

JURISDICTIONAL BRIEF

IN THE SUPREME COURT OF FLORIDA

JIM WADE
PETITIONER

v
STATE OF FLORIDA
RESPONDENT

5C00-214

FILED
DEBBIE CAUSSEUX
JAN 31 2000
CLERK, SUPREME COURT
BY _____

CASE NO. 2000-214
D.C.A. NO. 98-00150

PETITIONER'S' JURISDICTIONAL BRIEF
ON REVIEW FROM THE DISTRICT COURT
OF APPEAL, 2ND DISTRICT
STATE OF FLORIDA

JIM WADE 1104015
PRO SE
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TABLE OF CITATIONS

CASES:

McKENDRY V STATE, 1641 So.2d 45 (FLA. 1994)...1,3,5,6

ADAMS V CULVER, 111 So.2d 665 (FLA. 1959)...5

STATE V COGSWELL, 641 So.2d 45 (FLA. 1994)...5,6

STATUTES:

Sec. 827.071 (5) FLA. STAT. ...1-5,

..

Sec. 847.0135 FLA. STAT. ...5,

Sec. 827.071 (4) FLA. STAT. ...11

CONSTITUTION:

ART. 5 Sec. 3 (b) (3)

STATEMENT OF THE CASE AND FACTS

IN THE 10th DISTRICT CIRCUIT COURT OF POLK COUNTY, FLORIDA, THE STATE CHARGED THE PETITIONER WADE WITH POSSESSION OF CHILD PORNOGRAPHY 827.071 (5) AND POSSESSION WITH INTENT TO PROMOTE 827.071 (4).

AT THE CLOSE OF THE STATES CASE PETITIONER WADE MOVED TO DISMISS COUNTS 1 THROUGH 54 OF THE INFORMATION WHICH ALL INVOLVED THE USE OF COMPUTER, TO POSSESS CHILD PORNOGRAPHY. THE MOTION WAS DENIED BY THE CIRCUIT COURT. THE TRIAL COURT ERRED IN NOT DISMISSING THE CHARGES, WHICH WERE BASED ON COMPUTER GRAPHIC FILES. WADE WAS FOUND GUILTY OF ALL CHARGES. ON DECEMBER 22, 1997, WADE WAS SENTENCED TO PRISON. ON JANUARY 5, 1998 AN APPEAL WAS FILED WITH THE 2nd DISTRICT COURT OF APPEALS.

ON JANUARY 12, 2000, THE APPEALS COURT GAVE A RULING ON WADE'S APPEAL. 2 COUNTS OF POSSESSION WITH INTENT TO PROMOTE WAS OVERTURNED, AND 54 COUNTS OF POSSESSION OF CHILD PORNOGRAPHY WAS UPHOLD. THIS WAS IN DIRECT CONFLICT OF THIS COURTS DECISION IN MCKENDRY V. STATE 641 So.2d 45

(FLA. 1994). This case was remanded to the 10th District Circuit Court for resentencing.

On January 24, 2000, a notice to invoke discretionary jurisdiction was filed with the 2nd District Court of Appeals.

SUMMARY OF THE ARGUMENT

THE APPELLATE COURT SAID THE PROSECUTOR HAS DISCRETION TO DETERMINE WHICH STATUTE TO CHARGE WITH.

MORE PROPERLY RELIED McKENDRY V STATE, 641 So.2d 45 (FLA, 1994) WHICH COVERS SPECIFIC VERSUS GENERAL STATUTES.

SO APPELLATE COURT IS IN EXPRESS DIRECT CONFLICT WITH THIS COURT'S OPINION AND McKendry, ON THE SAME POINTS OF LAW.

THEREFORE THIS COURT SHOULD ACCEPT JURISDICTION.

JURISDICTIONAL STATEMENT

The FLORIDA Supreme Court has discretionary JURISDICTION TO REVIEW A decision OF A DISTRICT COURT OF APPEAL THAT EXPRESSLY AND DIRECTLY CONFLICTS WITH A decision OF THE Supreme COURT OR ANOTHER DISTRICT COURT OF APPEAL ON THE SAME POINT OF LAW. ART. V 3(b)(3) FLA. CONST. (1980); FLA. R. App. P. 9.030(a)(2)(A)(iv),

ARGUMENT

The APPELLATE COURT REJECTED THE PETITIONERS CLAIM THAT THE PETITIONER SHOULD HAVE BEEN CHARGED UNDER SEC. 847.035 FLA. STAT. (1995) WHICH DEALS SPECIFICALLY WITH COMPUTERS AND CHILD PORNOGRAPHY RATHER THAN SEC. 827.071 (5) FLA. STAT. 1995 WHICH PROHIBITS CHILD PORNOGRAPHY IN GENERAL. IN REACHING ITS CONCLUSION THE APPELLATE COURT RELIED ON STATE V COGSWELL, 521 So.2d 1081 (FLA. 1981) TO DETERMINE THAT STATE ATTORNEY HAD THE OPTION TO DECIDE UNDER WHICH STATUTE TO CHARGE PETITIONER.

THE APPELLATE COURTS DECISION IS IN EXPRESS AND DIRECT CONFLICT WITH THIS HONORABLE COURTS DECISION IN McKENDRY V STATE, 641 So.2d 45 (FLA. 1994), WHICH HOLDS THAT A SPECIFIC STATUTE ALWAYS CONTROLS OVER A STATUTE COVERING THE SAME SUBJECT IN MORE GENERAL TERMS, ID. AT 46; SEE ALSO ADAMS V. CULVER, 111 So.2d 665 (FLA. 1959).

A CLOSE EXAMINATION OF COGSWELL REVEALS THAT COGSWELL DEALS WITH STATUTES THAT COVER THE EXACT SAME CRIMINAL ACTIVITY WHEN ONE STATUTE MANDATES

A MISDEAMEANOR SANCTION FOR THE CRIME WHILE THE OTHER STATUTE PRESCRIBES A FELONY SANCTION. McKendry IS MORE ON POINT WITH THE INSTANT CASE BECAUSE IT DEALS WITH STATUTES THAT COVER THE SAME SUBJECT MATTER, WHEN ONE STATUTE DEALS SPECIFICALLY WITH THE SUBJECT MATTER WHILE THE OTHER DEALS MORE GENERALLY WITH THE SUBJECT MATTER.

THE APPELLATE COURTS RELIANCE ON COGSWELL HAS CREATED AN EXPRESS AND DIRECT CONFLICT ON THE SAME POINT OF LAW WITH THIS COURTS DECISION IN McKendry.

THIS COURT MUST ACCEPT JURISDICTION OF THIS CAUSE IN ORDER TO RESOLVE THE CONFLICT AND TO PRESERVE THE JURISDICTION OF THIS COURT.

CONCLUSION

This COURT HAS DISCRETIONARY JURISDICTION TO REVIEW THE DECISION BELOW, AND THE COURT SHOULD EXERCISE THAT JURISDICTION TO CONSIDER THE MERITS OF THE PETITIONERS ARGUMENT.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct copy of the foregoing

JURISDICTIONAL BRIEF has been furnished via

U.S. Mail on this 28th day of JANUARY, 2000, to

the office of ATTORNEY GENERAL, 2002 N. LOIS AVE,

7th FLOOR, TAMPA, FL 33607 AND _____.

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