

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v.

Case No. SC02-2167

Fifth DCA Case No. 5D02-1211

ALFRED J. WAGNER,

Respondent.

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ON DISCRETIONARY REVIEW FROM  
THE FIFTH DISTRICT COURT OF APPEAL

**INITIAL MERIT BRIEF OF PETITIONER**

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TABLE OF CONTENTS

TABLE OF AUTHORITIES . . . . .	iii
STATEMENT OF THE CASE AND FACTS . . . . .	1
SUMMARY OF ARGUMENT . . . . .	4
ARGUMENT	
THE FIFTH DISTRICT COURT OF APPEAL'S DISMISSAL OF THE STATE'S PETITION FOR WRIT OF CERTIORARI FOR LACK OF JURISDICTION BASED UPON ITS HOLDING THAT COURT MINUTES SIGNED BY A TRIAL JUDGE CONSTITUTE AN ORDER FROM WHICH JURISDICTIONAL TIME PERIODS RUN SHOULD BE QUASHED AND THE CASE REMANDED FOR FURTHER PROCEEDINGS ON THE TIMELY-FILED PETITION . . . . .	5
CONCLUSION . . . . .	21
CERTIFICATE OF SERVICE . . . . .	22
CERTIFICATE OF COMPLIANCE . . . . .	22

**TABLE OF AUTHORITIES**

**Cases:**

*Employers' Fire Ins. Co. v. Continental Ins. Co.*,  
326 So. 2d 177 (Fla. 1976) . . . . . 9,10,16,19

*Haakenstad v. Osborne*,  
402 So. 2d 1356 (Fla. 4<sup>th</sup> DCA 1981) . . . . . 10-11

*Spann v. State*,  
28 Fla. L. Weekly S293 (Fla. April 3, 2003). . . . . 16

*State v. Atkinson*,  
831 So. 2d 172 (Fla. 2002) . . . . . 17,18

*State v. Brown*,  
629 So. 2d 980 (Fla. 5<sup>th</sup> DCA 1993). . . . . 3,20

*State v. Sullivan*,  
640 So. 2d 77 (Fla. 2d DCA 1994. . . . . 12

*State v. Tremblay*,  
642 So. 2d 64 (Fla. 4<sup>th</sup> DCA 1994). . . . . 6-8

*State v. Wagner*,  
825 So. 2d 453 (Fla. 5<sup>th</sup> DCA 2002). . . . . 1,8

*Tanguay v. State*,  
782 So. 2d 419 (Fla. 2d DCA 2001). . . . . 18

**Other Authorities:**

Committee Note, Fla. R. App. P. 9.020(f). . . . . 10

Fla. R. App. P. 9.020(h). . . . .  
14,19

Fla. R. App. P. 9.100(c). . . . .  
6

Fla. R. App. P. 9.110(b). . . . .  
6

Fla. R. Civ. P. 1.080(h). . . . .  
11,14,15

**STATEMENT OF THE CASE AND FACTS**

Petitioner, the State of Florida, filed a petition for a writ of certiorari in the Fifth District Court of Appeal on April 25, 2002, challenging Wagner's release pending his civil commitment trial under the *Jimmy Ryce* Act. The circuit court released Wagner because the judge concluded that the State had not filed its commitment petition within the time set by Florida Statutes § 394.9135. *State v. Wagner*, 825 So. 2d 453, 454 (Fla. 5<sup>th</sup> DCA 2002)[hereinafter "Appendix A"]. This action by the trial court came at the end of a hearing held on January 23, 2002, at which the judge orally pronounced his intention that Wagner be immediately released and signed a court minutes form on which his decision to release Wagner was notated. See Appendix A at 3. At the time of these acts, the judge, the State's attorney, and Wagner's counsel, all knew that the form was not intended to be the order from which the time to appeal would run. (Appendix A at 2-3). The judge said: ". . . I want to give you something to

appeal . . . more than some form order that the clerk prepared."  
(Appendix A at 3).

The clerk's form is not designated an order, but is entitled "Open Court Minutes." (Exhibit to Motion to Dismiss Petition for Writ of Certiorari dated May 15, 2002).<sup>1</sup> There is no provision on the face of the form by which to convert the minutes into an order. See *id.* The signature, which apparently belongs to the judge, is illegible, and there is no indication on the form that it is the judge's signature. *Id.* Indeed, even the signature line is a hand-drawn one, as the form contains no signature line for any official other than the Clerk's representative. *Id.*

There is no indication what specific information on the form, the signature applies to, and the signature does not immediately follow the "release" provision. *Id.* However, it immediately follows the notation that Defense Counsel is "to prepare an order. Defendant to stay in contact with counsel." *Id.*

The clerk's form is dated and signed by the deputy clerk in attendance at the hearing on January 23, 2002. *Id.* It is stamped

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<sup>1</sup>The index to the record on appeal has not yet been prepared by the Fifth District Court of Appeal. Therefore, the documents referred to in this brief are cited by name and date. Once the index is received, Counsel will be happy to file an amended brief with record citations, should this Court indicate that it wants same.

by the clerk's office on the same date. *Id.*

The judge directed Wagner's attorney to draft an order setting out the ruling, and ordered him to forward a copy to the State. Appendix A at 2-3. If the State objected to the contents of the order, the court would hold a hearing to resolve any disputes. *Id.* There was a dispute, and the court held another hearing on March 20, 2002, after which the court again directed Wagner's attorney to prepare a draft order. (Appendix C to Motion for Rehearing *En Banc* dated August 8, 2002 at 22). The judge signed that draft on March 26, 2002. (Appendix D to Motion for Rehearing *En Banc* dated August 8, 2002 at 2). The State's certiorari petition was filed within 30 days of March 26th.

The Fifth District Court of Appeal dismissed the certiorari petition for lack of jurisdiction, deciding that it was untimely because the time to appeal ran from the oral pronouncement and signing of the court minutes on January 23rd, and not from the written order signed on March 26th. (Appendix A). It appears that the District Court felt obligated to reach that conclusion based on its own prior precedent in *State v. Brown*, 629 So. 2d 980 (Fla. 5<sup>th</sup> DCA 1993). *Id.* The court apparently construed *Brown* as holding that clerk's minutes constituted a rendered order. See *id.*

The State filed a Motion for Rehearing *en banc* and a Motion

for Rehearing and/or Certification of Conflict and/or as a Question of Great Public Importance. The Fifth District Court of Appeal denied the State's motions for rehearing by order entered on September 13, 2002.

The State filed its notice to invoke discretionary jurisdiction in the Fifth District Court of Appeal on October 3, 2002. On April 29, 2003, this Court issued an order for briefing and oral argument. The State's initial brief on the merits follows.

#### **SUMMARY OF ARGUMENT**

This case concerns when jurisdictional time periods commence for the filing of a petition for writ of certiorari or notice of appeal. Under the district court's decision, many deserving litigants will be deprived of the right to seek review, whether by certiorari or notice of appeal. Moreover, many meritorious claims, civil and criminal, will be unheard and remain wrongly decided.

This Court should vacate the order of the Fifth District Court of Appeal because it erroneously held that court minutes signed by a trial judge constitute an order from which the jurisdictional time periods for the filing of an appeal, or a petition seeking an extra-ordinary writ, run. The Fourth

District Court of Appeal's decision on the issue is contrary, and is correct. Moreover, the instant decision is inconsistent with this Court's prior precedent. The clerk's minutes form, though signed by the trial judge, does not fall within the definition of rendition of an order as set out by the appellate rules. This Court should interpret those rules so as to require that an order be clearly identified as an order of the court, signed and dated by the judge, filed with the clerk, and served on the parties, thereby promoting meaningful appellate review. The instant decision, if permitted to stand, will affect many cases, both civil and criminal, and will result in unwarranted delays and unjust results. It should be vacated.



ARGUMENT

THE FIFTH DISTRICT COURT OF APPEAL'S  
DISMISSAL OF THE STATE'S PETITION FOR WRIT  
OF CERTIORARI FOR LACK OF JURISDICTION BASED  
UPON ITS HOLDING THAT COURT MINUTES SIGNED  
BY A TRIAL JUDGE CONSTITUTE AN ORDER FROM  
WHICH JURISDICTIONAL TIME PERIODS RUN SHOULD  
BE QUASHED AND THE CASE REMANDED FOR FURTHER  
PROCEEDINGS ON THE TIMELY-FILED PETITION.

The district court held that clerk's minutes, signed in open court, constitute a rendered order for the purpose of commencing the time period in which a petition for writ of certiorari or notice of appeal seeking review must be filed. That ruling, as explained in detail below, was erroneous and should be quashed. The trial judge made it clear on the record that a subsequent written order would be prepared, and that the clerk's minutes the judge signed was not intended to be the order to be appealed. The subsequent written order more clearly articulated the rulings on which a review would be based than did the notation on the clerk's minutes form. Thus, the time for seeking review should be calculated based upon the date of rendition of the formal order by the trial judge without regard to a notation on a clerk's form.

The decision of the Fifth District Court of Appeal in the instant case, *State v. Wagner*, 825 So. 2d 453 (Fla. 5<sup>th</sup> DCA 2002), expressly and directly conflicts with the decision of the

Fourth District Court of Appeal in *State v. Tremblay*, 642 So. 2d 64 (Fla. 4<sup>th</sup> DCA 1994) on the same question of law. The *Wagner* decision is also inconsistent with this Honorable Court's decision in *Employers' Fire Ins. Co. v. Continental Ins. Co.*, 326 So. 2d 177 (Fla. 1976). Moreover, the *Wagner* holding is contrary to the requirements of the Rules of Appellate Procedure, as will be more specifically articulated hereinbelow. The State respectfully contends that the Fifth District's decision in this case is wrong.

The potential reach of the *Wagner* holding goes well beyond *Ryce* litigation and could affect both civil and criminal cases of all types. The jurisdictional time limits, for specified original proceedings and for appellate review of lower court decisions, begin to run from the date of rendition of the order to be reviewed. See Fla. R. App. P. 9.100(c), 9.110(b). For this reason, ascertainment of the date of rendition is critical in every case brought before the courts of this State. For the reasons set-out hereinbelow, the State asks this Court to approve the decision reached in *Tremblay* and quash the decision in *Wagner*.

In *State v. Tremblay*, the judge, ruling on a motion to dismiss the case, "signed a court status form reflecting that

the concealed weapon charge . . . was dismissed." 642 So. 2d at 65. The form was put in the court file, and the State appealed the dismissal of the charge. *Id.* On appeal, Tremblay claimed the court "lacks jurisdiction to consider this appeal, because the state's notice of appeal was untimely filed." *Id.* The claim of untimely filing turned on whether the clerk's form, signed by the judge and put in the official file, was a rendered order from which the jurisdictional time began to run. *Id.*

In ruling that the form did not constitute an order within the meaning of the jurisdictional rules, the Fourth District Court of Appeal noted that it had "found no authority to the effect that a signed court 'status form,' albeit signed by the judge and deposited by the clerk in the court file, constitutes a final, appealable order under the rule." *Id.* at 66. The court pointed out that the rules define "'rendition' as 'the filing of a signed, written order with the clerk of the lower tribunal,'" and define "'[o]rder' as '[a] decision, order, judgment, decree or rule of a lower tribunal, excluding minutes and minute book entries.'" *Id.* at 65. Thus, the form signed by the judge was not a rendered order from which the jurisdictional time periods would begin to run. *Id.*

Moreover, the court went on to state that while there could, possibly, be "a peculiar set of circumstances" which "might lead

us to conclude that a court status form might be found appealable," certain "precautionary measures" could be taken to ensure that such circumstances did not arise. *Id.* at 66. The court instructed: "One way to do this is for the trial judge to make it clear on the record that a subsequent written order will be prepared, and that any sheet of paper the judge signs which records a particular ruling as a docket entry, is not intended to be the order subject to be appealed." *Id.* Those are the identical precautionary measures taken by the court and the parties below in Wagner's case.

After indicating that he would release Wagner, the court directed Defense Counsel "to draw an order . . ." with the time for "the State to appeal to begin upon rendition of the order." *Wagner*, 825 So. 2d at 454. The State asked for notice of the signing of the order "so I know what my appeal time is." *Id.* The judge directed Defense Counsel to send the draft order to the State before sending it to him, so the State "can approve it as to form." *Id.* The court clarified: ". . . [O]nce you draft the order, send it over, let her look at it, if she thinks you've got something in there that I didn't say, then . . . . have hearings . . . ."<sup>2</sup> Basically, I want to give you something to

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<sup>2</sup>The parties' attorneys did not agree as to the language of the draft, and a hearing was held to resolve the dispute. Changes were

appeal more than what I just said, more than some form order that the clerk prepared." *Id.* at 454-55. Clearly, neither the trial judge, nor the parties, intended for, or believed that, the time for the filing of the notice of appeal would begin running until the judge signed the order which Defense Counsel was to draft after the hearing at issue. All reasonable steps were taken by the trial court to ensure that everyone knew that the minute book entry, prepared by the clerk, was not intended to be the order to be appealed. Surely, this constituted adequate "precautionary measures" under *Tremblay*.

The State contends that the result reached by the Fourth District in *Tremblay* is the correct and just one. That conclusion is buttressed by this Court's decision in *Employers' Fire Ins. Co. v. Continental Ins. Co.*, 326 So. 2d 177 (Fla. 1976)[hereinafter "*Employer's Fire*"]. In *Employers' Fire*, this Court considered a case holding that a signed minute book entry constituted a "judgment" for purposes of commencing the time for an appeal. 326 So. 2d at 178. Considering the nature of a minute book notation, this Court determined that it could not qualify as an order rendered within the meaning of the rules

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made, and thereafter, the formal order was signed and rendered. ( See Appendix C to Motion for Rehearing *En Banc* dated August 8, 2002 at 11-20).

pertaining to jurisdictional time periods. Rendition in that regard refers to an order that "end[s] the trial court's labor and lay[s] the predicate for appellate review." 326 So. 2d at 181. "Equally important is the fact that a trial court's decision is more clearly articulated, and therefore more reviewable, in a final judgment document than in a minute book notation. For these reasons, the time for taking an appeal should be governed by the rendition of a formal document of judgment by the trial judge . . . rather than by the signed entry in a minute book."<sup>3</sup> *Id.*

Based squarely upon this authority, minute entries were specifically excluded from the definition of order as noted in the Committee Note to Rule 9.020(f). Thus, *Wagner's* holding that the court minutes, signed by the trial judge and filed with the clerk, was transformed into a rendered order sufficient to begin the running of the jurisdictional time period conflicts with this Court's holding in *Employers' Fire*, as well as the appellate rules. This is especially true, where, as here, the trial court proceeded to render the "formal document of judgment" this Court specified in *Employers' Fire*.

Thus, the courts of this state have long recognized a

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The minute book entry at issue in *Employers' Fire* was "signed by the trial judge." 326 So. 2d at 179.

difference between notations in the clerk's minutes and formal orders of the judge. Another example is found in *Haakenstad v. Osborne*, 402 So. 2d 1356 (Fla. 4<sup>th</sup> DCA 1981). In *Haakenstad*, no formal order was entered on the date of the hearing, but there was "a notation by the court clerk that the trial court" dismissed the case "for lack of prosecution." When further prosecution was attempted, a different trial judge dismissed the case based on the notation on the court minutes. 402 So. 2d at 1356. The Fourth District Court held that "no final order has been entered in the first case," specifically finding that "[t]he clerk's notation . . . was certainly not an order . . . ." *Id.*

Cases such as this draw attention to the significant differences between a clerk's minutes of court proceedings and a properly rendered order. The clerk's court minutes are brief notations of what the deputy clerk regarded as the highlights of the proceeding. They typically do not provide for the judge's signature, and are not usually signed by him or her. At most, they are attested to by the deputy clerk. The parties are not given copies of the minutes, nor are they consulted about the accuracy of the notations. Moreover, if minutes ultimately signed by a judge could thereby be transformed into an order, the parties would need to consult the court file on a daily

basis to determine whether, and if so, when, the minutes were signed so as to become an order commencing the running of the jurisdictional time for an appeal.

The State submits that an order must be a document clearly identified as an order of the court. It must specify the parties, and the judge, indicate the action taken, be dated, and be signed by the judge. Thereafter, it must be filed with the clerk, and served on the parties. See Fla. R. Civ. P. 1.080(h). Oral pronouncements, even accompanied by signed court minutes, are insufficient to constitute an order.

The Second District Court of Appeal reached a similar determination in *State v. Sullivan*, 640 So. 2d 77 (Fla. 2d DCA 1994). There, the trial court had attempted to transform the face of a motion into an order by affixing a stamp on the motion and notating the disposition of the motion thereon. 640 So. 2d at 78. The District Court said that while "a short form order stamped on the face of a motion" might be appropriate in some cases, it "should not be used when it is essential to fix a point from which crucial time periods are to be calculated for purposes of rendition under rule 9.020(g)." *Id.* An "oral pronouncement and stamped order do not satisfy the requirements of rendition." *Id.* The State submits that neither do an oral



pronouncement and notations on clerk's minutes do so.<sup>4</sup>

The clerk's minutes in the instant case are not identified as an order of the court. The minutes do not specify that the judge signed the document; neither does it state what the signature, alleged to be the judge's, applies to. Perhaps most importantly, there is no indication that it was served on the parties. Thus, the State submits that it is not a rendered order sufficient to commence the running of the jurisdictional time period for the filing of a certiorari petition, or a notice of appeal.

There are strong public policy reasons why the definition of "rendition" in the appellate rules does not include oral pronouncements coupled with signed court minutes. Under *Wagner*, a clerk's notations regarding what happened during a court proceeding, if signed at some point by the trial judge, will become rendered orders from which the jurisdictional time limits will run. How will parties know when those time periods have begun? *Wagner* does not provide that the court minutes become a

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<sup>4</sup>The State points out that in *Sullivan*, the judge **intended** to transform the short form stamp into an order ending his judicial labor on the issue; in the instant case, the judge clearly did not intend to end his judicial labor with the clerk's minutes form. The State submits that since the order in *Sullivan* was insufficient to effect rendition, the clerk's form in the instant case surely cannot have been sufficient to do so.

rendered order for jurisdictional purposes, only if, the judge signs it in the presence of counsel and/or the parties. Neither does it require that a copy of the signed court minutes be mailed, or otherwise delivered, to counsel and/or the parties. Since the parties might not be aware that the jurisdictional time frame has begun, otherwise meritorious claims will be barred from consideration at the appellate level.

In the instant case, the clerk's form is not designated an order, but is entitled "Open Court Minutes." (Exhibit to Motion to Dismiss Petition for Writ of Certiorari dated May 15, 2002). There is no provision on the face of the form by which to convert the minutes into an order. *See id.* The signature, which apparently belongs to the judge, is illegible, and there is no indication on the form that it is the judge's signature. *Id.* Indeed, even the signature line is a hand-drawn one, as the form contains no place for any official, other than the Clerk's representative, to sign it. *Id.* Neither is there any indication of service on the parties.

Although it might be argued that the parties in this case knew it was the judge's signature because he signed it at a hearing at which they were present, the State submits that making rendition of an order dependent upon whether all parties' attorneys see the judge sign a form is an unworkable standard.

Certainly, nothing in the present rule defining rendition is dependent upon whether the document is signed in the presence of the parties. See Fla. R. App. 9.020(h).<sup>5</sup>

The rules of civil procedure do provide that orders are to be served on the parties when entered. Fla. R. Civ. P. 1.080(h). There is no indication that occurred with the clerk's minutes in this case. However, it did occur with the formal order, which was prepared as specifically provided for in Rule 1.080(h).<sup>6</sup> Service is essential to the appellate process, for without it, parties will have no notice of either the beginning, or ending, of the time period for the filing of an appeal. There is no indication that the "open court minutes" form at issue in this case was even seen by the parties, much less served on them.

Moreover, even if seen, there is no indication what specific

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<sup>5</sup>"An order is rendered when a signed, written order is filed with the clerk of the lower tribunal." Fla. R. App. P. 9.020(h). The parties' presence has nothing to do with rendition of an order. Moreover, should signing in the presence of the parties be sufficient to accomplish rendition, evidentiary hearings would be necessary in some cases in order to determine whether a document was a rendered order. In such cases, jurisdiction would have to be relinquished to the circuit court for the hearing before the appellate court could determine the timeliness of the notice of appeal or petition for extraordinary relief.

<sup>6</sup>"The court may require that orders . . . be prepared by a party, may require the party to furnish . . . envelopes for service of the order . . ., and may require that proposed orders . . . be furnished to all parties before entry by the court of the order . . . ." Fla. R. Civ. P. 1.080(h).

information on the form, the signature applies to, and the signature does not immediately follow the "release" provision. (Exhibit to Motion to Dismiss Petition for Writ of Certiorari dated May 15, 2002). However, it does follow the notation that Defense Counsel is "to prepare an order. Defendant to stay in contact with counsel." *Id.* Thus, the placement of the judge's signature might reasonably be interpreted to pertain specifically to the instruction regarding who was to draft the formal order which the court expected to enter at some future time.

If the *Wagner* approach is correct, a trial court's signing of a minutes form would preclude the filing of a formal order more than thirty (30) days after the notation was made. This is so because, the party appealing, would be forced to file a notice which would divest the lower court of jurisdiction. This would result in the appellate court deciding claims without the benefit of the trial court's factual findings and legal reasoning. Moreover, in some of those cases, the appellate court would be forced to make factual findings which the law says should be made by the trial court, or remand the case for additional proceedings, resulting in unjust, and unnecessary, delays, not to mention the waste of judicial time and resources. Further, although *Wagner* should not have been released by the

trial court (the issue presented in the underlying certiorari petition), in cases where such an action was appropriate, the trial court would be forced to choose between the individual's right to liberty and the right to a meaningful appeal for the sake of justice.

Orders that permit an appellate court to more fully review the trial court's decision should be encouraged. That the "trial court's decision is more clearly articulated, and therefore more reviewable, in a final judgment document than in a minute book notation" (*Employers' Fire*, 326 So. 2d at 181) is an important consideration in the pursuit of justice. Whether decreed by statute, rule, or good common sense, formal orders which permit appellate courts to make a more meaningful review are preferable to notations on a form, especially one not intended to be the order which ends judicial labor on the matter at issue. *Cf. Spann v. State*, 28 Fla. L. Weekly S293 (Fla. April 3, 2003)[statutory provision - court must evaluate proposed mitigating circumstances in written order to assure reviewing court that trial court made a proper evaluation "'as well as to permit this Court a meaningful review of the sentencing order.'"].

In Wagner's case, the draft order presented by Defense Counsel contained a basis for Wagner's release which was not

orally specified by the trial court. The trial court's decision to release Wagner appeared to be based solely on *Atkinson v. State*, 791 So. 2d 537 (Fla. 2d DCA 2001),<sup>7</sup> but Defense Counsel included *Tanguay v. State*, 782 So. 2d 419 (Fla. 2d DCA 2001), *rev. granted*, 821 So. 2d 302 (Fla. 2002), as a basis in the proposed order. *Tanguay* presents a different, and somewhat more meritorious (but still incorrect), basis for the release. This discrepancy was resolved at the March 23<sup>rd</sup> hearing on the draft order. (Appendix C to Motion for Rehearing *En Banc* dated August 8, 2002 at 10-20). The trial judge explained that "whether I said it or not," he "did use those two cases," referring to *Atkinson* **and** *Tanguay*. *Id.* at 20. He permitted both cases as a basis for his decision to release Wagner, (Appendix D to Motion for Rehearing *En Banc* dated August 8, 2002 at 2), even though his oral pronouncement indicated that his decision was based solely on *Atkinson*. See Appendix B to Motion for Rehearing *En Banc* dated August 8, 2002.

In this Court's subsequently issued opinion in *State v. Atkinson*, 831 So. 2d 172, 174 (Fla. 2002), this Court held that

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<sup>7</sup>This Court subsequently upheld the Second District's dismissal of the commitment petition in *Atkinson*, holding "the Ryce Act is limited to persons who were in lawful custody on its effective date." *State v. Atkinson*, 831 So. 2d at 174.

only persons in lawful custody on the effective date of the Ryce Act are subject to the Act. There is no question in Wagner's case that he was in lawful custody on the effective date of the Act. The point argued below was that Wagner was not in lawful custody when the petition was filed on September 7, 2000. (See Appendix B to Motion for Rehearing *En Banc* dated August 8, 2002 at 1-2). The trial court made it clear that his "finding in this case is a very narrow finding . . . that Mr. Wagner was not in lawful custody after August 28<sup>th</sup>, 2000 . . ." *Id.* at 1. Thus, the *Atkinson* holding did not provide authority for the trial court's release of Wagner, and it was the only authority orally pronounced at the hearing when the form was signed. Without the subsequent written order citing to *Tanguay*, there clearly was no basis for the court's action in releasing Wagner.<sup>8</sup> The court recognized this at the hearing on the order, and said that he intended to also rely on *Tanguay* in releasing Wagner, because a release based solely on *Atkinson* would have been inappropriate.<sup>9</sup>

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<sup>8</sup>Of course, the State contends that Wagner's release was not appropriate in any event. *Tanguay* does not reach the instant case because it was decided on the basis of the original version of the Ryce Act, before the immediate release provision was added in May, 1999. See *Tanguay v. State*, 782 So. 2d 419, 421 n.2 (Fla. 2d DCA 2001). Moreover, even if it reaches Wagner's case, *Tanguay* was wrongly decided.

<sup>9</sup>The judge said: ". . . I did use those two cases whether I said it or not because you have to use both case[s] to fashion

(See Appendix C to Motion for Rehearing *En Banc* dated August 8, 2002 at 16-20). *Tanguay* was permitted to remain in the final order as a basis for the release to fully explain the judge's decision process and intentions (existing at the time of the oral pronouncement) and ensure meaningful review of the order releasing Wagner.

It is clear on this record that the clerk's minutes form did **not** clearly articulate the trial court's decision. Neither did it end the court's labor, or lay the correct predicate for appellate review. Thus, it cannot be the rendered order which begins the running of the jurisdictional time period under the appellate rules. *Employer's Fire*; Fla. R. App. P. 9.020(h).

Finally, in *Employers' Fire*, this Court took "judicial notice of the wide disparity in the practices of our trial courts as to the time, manner and completeness of minute book entries." 326 So. 2d at 180. This Court said: "The inevitable variations in the way judges complete court minutes suggest that these entries would generally be an unreliable guide by which to measure either appellate or limitations time." *Id.* That is just as true today, as it was when *Employers' Fire* was decided.

In fact, that was the *Wagner* trial court's specific concern.

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the remedy . . . ." (Appendix C to Motion for Rehearing *En Banc* dated August 8, 2002 at 20).



He, like this Court in *Employers' Fire*, regarded the "form order that the clerk prepared" to be unreliable and insufficient to permit meaningful appellate review.<sup>10</sup> As he told the parties at the time, he wanted to give the losing party "something to appeal more than what I just said, more than some form order that the clerk prepared." (Appendix A at 3). To that end, he entered his order ending his judicial labor on the issue of Wagner's pre-trial release on March 26, 2002. That is the date from which the jurisdictional time for appeal began to run. With respect, the Fifth District Court's conclusion to the contrary is wrong.<sup>11</sup>

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<sup>10</sup>It is noteworthy that in *Employers' Fire*, this Court rejected court minutes prepared by **a judge**; in *Wagner*, the judge indicated that the court minutes were prepared by **the clerk**. The State suggests that this further reduces the reliability of the "order" in *Wagner*.

<sup>11</sup>The State points out that the district court's reliance on its prior decision in *State v. Brown*, 629 So. 2d 980 (Fla. 5<sup>th</sup> DCA 1993) was erroneous. In *Brown*, the "trial court signed a form entitled "Court Minutes" and "Order (Motion Hearing)." 629 So. 2d at 980. The judge "X'd the blanks preceding both the words "Court Minutes" and "Order (Motion Hearing)," indicating that the form was **both** the court minutes and an order of the court. *Id.* Thus, it is clear that the judge intended that the form be the order of the court at the time it was filed with the clerk. That the judge apparently later decided to issue an additional order does not defeat the clear intent existing at the time the minutes/order form was completed, signed, and filed by the judge. That is not the case in *Wagner*. *Wagner's* judge made it clear that the court minutes were not his order, and all participants shared that understanding. Thus, *Wagner's* case is fully distinguishable from *Brown*.

**CONCLUSION**

Based on the foregoing argument and authority, the State respectfully requests that this Court approve the decision of the Fourth District Court of Appeal in *State v. Tremblay*, quash the decision of the Fifth District Court of Appeal in the instant case, and remand this case to the district court for further proceedings on the State's timely petition for writ of certiorari.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I CERTIFY that a copy of the above and foregoing brief on jurisdiction has been furnished to Nancy Ryan, Assistant Public Defender, Attorney for Respondent, 112 Orange Ave., Daytona Beach, FL 32114, via the Appellate Public Defender's basket at the Fifth District Court of Appeal, on this 27th day of May, 2003.

**CERTIFICATE OF COMPLIANCE**

The undersigned certifies that this brief was typed using 12 point Courier New, a font that is not proportionately spaced.

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IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v.

Case No. SC02-2167

Fifth DCA Case No. 5D02-1211

ALFRED J. WAGNER,

Respondent.

-----/

**APPENDIX**

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