

IN THE SUPREME COURT OF FLORIDA

CASE NO. 64,639

THE STATE OF FLORIDA,

Petitioner,

vs.

K.H., a juvenile,

Respondent,

FILED
NOV 10 1983
CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

(2)

ON CONFLICT JURISDICTION FROM THE DISTRICT COURT OF APPEAL

~~_____~~

BRIEF OF PETITIONER ON THE MERITS

JIM SMITH
Attorney General
Tallahassee, Florida

RICHARD E. DORAN
Assistant Attorney General
Ruth Bryan Owen Rhode Building
Florida Regional Service Center
401 N.W. 2nd Avenue (Suite 820)
Miami, Florida 33128
(305) 377-5441

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INTRODUCTION

The State of Florida, was the Petitioner in the trial court. K.H., a juvenile, was the Respondent in the trial court. In this brief, the parties will be referred to as they appear before this Court. The symbol "R" will be used to designate the Record on Appeal. The symbol "SR" will be used to designate the Supplemental Record on Appeal which consists of the three (3) pages of the transcript of the proceedings below. All emphasis has been supplied unless the contrary is indicated.

STATEMENT OF THE CASE

On May 9, 1983, the Petitioner filed its Petition for Delinquency against the Respondent alleging that the Respondent unlawfully, feloniously, wantonly or maliciously threw a rock at or into a occupied vehicle contrary to the provisions of §790.19 Florida Statutes. The act as alleged in the Petition for Delinquency constitutes a second degree felony. (See. R-1).

On June 20, 1983, the instant cause was called up for hearing before the Honorable Seymour Gelbert, a Judge of the Circuit Court of the Eleventh Judicial Circuit, Family Division. After a brief inquiry and colloquy between the Judge and the State Attorney, the Judge dismissed the petition. (See SR 2-4). The State of Florida sought appellate or certiorari

review of this case in the District Court of Appeal. Review was denied solely upon authority of State v. C.C., 449 So.2d 280 (Fla. 3d DCA 1983) En Banc, approved ___ So.2d ___ (Fla. Case No. 64,354). This court then grant review on grounds of express and direct decisional conflict. The briefing schedule in the case was stayed pending resolution of State v. C.C., supra. On October 21, 1985, the court ordered a brief on the merits of the case.

SUMMARY OF ARGUMENT

On authority of State v. Smith, 260 So.2d 489 (Fla. 1972), the Petitioner seeks a reversal of the District Court's order of dismissal and an instruction to grant the writ of certiorari. The trial court lacked jurisdiction to dismiss the State's case prior to any hearing and his action constitutes a departure from the essential requirements of law.

ISSUE

WHETHER THE TRIAL COURT HAD THE LAW-
FUL AUTHORITY TO SUMMARILY DISMISS
THE STATE'S PETITION FOR DELINQUENCY?

LAW AND ARGUMENT

THE TRIAL COURT WAS WITHOUT AUTHORITY TO SUMMARILY DISMISS THE STATE'S PETITION FOR DELINQUENCY IN THE INSTANT CAUSE.

It is instantly apparent from a reading of the very brief transcript of proceedings that the trial court dismissed the instant petition for no other reason than the fact that he disagreed with the wisdom and the decision of the State Attorney to proceed with this matter.

The trial court's summary dismissal of the petition, without sufficient legal basis reflected in the record, is tantamount to the court entering an order of nolle prosequi. Obviously, the trial court lacks such authority. The decision to file a nolle prosequi is essentially vested solely in the discretion of the State. In the interest of S.R.P., a child, 390 So.2d 1052 (Fla. 4th DCA 1981); State v. Braden, 375 So.2d 49 (Fla. 2d DCA 1979); State v. Darnell, 335 So.2d 638 (Fla. 4th DCA 1976).

Accordingly, the trial court's order dismissing Petitioner's petition must be vacated. The order violates the standard for certiorari review in that it was made without jurisdiction and departs from the essential requirements of law. This honorable court should recognize this grave error and direct the Third District Court of Appeal to issue this writ of certiorari on

authority of State v. Smith, 260 So.2d 489 (Fla. 1972). Accord,
State v. Jones, ___ So.2d ___ (Fla. Case No. 64,042, October
17, 1985)[10 F.L.W. 565], Boyd, C.J. concurring.

CONCLUSION

Based upon the foregoing reasons and citations of authority, the Respondent, the State of Florida, prays that this Honorable Court enter an order vacating the District Court's order of dismissal of Petitioner's Petition for Delinquency with instructions to grant a writ of certiorari to Petitioner.

Respectfully submitted,

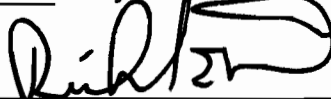
JIM SMITH
Attorney General



RICHARD E. DORAN
Assistant Attorney General
Department of Legal Affairs
401 N.W. 2nd Avenue (Suite 820)
Miami, Florida 33128
(305) 377-5441

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **REPLY BRIEF OF PETITIONER** was furnished by mail to **THE HONORABLE BENNETT H. BRUMMER**, Public Defender, Eleventh Judicial Circuit of Florida, 1351 N.W. 12th Street, Miami, Florida 33125, on this 14th day of November, 1985.



RICHARD E. DORAN
Assistant Attorney General

RED/dm