed controls whether the charges should be filed in juvenile court or criminal court, Griffith's convictions must stand because he failed to object to being tried in adult court. Counsel points us to State v. King, 426 So. 2d 12, 14 (Fla. 1982), by way of analogy. King is directly on point. As in the instant case, King, who was a juvenile, was tried and convicted as an adult without objection. On appeal, he pointed out for the first time that under the law he should have been charged as a juvenile. This Court agreed that he was entitled to be charged as a juvenile but held that he waived this right by not asserting it at the trial level. The Court reasoned that the issue turned on whether the error was fundamental, affecting the court's jurisdiction so as to render its judgment void. The Court concluded that the judgment was only avoidable and that as a consequence King waived his right to be tried as a juvenile by failing to object at the trial court level. The Court stated:

In this case the trial court had jurisdiction of the subject matter ... because it is a circuit court which has jurisdiction of all felonies. § 26.012(2)(d), Fla. Stat. (1981). As for any objections King may have had as to the court's jurisdiction over his person, he waived them by appearing in person and defending his case.

Haddock v. State, 129 Fla. 701, 176 So. 782 (1937); Tillman v. State, 58 Fla. 113, 50 So. 675 (1909).

King, 426 So. 2d at 14.

Similarly, there is no jurisdictional problem in the instant case because the juvenile court and the criminal court are divisions of the circuit court. Griffith waived any objections he had relative to being tried in the criminal division by appearing and defending his case. As we explained in King:

There is good reason for requiring defendants to register their objections with the trial court. A defendant should not be allowed to subject himself to a court's jurisdiction and defend his case in hope of an acquittal and then, if convicted, challenge the court's jurisdiction on the basis of a defect that could have been easily remedied if it had been brought to the court's attention earlier. Neither the common law nor our statutes favor allowing a defendant to use the resources of the court and then wait until the last minute to unravel the whole proceeding. Sawyer v. State, 94 Fla. 60, 113 So. 736 (1927). In this case, if the court had realized that respondent had been improperly charged by an indictment, the defect could have been remedied quite easily by the filing of an information under section 39.04(2)(e)4, or the transfer of the case to the juvenile division.

Id. at 15. [FN3]

FN3. The King rationale was reaffirmed by this Court in State v. Fitzpatrick, 430 So. 2d 444 (Fla. 1983).

State v. Griffith, 675 So. 2d at 913-914; see King v. State, 426 So. 2d 12 (Fla. 1982), wherein this Court held:

Thus we hold that a juvenile charged with an offense not punishable by death or life imprisonment has a right not to be charged by an indictment. However, this right, as with all other rights, may be waived if not asserted in a timely and proper fashion. The second issue raised by the state in this case is whether a juvenile must assert his right not to be tried by an indictment at the trial level or whether he can assert that right for the first time on appeal. The answer to this question depends on whether the error committed is a fundamental error affecting the court's jurisdiction thereby rendering its judgment void.

This Court has long recognized a distinction between judgments that are void and those that are voidable. Objections to a void judgment can be raised at any time, whereas objections to a voidable judgment must be timely made. Malone v. Meres, 91 Fla. 709, 109 So. 677 (1926). "If the court has acquired jurisdiction of the subject-matter and of the parties, the judgment or decree entered is binding, even though erroneous because of irregularity of procedure, and such judgment or decree will not be set aside, reversed, or modified, except by appropriate direct appellate procedure." 91 Fla. at 720, 109 So. at 682. If a court has jurisdiction of the subject matter and of the parties, the proceeding is not a nullity and the judgment is not void.

In this case the trial court had jurisdiction of the subject matter and of the parties. It had jurisdiction of the subject matter because it is a circuit court which has jurisdiction of all felonies. § 26.012(2)(d), Fla. Stat. (1981). As for any objections King may have had as to the court's jurisdiction over his person, he waived them by appearing in person and defending his case. Haddock v. State, 129 Fla. 701, 176 So. 782 (1937); Tillman v. State, 58 Fla. 113, 50 So. 675 (1909).

The situation in Haddock is quite analogous to the one in this case. In Haddock the defendant appealed his conviction entered by the criminal court of record, complaining that the court lacked jurisdiction because the statutory procedures for transferring his case from the circuit court to the criminal court of record were not properly followed. This Court affirmed the conviction, noting that the defendant had waived any right to question the criminal court of record's jurisdiction by appearing before the court and defending his case without objecting to the court's jurisdiction until after judgment. Similarly, respondent waived any objections he may have had about his case not being transferred properly to the criminal division of the circuit court by the filing of the information. Cf. State v. Goodson, 403 So. 2d 1337 (Fla. 1981) (the filing of an information acts as a transfer to the criminal division for purposes of invoking section 958.04(1)(a) of the Youthful Offender Act).

There is good reason for requiring defendants to register their objections with the trial court. A defendant should not be allowed to subject himself to a court's jurisdiction and defend his case in hope of an acquittal and then, if convicted, challenge the court's jurisdiction on the basis of a defect that could have

been easily remedied if it had been brought to the court's attention earlier. Neither the common law nor our statutes favor allowing a defendant to use the resources of the court and then wait until the last minute to unravel the whole proceeding. Sawyer v. State, 94 Fla. 60, 113 So. 736 (1927). In this case, if the court had realized that respondent had been improperly charged by an indictment, the defect could have been remedied quite easily by the filing of an information under section 39.04(2)(e)4, or the transfer of the case to the juvenile division.

King v. State, 426 So. 2d at 14-15; see also § 985.210(1), Fla. Stat. (1997), providing that "[t]he circuit court has exclusive original jurisdiction of proceedings in which a child is alleged to have committed a delinquent act or violation of law." Id.; § 39.022(1), Fla. Stat. (1997), using identical language. Because Mr. Cote had been initially prosecuted by information filed in the criminal felony division of the circuit court, the majority correctly concluded that the juvenile proceeding did not come within the specified grant of jurisdictional authority awarded by the Act, however, that lack of statutory authority did not divest the juvenile division of the circuit court of subject matter jurisdiction. See Cote v. State, 760 So. 2d at 165. In Griffith v. State, 654 So. 2d 936 (Fla. 4th DCA 1995), the district court had reversed the conviction of a defendant who had been prosecuted in the criminal division of the circuit court for offenses that had occurred when the defendant was under the age of sixteen based on a finding that the criminal division lacked jurisdiction. Id. at 938-941. This Court reversed the district court, acknowledging that the Juvenile Justice Act vested the juvenile division with exclusive jurisdiction over all

proceedings in which a child allegedly violates the law unless juvenile jurisdiction was waived or a statutory exception applied and concluding that there had been "no jurisdictional problem" that required reversal because "the juvenile court and the criminal court are both divisions of the circuit court." State v. Griffith, 675 So. 2d at 913-914, citing State v. King, 426 So. 2d 12 (Fla. 1982); see Cote v. State, 760 So. 2d at 165-166.

Inasmuch as Petitioner's case appears to be the reverse of the scenarios in State v. Griffith and King v. State, the same rules should have applied. See Judge Fulmer's dissent in Cote v. State, 760 So. 2d at 166. When Mr. Cote was prosecuted for violating his juvenile sanctions, the proceeding, arguably, should have been conducted in the criminal felony division of the circuit court, not the juvenile division thereof. While both the juvenile division judge and the criminal felony division judge are circuit judges, the circuit court had subject matter jurisdiction over criminal felony proceedings. See Cobb v. State ex. rel. Hornickel, 134 Fla. 315, 187 So. 151 (Fla. 1939), "Jurisdiction of the subject matter" means the power of the court to adjudicate the class of cases to which the particular case belongs (citations omitted). Id., 134 Fla. at 324, 187 So. at 155; see also Art. V, § 3, 20, Fla. Const.; § 985.201, Fla. Stat. (1997); § 39.22, Fla. Stat. (1997); § 26.012(2)(c), (2)(d), Fla. Stat. (1997). Therefore, the juvenile division court judgments of contempt and sentences were not void for lack of subject matter jurisdiction, albeit, they may have been voidable, in

which case a timely objection was required by the state, which had not been forthcoming when the indirect contempt proceedings and punishments were imposed. See Cote v. State, 760 So. 2d at 166. In Mr. Cote's case, unlike in State v. Griffith and King v. State, the state, not the defendant, Mr. Cote, sought to set aside the voidable judgments after the fact, pursuant to Cote's motion to dismiss, such that the state, not Cote, had waived the ability to void the voidable judgments and sentences by failing to object at the time of the first prosecution and sentences imposed by the juvenile division of the circuit court pursuant to the indirect criminal contempt orders. Unlike in State v. Griffith and King v. State, wherein there had been a single prosecution and conviction and the defendant was seeking to overturn the conviction, Mr. Cote sought to set aside the second prosecution and second sanction imposed on him based on a single offense or same conduct, which were both contrary to the protections promised by the double jeopardy clause, see U.S. Const. amend. V; Art. I, § 9, Fla. Const.; N.T. v. State, 682 So. 2d 688 (Fla. 5th DCA 1996), under which Mr. Cote timely had asserted his right to in the trial court. See Cote v. State, 760 So. 2d at 166. Therefore, the majority errantly concluded, relying on State v. Griffith, that it was incumbent on Mr. Cote, instead of the state, to object to the initial contempt proceeding in the juvenile division. Rather, it was incumbent on the State to object to the indirect criminal contempt proceeding in the circuit court, juvenile division, in order to preserve its

authority to prosecute Mr. Cote's alleged violation of his juvenile sanction in the criminal felony division based on the same conduct. See Cote v. State, 760 So. 2d at 166. Thus, the state waived its challenge to the juvenile contempt judgments by failing to object to the proceedings in the juvenile division and, therefore, the otherwise voidable contempt judgments and sentences should have stood such that Cote's prosecution for both indirect criminal contempt in the circuit court, juvenile division, and a violation of community control in the circuit court, criminal felony division, violated his constitutional guarantee against double jeopardy. See Judge Fulmer's dissent, Cote v. State, 760 So. 2d at 166, citing N.T. v. State, 682 So. 2d 688, 689-691 (Fla. 5th DCA 1996).

Accordingly, the Second District Court of Appeal's decision in Cote v. State, No. 2D98-04438 (Fla. 2d DCA), reh'g denied, (May 8, 2000), (2-1 decision)(Fulmer, ACJ, dissenting) expressly and directly conflicts with the Fifth District Court of Appeal's decision in N.T. v. State, 682 So. 2d 688 (Fla. 5th DCA 1996) on the same question of law regarding whether prosecution for both indirect criminal contempt in the juvenile division and a violation of community control in the felony division based on the same conduct violated constitutional guarantee against double jeopardy. Therefore, this Court should exercise discretionary jurisdiction, pursuant to Fla. R. App. P. 9.030(a)(2)(A)(iv), to quash the Second District Court of Appeal's decision and thereafter determine Petitioner's case on the merits whereby the

trial court's orders denying Petitioner's motion to dismiss, finding that he had violated community control, and revoking same are reversed after which his original juvenile sentence should be reimposed in case 97-670-F based on violation of the double jeopardy clause.

On the merits of Petitioner's case, the trial court committed prejudicial reversible error, fundamental in nature, by denying Mr. Cote's motion to dismiss which had been based on double jeopardy grounds. (V1, R106-07). Mr. Cote was substantially prejudiced by this fundamental error since, effectively, he had pleaded guilty on two separate occasions to having committed the same acts based on the same conduct in violation of his community control/post commitment community control order and had been punished twice for these violations, in violation of double jeopardy principles. See U.S. Const. amend. V; Art. I, § 9, Fla. Const; N.T. v. State, 682 So. 2d 688, 689-691 (Fla. 5th DCA 1996). Thus, Mr. Cote's withheld adjudication of guilt and sentence entered in case number 97-670-F should be vacated as being violative of constitutional prohibition against double jeopardy and his case should be remanded back to the trial court where his juvenile adjudication of delinquency and juvenile disposition should be reinstated.

Mr. Cote's motion to dismiss the petition for violation of community control/post commitment community control, in relevant part, stated:

1. The Defendant was sentenced in adult court to juvenile sanctions, Level 8 commitment, on 9/18/97.

2. The Defendant completed phase one (1) and was completing phase two (2) of the Aftercare program at MSO Boot Camp.

3. On 8/3/98, the Defendant was brought to juvenile court, Judge Scott Brownell, on four (4) separate Petitions and Orders to Show Cause, each Petition and Order to Show Cause specifically tailored to each of the four (4) alleged violations of community control.

4. On 8/3/98, the Defendant was arraigned on each of four (4) alleged violations of community control.

5. On each of four (4) Petitions and Orders to Show Cause, the Defendant was found to be guilty of indirect criminal contempt and sentenced to fifteen (15) days in secure detention.

6. After serving his contempt sentence in juvenile detention, the Defendant was transported and housed in the adult section of the Manatee County Jail on the State's Petition for Violation of Community Control.

7. The prosecution of the Defendant for both the violation of community control and indirect criminal contempt arising out of his alleged failure to meet conditions of community control violates his constitutional guarantee against double jeopardy pursuant to the 5th and 14th Amendments to the U.S. Constitution, and Article I, Section 9 of the Florida Constitution.

WHEREFORE, the Defendant prays this Honorable Court grant his motion and enter an Order dismissing the petition for violation of community control.

(V1, R65-66). The trial court, nevertheless, denied Mr. Cote's motion to dismiss, thereby, committing reversible prejudicial error, fundamental in nature, by erroneously ruling that the juvenile court did not have jurisdiction to impose orders of indirect criminal contempt for the violations alleged in the petitions and show cause orders ## 1-4 as to case number 97-670-F, violations which mirrored those alleged in the petition for violation of community control/post commitment community control in case number 97-670-F. (V1, R106-07). Abuse of discretion in the standard of review for determining whether the trial court

committed reversible error in denying Petitioner's motion to dismiss. See State v. Balezon, 765 So. 2d 819, 822 (Fla. 4th DCA 1999), citing Rodriguez v. State, 622 So. 2d 1084, 1084 (Fla. 4th DCA 1993). Plainly, the trial court abused its discretion in denying Mr. Cote's motion to dismiss in the instant case.

The petition for violation of community control/post commitment community control in case number 97-670-F was filed on August 7, 1998 (V1, R55), together with an attached affidavit for revocation of aftercare/re-entry which listed the following violations in paragraph 2:

- a) 06-06-80 violated his commitment order by consuming an alcoholic beverage. Blood alcohol level was .23%
Violated commitment by leaving residence breaking curfew and consuming alcohol.
- b) 07--24-98 violating commitment by leaving residence (curfew violation)
Driving his mothers vehicle without possessing a valid Driver License.
- c) 07-31-98 violated commitment leaving house after curfew and getting intoxicated from the consumption of alcohol.
- d) Continuous rule violations in the program which are attached to this packet.

(V1, R54). Apparently, the date was wrongly stated in paragraph 2a, in that the date of the alleged violation regarding Mr. Cote having consumed alcoholic beverage was 06-04-98, not 06-06-80 as incorrectly stated in the affidavit, although the incident was written up on June 6, 1998. (SV3, R130-133). Previously, on August 3, 1998, in open court, Mr. Cote pleaded guilty to four petitions and orders to show cause for indirect criminal contempt, ## 2-4. (V1, R47). Moreover, an order of indirect criminal contempt previously had been rendered against Cote on

June 6, 1998 for the violation of curfew and drinking that had occurred on June 4, 1998, albeit the order was not filed until June 9, 1998 in open court. (SV3, R133). Thus, Mr. Cote had pleaded guilty in juvenile court to the petitions and orders to show cause orders, ## 1-4, for indirect criminal contempt, in case number 97-670-F, for factual allegations of violations which included the same factual allegations of violations contained in the Petition for Violation of Community Control/Post Commitment Community Control subsequently filed on August 7, 1998 in adult court in case number 97-670-F. (V1, R39-45, 47, 54-55, SV3, R133, SV4, 140, 143).

At the hearing held in the criminal felony division of the circuit court on Mr. Cote's motion to dismiss, the defense argued that Cote had pleaded guilty in juvenile court, before Judge Brownell, to four petitions and orders to show cause, each alleging separate violations of post commitment community control aftercare probation and had been sentenced to fifteen days of secure detention on each of two of the orders of indirect criminal contempt. (V1, R104-5). Plainly, Mr. Cote previously had been placed in jeopardy as to the alleged violations of aftercare probation, including those as related to case number 97-670-F, such that the filing of an additional petition for violation of community control/post commitment community control in case number 97-670-F constituted double jeopardy. (V1, R105); see United States v. Dixon, 509 U.S. 688 (1993), wherein the United States Supreme Court held that the double jeopardy

protections apply to both criminal contempt proceedings and criminal prosecutions. In support of Ronald Cote's motion to dismiss based on violation of constitutional guarantee against double jeopardy principles, the defense relied on N.T. v. State, 682 So. 2d 688 (Fla. 5th DCA 1996), wherein the court reversed on similar double jeopardy principles involving prosecution and punishment for violation of community control and indirect criminal contempt based on the same conduct. See N.T. v. State, 682 So. 2d at 689-91; see also E.G. v. State, 709 So. 2d 122, 123-124 (Fla. 5th DCA 1998), wherein the court, although not dealing with double jeopardy issues since the juveniles therein had not been charged with violating community control in addition to contempt of court proceedings for the same conduct, nevertheless, acknowledged that double jeopardy principles would apply where contempt and violation of community control were based on the same conduct as occurred in Mr. Cote's case. Mr. Cote continues to argue, relying on N.T. v. State, contrary to the Second District Court of Appeal's decision rendered in Cote v. State, that filing the petition for violation of community control/post commitment community control which alleged similar violations to those which Cote previously had pleaded guilty to in juvenile court to petitions and orders to show cause, ##1-4, in case number 97-670-F, based on the same conduct, violated constitutional prohibitions against double jeopardy such that his motion to dismiss should have been granted in case number 97-670-F.

While not disputing that the allegations of violations contained in the petition for violation of community control/post commitment community control mirrored the alleged violations contained in the petitions and orders to show cause ##1-4 and indirect criminal contempt orders previously pleaded to by Cote in case number 97-670-F, instead, the state responded to Mr. Cote's motion to dismiss on jurisdictional grounds, arguing, albeit, erroneously, that the juvenile court did not have jurisdiction to hear the petitions and orders to show cause in case number 97-670-F, citing § 985.233(4)(e), Fla. Stat. (1997) for the proposition that "any further proceedings, once a child has been to adult court and sentenced as a juvenile, shall be heard in the adult court." (V1, R106). The trial court committed fundamental reversible error by relying on the state's response to summarily deny Mr. Cote's motion to dismiss and ruling:

THE COURT: Well, I'll consider that Judge Brownell was aware of or should have been aware of the rule that, or the statute that prohibited him from exercising jurisdiction in 97-670, and merely disposed of the juvenile cases over which he did have jurisdiction. So the motion's denied.

(V1, R106). The defense attorney pointed out that any jurisdiction problem was not the fault of Mr. Cote who had been hauled in front of the juvenile court where he pleaded guilty and was sentenced. (V1, R106). Further, Mr. Cote's defense attorney pointed out to the trial court that the paperwork on the case indicated that Cote had entered a plea of guilt in front of Judge Brownell, the juvenile court, as to the felony case number 97-670-F. (V1, R106). Unpersuaded by the defense double jeopardy

argument, the trial court reiterated its rationale for denying Mr. Cote's motion to dismiss on jurisdictional grounds:

THE COURT: Motion denied. I agree, Judge Brownell had no jurisdiction, and the sentence that was imposed on Mr. Cote is going to be treated by this Court as the sentence for the cases for which Judge Brownell did have jurisdiction.

(V1, R106-07).

Plainly, the trial court committed reversible prejudicial error, fundamental in nature, by denying the defense double jeopardy argument presented in Cote's motion to dismiss since the juvenile court did have jurisdiction to find Cote guilty of indirect criminal contempt, as evidenced by petitions and orders to show cause, ## 2-4. and indirect criminal contempt orders, ##1-3, filed in case number 97-670-F such that the petitions and orders to show cause and accompanying orders of contempt were imposed in case number 97-670-F as well in the juvenile cases also before Judge Brownell, contrary to the trial court's ruling. (V1, R47, 49, 52, SV3, R133, SV4, 140, 143). Under § 985.201(1), Fla. Stat. (1997), the circuit court has exclusive original jurisdiction in the circuit court over proceedings in which a child is alleged to have committed a delinquent act or violation of law. § 985.201(1), Fla. Stat. (1997); see also § 39.022(1), Fla. Stat. (1995). Mr. Cote, a juvenile under the age of eighteen, had been direct filed against on March 7, 1997, for allegedly having committed burglary of dwelling with assault or battery in case number 97-670-F on February 19, 1997. (V1, R01-02). The youth, although direct filed in adult court, the

criminal felony division of the circuit court, had his adjudication withheld in the adult criminal felony division of the circuit court and, instead, was adjudicated delinquent in the juvenile division and sentenced as a juvenile after having pleaded no contest on August 26, 1997 (V1, R20-30), under the provisions of § 39.052, Fla. Stat. (Supp. 1996); §§ 39.054, 39.059, Fla. Stat. (1995). See § 39.052(3)(a)5a(XI), (3)(a)5b(I), (3)(a)5d, 3(b), and (3)(c), Fla. Stat. (Supp. 1996); § 39.059(1)-(4), (6), and (7)(a) and (7)(e), Fla. Stat. (1995); see also § 39.054, Fla. Stat. (1995), as to powers of disposition available to the court after determining not to impose youthful offender or adult sanctions under § 39.059(7)(e), Fla. Stat. (1995) as occurred in Mr. Cote's case, case number 97-670-F. Unlike § 985.233(4)(e), Fla. Stat. (1997) set out in Chapter 985, effective October 1, 1997, Chapter 39 had no counterpart, particularly, § 39.059(6), Fla. Stat. (1995), as to further proceedings involving sanctions being heard in adult court after a child has been sentenced to juvenile sanctions although subsection 39.052(3)5d provided:

d. Once a child has been transferred for criminal prosecution pursuant to information and has been found to have committed the presenting offense or a lesser included offense, the child shall be handled thereafter in every respect as if an adult for any subsequent violation of state law, unless the court imposes juvenile sanctions under s. 39.059(6).

§ 39.052(3)5d, Fla. Stat. (Supp. 1996). Thus, the juvenile court had jurisdiction over Mr. Cote when initially sentenced, at least until, October 1, 1997, the effective date of § 985.233(4)(e),

Fla. Stat. (1997).

A written order of Commitment To The Department Of Juvenile Justice and Aftercare Probation, entered by Judge Dubensky, in case number 97-670-F, was filed in the Juvenile Division in the Twelfth Judicial Circuit, in and for Manatee County, Florida. (V1, R29-30). The written commitment order of the juvenile division of the circuit court plainly indicated that the juvenile division was retaining authority, i.e., jurisdiction, over the discharge of Mr. Cote from commitment and upon release from commitment, from his placement on post commitment community control for an indeterminate period of time, but not longer than his 19th birthday jurisdiction which was proper under the provisions of § 39.059, Fla. Stat. (1997). (V1, R29-30). Accordingly, the juvenile court had jurisdiction to enforce its orders through indirect criminal contempt such that the state's argument, presented at Mr. Cote's hearing on his motion to dismiss, was without legal merit regarding the juvenile court not having jurisdiction to enter the four orders of indirect criminal contempt in case number 97-670-F based on the same alleged violations contained in the petition for violation of community control/post commitment community control subsequently filed in the same case. See § 39.0145, Fla. Stat. (1995); § 985.216, Fla. Stat. (1997).

Even if the juvenile division of the circuit court did not have jurisdiction over Mr. Cote, pursuant to § 985.233(4)(e), Fla. Stat. (1997), the prosecution of the indirect criminal

contempt orders with accompanying punishments in the juvenile division resulted in voidable judgments and sentences, as opposed to void judgments and sentences, such that an objection by the state was required at the time of the indirect criminal contempt proceedings in the juvenile division of the circuit court in order to not waive the objection. See State v. Griffith, 675 So. 2d 911, 913-914 (Fla. 1996); State v. King, 426 So. 2d 12, 14-15 (Fla. 1982). Thus, any irregularity in the juvenile court's jurisdiction had been waived by the state by not objecting to the juvenile court accepting Mr. Cote's guilty pleas as to petitions and orders to show cause for indirect criminal contempt, ##2-4; and by not objecting to the juvenile court entering orders of indirect criminal contempt, ## 1-3, in case number 97-670-F. (V1, R29-30, 47, 49, 52, SV3, R133, SV4, R140, R143). See Turner v. State, 769 So. 2d 1108, 1109 (Fla. 2d DCA 2000); State v. J.S., 716 So. 2d 865, 866-867 (Fla. 5th DCA 1998); Miller v. State, 702 So. 2d 617, 618-619 (Fla. 4th DCA 1997). Similarly, in Mr. Cote's case, the state never objected when Judge Dubensky sentenced Cote as a juvenile in the juvenile division of the circuit court; nor, did the state object when the juvenile court, Judge Brownell, accepted Mr. Cote's pleas as to the petitions and show cause orders for indirect criminal contempt, ## 2-4, and imposed three orders of indirect criminal contempt, ## 1-3, for violations of his post commitment community control order in case number 97-670-F which included violations factually similar to those subsequently alleged by the state in the petition for

violation of community control/post commitment community control filed in adult division of the circuit court against Mr. Cote in case number 97-670-F. (V1, R47, 49, 52, SV3, R133, SV4, R140, 143). Inasmuch as Petitioner's case appears to be the reverse of the scenarios in State v. Griffith and King v. State, the same rules should have applied. When Mr. Cote was prosecuted for violating his juvenile sanctions, the proceeding, arguably, should have been conducted in the criminal felony division of the circuit court, not the juvenile division thereof. While both the juvenile division judge and the criminal felony division judge were circuit judges, the circuit court had subject matter jurisdiction over criminal felony proceedings. See Cobb v. State ex. rel. Hornickel, 134 Fla. 315, 187 So. 151 (Fla. 1939), "Jurisdiction of the subject matter" means the power of the court to adjudicate the class of cases to which the particular case belongs (citations omitted). Id., 134 Fla. at 324, 187 So. at 155; see also Art. V, § 3, 20, Fla. Const.; § 985.201, Fla. Stat. (1997); § 39.22, Fla. Stat. (1997); § 26.012(2)(c), (2)(d), Fla. Stat. (1997). Therefore, the juvenile court's judgments of contempt and sentences were not void for lack of subject matter jurisdiction, albeit, they may have been voidable, in which case a timely objection was required by the state, which had not been forthcoming when the indirect contempt proceedings and punishments were imposed. See Cote v. State, 760 So. 2d at 166. In Mr. Cote's case, unlike in State v. Griffith and King v. State, the state, not the defendant, Mr. Cote, sought to set

aside the voidable judgments after the fact, pursuant to Cote's motion to dismiss, such that the state, not Cote, had waived the ability to void the voidable judgments and sentences by failing to object at the time of the first prosecution and sentences imposed by the juvenile division of the circuit court pursuant to the indirect criminal contempt orders. Unlike in State v. Griffith and King v. State, wherein there had been a single prosecution and conviction and the defendant was seeking to overturn the conviction, Mr. Cote sought to set aside the second prosecution and second sanction imposed on him based on a single offense or same conduct, which were both contrary to the protections promised by the double jeopardy clause, see U.S. Const. amend. V; Art. I, § 9, Fla. Const.; N.T. v. State, 682 So. 2d 688 (Fla. 5th DCA 1996), under which Mr. Cote timely had asserted his right to in the trial court. Therefore, it was incumbent on the state to have objected to the indirect criminal contempt proceeding in the circuit court, juvenile division, in order to preserve its authority to prosecute Mr. Cote's alleged violation of his juvenile sanction in the criminal felony division based on the same conduct. Accordingly, the state waived its challenge to the juvenile contempt judgments by failing to object to the proceedings in the juvenile division and, therefore, the otherwise voidable contempt judgments and sentences should have stood such that Cote's prosecution for both indirect criminal contempt in the circuit court, juvenile division, and a violation of community control in the circuit

court, criminal felony division, based on the same conduct violated his constitutional guarantee against double jeopardy. See N.T. v. State, 682 So. 2d 688, 689-691 (Fla. 5th DCA 1996). Plainly, the trial court's erroneous denial of Mr. Cote's motion to dismiss was not harmless inasmuch as he was substantially prejudiced thereby because he pleaded guilty to violations of community control based on the same conduct that he already had been prosecuted and punished in indirect criminal contempt proceedings after which he was sentenced to seven years in prison suspended in lieu of two years community control followed by five years of probation in case number 97-670F.

Thus, the Second District Court of Appeal's decision in Cote v. State, No. 2D98-04438 (Fla. 2d DCA), reh'g denied, (May 8, 2000), (2-1 decision)(Fulmer, ACJ, dissenting) is in express and direct conflict with the Fifth District Court of Appeal's decision in N.T. v. State, 682 So. 2d 688 (Fla. 5th DCA 1996) on the same question of law regarding whether prosecution for both indirect criminal contempt in the juvenile division of the circuit court and a violation of community control in the criminal felony division of the circuit court based on the same conduct violated constitutional guarantee against double jeopardy. Accordingly, this Court should exercise discretionary jurisdiction, pursuant to Fla. R. App. P. 9.030(a)(2)(A)(iv), quash the Second District Court of Appeal's decision and review Petitioner's case on the merits, thereafter, reversing the trial court's orders denying Petitioner's motion to dismiss, revoking

his juvenile delinquency adjudication and disposition, and sentencing Petitioner to 72 months in prison suspended in lieu of Mr. Cote successfully completing 2 years community control followed by 5 years of probation, after which his original juvenile adjudication of delinquency and disposition should be reimposed in case 97-670-F, together with credit for any time served on community control and probation in the interim.

CONCLUSION

Petitioner, RONALD COTE, based on the facts, arguments, and citations to legal authorities presented herein, requests that this Court exercise discretionary jurisdiction, pursuant to Fla. R. App. P. 9.030(a)(2)(A)(iv), to review the Second District Court of Appeal's decision in Cote v. State, No. 2D98-04438 (Fla. 2d DCA), reh'g denied, (May 8, 2000), which expressly and directly conflicts with the Fifth District Court of Appeal's decision in N.T. v. State, 682 So. 2d 688 (Fla. 5th DCA 1996) on the same question of law regarding double jeopardy and, thereafter, quash the Second District Court of Appeal's decision and review Petitioner's case on the merits, thereafter, reversing the trial court's orders denying Petitioner's motion to dismiss, revoking his juvenile delinquency adjudication and disposition, and sentencing Petitioner to 72 months in prison suspended in lieu of Cote successfully completing 2 years community control followed by 5 years of probation, after which his original juvenile adjudication of delinquency and disposition should be reimposed in case 97-670-F, together with credit for any time served on community control and probation in the interim.

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APPENDIX

PAGE NO.

A. Copy of Second District Court of Appeal decision in Cote v. State, 760 So. 2d 162 (Fla. 2d DCA), reh'g denied, (May 8, 2000), (2-1 decision)(Fulmer, ACJ, dissenting)

B. Copy of Order Denying Motion for Rehearing in Cote v. State, No. 2D98-04438 (Fla. 2d DCA March 17, 2000), rehrq den., May 8, 2000

C. Copy of Fifth District Court of Appeal decision in N.T. v. State, 682 So. 2d 688 (Fla. 5th DCA 1996)

CERTIFICATE OF SERVICE

I certify that a copy has been mailed to Timothy A. Freeland, Suite 700, 2002 N. Lois Ave., Tampa, FL 33607, (813) 873-4739, on this _____ day of August, 2001.

CERTIFICATION OF FONT SIZE

I hereby certify that this document was generated by computer using Wordperfect 5.1 format with Courier 12 Point Font. The Office of the Public Defender, Tenth Judicial Circuit, is currently in the process of converting from Wordperfect 5.1 format to Microsoft Word format in order to comply with Rule 9.210(a)(2), since Courier New 12 Point Font is not available in Wordperfect 5.1. As soon as this upgrade is completed, Courier New 12 Point Font will be the standard font size used in all documents submitted by undersigned. This document substantially complies with the technical requirements of Rule 9.210(a)(2) and complies with the intent of said rule.

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