

IN THE SUPREME COURT OF FLORIDA

GARY CZAJKOWSKI,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Case No. SC15-2313
4th DCA Case No. 4D13-3693

RESPONDENT'S BRIEF ON JURISDICTION

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STATEMENT OF THE CASE AND FACTS

Petitioner was charged with unlawful compensation or reward for official behavior and conspiracy to commit unlawful compensation or reward for official behavior. Czajkowski v. State, 40 Fla. L. Weekly D2464, D2464 (Fla. 4th DCA Nov. 4, 2015). Petitioner filed a motion to dismiss the charges on the basis that section 838.016 was unconstitutional as applied to his prosecution. Id. Petitioner asserted that the lack of a definition of the phrase "not authorized by law" rendered the statute unconstitutionally vague. Id. The trial court denied Petitioner's motion to dismiss. Id. A jury convicted Petitioner of fourteen counts of unlawful compensation or reward for official behavior and one count of conspiracy to commit unlawful compensation or reward for official behavior. Id.

On appeal, Petitioner argued that the trial court erred in denying his motion to dismiss the information on the ground that section 838.016 is unconstitutional as applied to him because of the alleged vagueness of the phrase "not authorized by law." Id. at 2465. The Fourth District Court of Appeal rejected this argument based on a decision of this Court: "Based on this argument, we must affirm. Our supreme court already has rejected a vagueness challenge to section 838.016(1)." Id. (citing Hoberman v. State, 400 So. 2d 759 (Fla. 1981)).

The Fourth District Court of Appeal also undertook an independent review of the trial court's ruling: "On the possibility that we are not bound by Hoberman due to its lack of detailed reasoning, we have conducted a de novo review of the trial court's ruling." Czajkowski, 40 Fla. L. Weekly at D2465. After examining other statutory provisions and caselaw, the Fourth District Court of Appeal found that the statute sufficiently informed Petitioner that his conduct was unlawful: "Thus, section 838.016(1) was sufficiently definite to inform the defendant that his conduct in providing gifts to influence public employees' official action - which in turn, caused them to violate sections 112.313(2) and 112.313(4) by accepting things of value given to influence their official action - was 'not authorized by law.'" Id. at D2465-67. Without expressly declaring the statute valid, the Fourth District Court of Appeal affirmed the trial court's denial of Petitioner's motion to dismiss. Id. at D2467.

SUMMARY OF THE ARGUMENT

The decision of the Fourth District Court of Appeal did not expressly declare a state statute valid.

ARGUMENT

THE DECISION OF THE FOURTH DISTRICT COURT OF
APPEAL DID NOT EXPRESSLY DECLARE SECTION
838.016 VALID.

Prior to the 1980 amendment to Article V of the Florida Constitution, this Court could review a district court decision if a declaration of validity of a statute was inherent in the decision, yet not expressly articulated. See Harrell's Candy Kitchen, Inc. v. Starsota-Manatee Airport Authority, 111 So. 2d 439, 441 (Fla. 1959) (explaining the inherency doctrine). However, the validity of the statute must now be expressly articulated. See Art. V, § 3(b)(3), Fla. Const. (stating that this Court "[m]ay review any decision of a district court of appeal that expressly declares valid a state statute").

At no point in the decision does the Fourth District Court of Appeal expressly declare section 838.016 valid. In Graham v. Haridopolos, 108 So. 3d 597, 599 (Fla. 2013), this Court found an express declaration of validity where the district court stated: "the challenged statutes are constitutional." Graham v. Haridopolos, 75 So. 3d 315, 317 (Fla. 1st DCA 2011). In Simmons v. State, 944 So. 2d 317, 321 (Fla. 2006), this Court found an express declaration of validity where the district court stated: "these statutes are not unconstitutional." Simmons v. State, 886 So. 2d 399, 400 (Fla. 1st DCA 2004). In

Ilkanic v. City of Fort Lauderdale, 705 So. 2d 1371, 1372 (Fla. 1998), this Court found an express declaration of validity where the district court stated: "we therefore hold that the statute is not constitutionally infirm." City of Fort Lauderdale v. Ilkanic, 683 So. 2d 563, 565 (Fla. 4th DCA 1996). Since the Fourth District Court of Appeal did not expressly declare the statute valid, jurisdiction does not exist.

Even if discretionary jurisdiction existed, this case does not present a significant issue warranting review by this Court. First, the decision is consistent with this Court's Hoberman decision that rejected a vagueness challenge to the same statute, section 838.016, on the basis that section 838.016 conveys "a sufficiently definite warning as to the proscribed conduct." Hoberman, 400 So. 2d at 758. Second, Petitioner was a businessman who gave gifts to municipal employees to obtain more work for his company. Czajkowski, 40 Fla. L. Weekly at D2464-65. Petitioner also instructed his employees to lie about an \$8,500 watch that was given to a municipal employee. Id. at D2465. Since the Florida Statutes prohibit municipal employees from receiving gifts given to influence official action, the application of 838.016 was not vague as applied to Petitioner's conduct. See Sieniarski v. State, 756 So. 2d 68, 74 (Fla. 2000) ("a person to whom a statute may constitutionally be

applied may not challenge that statute on the ground that it may conceivably be applied unconstitutionally to others in situations not before the Court"). The instant decision of the Fourth District Court of Appeal was correctly decided.

CONCLUSION

Since there was no express declaration that the statute was valid, this Court should deny the petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing was served by email on Margaret Good-Earrest and Cherry Grant, P.O. Box 1161, Lake Worth, Florida 33460 at Good2300@BellSouth.net and CherryGrantLaw@gmail.com on January 11, 2016.

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CERTIFICATE OF TYPEFACE COMPLIANCE

I HEREBY CERTIFY that this brief has been prepared in Courier New font, 12 point, and double spaced.

/s/ MARK J. HAMEL
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