

IN The SUPREME COURT OF FLORIDA

JIM L. WADE,
PETITIONER,

V.

STATE OF FLORIDA,
RESPONDENT

CASE NO. SC00-214

LOWER TRIBUNAL NO.:

2098-00108

FILED
THOMAS D. HALL
JUN 19 2000
CLERK, SUPREME COURT
BY _____

PETITIONER'S Reply ON THE MERITS OF
THE BRIEF

ON APPEAL FROM THE DISTRICT
COURT OF APPEAL, 2ND. DISTRICT
STATE OF FLORIDA.

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PRO-SE

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STATUTES

SECTION 847.0135	3, 4, 6
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PRELIMINARY STATEMENT

IN THIS BRIEF THE PETITIONER JIM L. WADE WILL BE KNOWN AS THE PETITIONER.
THE STATE OF FLORIDA WILL BE KNOWN AS THE RESPONDENT.

STATEMENT OF CASE AND FACTS

STATEMENT OF CASE AND FACTS HAVE BEEN ACCEPTED BY RESPONDENT.

SUMMARY OF ARGUMENT

THE STATE DOES NOT HAVE THE DISCRETION TO DETERMINE CHARGES FILED WHEN YOU HAVE A SPECIFIC STATUTE VERSUS A GENERIC STATUTE.

ARGUMENT ISSUE

FIRST TO ADDRESS RESPONDENTS ISSUE THAT PETITIONER WAIVED THIS ISSUE FOR LACK OF, A MOTION TO DISMISS. SEVERAL TIMELY MOTIONS WERE MADE TO DISMISS THIS CASE BY THE DEFENSE ATTORNEY. THE FIRST MOTION WAS MADE EARLY IN THE TRIAL (I:57 II:186) AND AT THE CLOSE OF THE TRIAL (III 184-185). BOTH TIMES THE MOTION WAS DENIED, ONCE WITH A HEARING AND ONE WITHOUT, BY THE JUDGE,

DESPITE RESPONDENTS CONTENTION, THE INSTANT CASE McKendry v. STATE, 641 So.2d 45 (FLA, 1994), DOES PRESENT AN ISSUE OF STATUTORY CONSTRUCTION.

THE STATE OF FLORIDA CLEARLY HAD TWO STATUTES REGARDING CHILD PORNOGRAPHY. 847.0135 WHICH CLEARLY DEFINES CHILD PORNOGRAPHY BY MEANS OF A COMPUTER VERSUS THE MORE GENERIC STATUTE, 827.071(4)(5), WHICH ONLY DEALS IN THE MORE GENERAL TERMS OF POSSESSION OF CHILD PORNOGRAPHY.

THIS IS A ANALYSIS OF THE ISSUE BY APPLYING ACCEPTED RULES OF STATUTORY CONSTRUCTION TO THE STATUTE IN QUESTION.

A SPECIFIC STATUTE COVERING A PARTICULAR SUBJECT AREA ALWAYS CONTROLS

OVER A STATUTE COVERING THE SAME AND OTHER SUBJECTS IN MORE GENERAL TERMS.

McKendry v. STATE 641 So.2d.45 (FLA.1994), ADAMS v. CULVER, 111 So.2d 665, 667 (FLA 1959), STATE v. Billie, 497 So.2d. 889, 894 (FLA.2d. DCA 1986), Review denied, 506 So.2d. 1040 (FLA 1987). The more specific statute is considered to be an exception to the general terms of the more comprehensive statute, FLOYD v. BENTLEY 496 So.2d 862, 864 (FLA 2d DCA 1986) Review denied, 504 So.2d. 767 (FLA 1987).

UNDER THIS RULE SECTION 847.0135 WHICH SPECIFICALLY ADDRESSES THE CRIMINAL CHARGE, POSSESSION OF CHILD PORNOGRAPHY BY MEANS OF A COMPUTER, PREVAILS OVER 827.071 (4) (5).

THE SECOND ISSUE IS LEGISLATIVE INTENT. SECTION 827.071 (4) (5) WAS ENACTED § 4, CH. 83-74 LAWS OF FLORIDA. WHERE AS 847.0135 WAS ENACTED § 11, CH. 86-238 LAWS OF FLORIDA. SECTION 827-071(4) (5) WAS ENACTED BEFORE THE USE OF ONLINE SERVICES AND COMPUTERS WAS READILY AVAILABLE. SECTION 847.0135 WAS BROUGHT ABOUT TO SPECIFICALLY DEFINE COMPUTER PORNOGRAPHY AND THE ACT WAS TITLED, COMPUTER PORNOGRAPHY AND CHILD EXPLOITATION ACT OF 1986. THE LEGISLATIVE INTENT IS CLEARLY DEFINED, WHEN ENACTING THE MORE SPECIFIC STATUTE.

The Third Issue, IS OVERLAPPING CRIMINAL STATUTES, IS THE ISSUE OF THE DUE PROCESS CLAUSE OR EQUAL PROTECTION CLAUSE.

THE EQUAL PROTECTION CLAUSE PROHIBITS SELECTIVE ENFORCEMENT "BASED UPON AN UNJUSTIFIABLE STANDARD SUCH AS RACE, RELIGION, OR OTHER ARBITRARY CLASSIFICATIONS, O'YLER V. BOLES 368 U.S. 448, 456, 82 S.Ct. 501, 506, 7 L. Ed. 446 (1962).

SINCE THE 10TH CIRCUIT COURT'S PROSECUTOR BRAD COPLEY IMMEDIATELY LABELED PETITIONER A PEDOPHILE AT THE ARRAIGNMENT AND THROUGHOUT THE TRIAL, EVEN THOUGH NOT BEING JUDGED GUILTY OF ANY CHARGES OR MY RECORD REFLECTING PEDOPHILE CHARGES AND LOOKING AT THE COURTS RECORD, AS TO OTHER CONVICTIONS FOR THE SAME CRIME AND THEY MUST GENERALLY WAS JUDGED AS MISDEMEANORS. ARBITRARY CLASSIFICATION CLEARLY PLAYS A PART,

ALL OF THE CASES CITED BY THE RESPONDENT DEALS WITH THE DISCRETION A PROSECUTOR HAS IN REGARDS TO SENTENCING. THE PETITIONER'S ISSUE IS CLEARLY IN REGARDS TO THE PROPER CRIMINAL STATUTE BEING APPLIED.

CONCLUSION

REVERSAL IS REQUIRED, because The STATE should have prosecuted under SECTION 847.0135 FLA. STATUTES (1995) which specifically proscribes, The use of a computer to promote and possession of child pornography, rather than the more generic or general statute on child pornography, SECTION 827.071 (4) (5) FLA. STATUTE (1995).

The accepted Rule of Statutory Construction as defined in McKendry v. State 641 So.2d. 45 (FLA 1994), Adams v. Culver, 111 So.2d. 665 (FLA 1959), and Floyd v. Bentley, 496 So.2d 862, 864 (FLA. 2d DCA 1986) Reviewed 504 So.2d. 767 (FLA 1987), require the more specific statute covering a subject control over a more general statute on the same topic. The prosecution was required to use the specific more limiting statute, since this was the legislative intent in passing the more specific statutory proscription on using computers to promote or possess child pornography. See McKendry v. State; Adams v. Culver; Floyd v. Bentley.

The Petitioners ask this court to reverse judgement on all counts, with directions that the charges be dismissed.

CERTIFICATE OF SERVICE

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

Petitioner Reply on the Brief of Merits has been furnished via

U.S. Mail on this 15th day of JUNE, 2000, to

the office of CLERK OF COURTS / FLORIDA SUPREME COURT,

SUPREME COURT Building 500 DUVAL ST. TALLAHASSEE, FL. ³²³⁹⁹⁻¹⁴²⁵

ALSO TO

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