

THE SUPREME COURT OF FLORIDA

ZENAIDA GOMEZ

Petitioner,

Case No. SC09-1401

L.T. Case No: 3D08-394

v.

VILLAGE OF PINECREST,

Respondent.

RESPONDENT'S BRIEF ON JURISDICTION

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I.

STATEMENT OF THE CASE AND FACTS

The Petitioner's Statement of the Case and Facts is for the most part accurate. However, this is a Brief on Jurisdiction pursuant to Rule 9.120 (d) Florida Rules of Procedure, in which the court below has certified this case as in conflict with decisions of two other district courts of appeal; therefore, Petitioner's lengthy Statement of Case and Facts are not relevant to this Brief. The Respondent reserves the opportunity to make any further comments as to the Statement of Case and Facts until such time as this Court accepts jurisdiction and this matter is briefed on the merits.

II.

SUMMARY OF ARGUMENT

The Village of Pinecrest ("The Village") urges that this Court decline to exercise its discretionary jurisdiction to review the decision of the District Court below.

III.

ARGUMENT

The District Court below has certified this case as in direct conflict with the decisions in two other appellate courts of this State: *Department of Highway Safety & Motor Vehicles v. Karr*, 798 So. 2d (Fla. 1st DCA 2001)

and *Brevard County Sheriff's Office v. Baggett*, 4 So. 3d 67 (Fla. 5th DCA 2009). The Respondent does not dispute that the Third District Court of Appeal has certified a conflict between its decision and those of the First and Fifth District Courts of Appeal and that gives rise to discretionary jurisdiction under Article V, §3(b)(4) of the Florida Constitution, and Rule 9.030(a)(2)(A)(vi), Fla. R. App. P. However, although there may be certified conflict, this Court's jurisdiction is not *mandatory*, it is discretionary, and, there is insufficient reason to exercise that discretion in the case at bar. *See* Padavano, P., *Appellate Practice*, Part III. Appellate Proceedings, Chapter 28. Discretionary Review, section 28:4.

The Petitioner has not presented a persuasive rationale to convince this Court that this case presents a broad legal or policy issue to be resolved by this Court necessary to invoke its discretionary jurisdiction. First, it is noteworthy that both the *Karr* and *Baggett* decisions that are in conflict with the instant decision involved seized *vehicles*, not real property; therefore, most of the Petitioner's policy issues that pertain to the loss of value to real property and the ramifications thereto do not apply to vehicles, just as Petitioner's argument would not apply to seized boats. There is no record below to indicate the number of seizures of real property that occur in this State, or the number of any other seizures, to support the broad policy

statements advanced by the Petitioner. If, for example, Section 932.703 (2)(a) is rarely applied to real property, yet applied predominantly to cars and boats, then this Court's discretionary jurisdiction would not be well-served here. Lacking any statistical evidence of the actual effect of the statutory scheme, Petitioner's argument is mere speculation.

Even if the Petitioner could establish any proof that seizures of real property were significant in number throughout the State, the "chamber of horrors" that it envisions, such as the owner's refusal to pay insurance or property taxes during the "seizure" period, is also based upon sheer speculation. There was nothing offered below to support that this situation occurs and there is no reason to believe that such events would occur.

The ripple effect to "innocent third parties" that the Petitioner further conjures, e.g., that lenders will be put at risk; the city will lose its tax base; neighboring property values will be deflated are all likewise speculative. Furthermore, without any record evidence of these occurrences, these scenarios do not support the exercise of discretionary jurisdiction here.

Finally, with respect to Petitioner's overall judgment that is in opposition to that of the drafters of this statute, sound policy does not suggest that property on which there is probable cause to believe there is contraband should be ignored by the police and the Village. That policy

would have far more dangerous ramifications than those that the Petitioner fears. The intent of the legislature is to authorize the governing authority to *immediately* take control of the property, because of the “clear and present danger” that is posed based upon the suspected contraband. If the police locate marijuana growing in a backyard, so can neighboring teenagers, and to suggest that the neighboring property values are the more serious risk, as the Petitioner claims, not only substitutes the Petitioner’s policy decision for the Legislature’s, but also proves that it is not a sufficient ground for this Court’s discretionary jurisdiction.

IV.

CONCLUSION

For the reasons stated, the Respondent opposes the exercise of the Court’s discretionary jurisdiction and respectfully requests that it decline to review the decision of the District Court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via U.S. mail upon Richard J. Diaz, Esquire 3127 Ponce de Leon Blvd. Coral Gables FL 33134 and Jane Ellen Bond, Esquire, Butler & Hosch, P.O. Box 628206, Orlando, FL 32862-8206 on this ____ day of September, 2009.

By: _____
Cynthia Everett
Fla. Bar No: 350400

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the type size and style used throughout this Brief is 14-point Times New Roman double-spaced, and that this Brief fully

complies with the requirements of Florida Rule of Appellate Procedure
9.210(a)(2).

By: _____
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