

IN THE SUPREME COURT OF FLORIDA

HOLLIS JONES,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

CASE NO: 64-042

**FILED**

SID J. WHITE

MAR 2 1964

CLERK, SUPREME COURT

BY \_\_\_\_\_  
Deputy Clerk

PEITITIONER'S REPLY BRIEF ON MERITS

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STATEMENT OF THE CASE AND THE FACTS

Appellant relies on the Statements in his Initial Brief  
on the Merits.

ARGUMENT

POINT I

THE STATE MAY NOT OBTAIN CERTIORARI  
REVIEW OF DECISIONS OF THE TRIAL  
COURT WHERE IT HAS NO RIGHT OF  
APPELLATE REVIEW.

A. Article V, Section 4(b)(1), Florida Constitution (1968) grants to district courts of appeal the power, inter alia, "to hear appeals, that may be taken of right, from final judgments or orders of trial courts." Manifestly, the foregoing provision is in the nature of an enabling act for our courts of appeal. Accordingly, the respondent's argument, that the foregoing section creates a right of appeal, is incorrect.

B. While Section 924.07(1), Florida Statutes (1981) empowers the government to appeal orders dismissing indictments or informations, it does not allow any appeal from an order dismissing an affidavit or violation of probation. The State's argument on this point falls afoul of the principle: EXPRESSIO UNIUS EST EXCLUSIO ALTERIUS.

C. Section 924.08(2), Florida Statutes (1981) is again merely an enabling statute and confers no rights on the state. Nevertheless, the state in its brief has argued that, because Section 924.08 empowers district courts of appeal to hear appeals from final orders, an appeal was authorized in the instant case. The State's argument presupposes that the order of the trial court dismissing a charge of violation of probation, was a final order. If such an order is a final order, then it was the state's duty to appeal from the first order dismissing the charge of violation, and

the subsequent refiling of the charge of violation (and the later appeal) was improper.

D. Section 924.37, Florida Statutes (1981), empowering the state of appeal from orders dismissing affidavits, refers to the obsolete practice of bringing criminal charges by affidavit. Section 924.37, Florida Statutes Annotated, "Legislative Committee Notes -- 1970." Accordingly, the State's argument, that Section 924.37 authorizes appeals from orders dismissing charges of violation of probation, is frivolous.

E. Florida Rule of Appellate Procedure 9.030(b)(2) and (3) simply delineates the power of the district courts of appeal. It "should not be considered as authority for the resolution of disputes concerning any court's jurisdiction." Fla.R.App.P. 9.030 (1977, Committee Notes). Accordingly, respondent's argument that the rule expands the certiorari jurisdiction of the district courts of appeal is incorrect.

POINT II

WHERE THE TRIAL COURT DID NOT DEPART  
FROM THE ESSENTIAL REQUIREMENTS OF  
LAW, THE COURT OF APPEAL ERRED BY  
TREATING THE STATE'S IMPROPER APPEAL  
AS A PETITION FOR THE WRIT OF CERTIORARI,  
AND BY GRANTING THE WRIT.

Appellant relies on his Initial Brief on the Merits as  
to this point.

POINT III

THE COURT OF APPEAL ERRED WHERE IT  
GRANTED THE WRIT OF COMMON LAW  
CERTIORARI WHERE NO INITIATING  
DOCUMENT WAS TIMELY FILED.

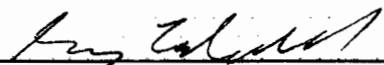
Appellant relies on his Initial Brief on Merits.

CONCLUSION

The order of the lower court granting the Writ of Certiorari should be overturned.

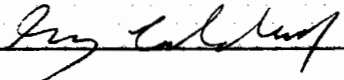
Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to JOAN FOWLER ROSSIN, ESQUIRE, Assistant Attorney General, 111 Georgia Avenue, West Palm Beach, Florida, by courier, this 29 day of February, 1984.

  
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