

IN THE SUPREME COURT OF FLORIDA


FILED

SID J. WHITE

AUG 27 1984

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk



JIMMIE LEE ALEXANDER,)
)
 Petitioner,)
)
 v.)
)
 STATE OF FLORIDA,)
)
 Respondent.)
 _____)

Case No. 65,666

ANSWER BRIEF ON JURISDICTION

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PRELIMINARY STATEMENT

Petitioner was the defendant in the Criminal Division of the Circuit Court of the Seventeenth Judicial Circuit, in and for Broward County, Florida, and the appellant in the District Court of Appeal, Fourth District. Respondent was the prosecution and appellee in the lower courts. In the brief the parties will be referred to as they appear before this Honorable Court.

STATEMENT OF THE CASE AND FACTS

Respondent accepts the statement of the case and facts as presented in petitioner's brief.

REASONS FOR DENIAL OF WRIT

Respondent agrees that this Court clearly has jurisdiction to hear this case because the opinion of the Fourth District Court of Appeal expressly declares that Section 790.01(2) Fla.Stat. (1981) is not void for vagueness as asserted by petitioner. The issue is whether there is the necessity for this Court to grant review of the decision of the Fourth District Court of Appeal and respondent maintains that there is not. The Fourth District Court of Appeal opinion gives a very thorough and careful analysis of the statute making further review by this Court unnecessary.

This case really turned on whether the motion to dismiss was properly denied. The district court found that it was because there was always a material fact in dispute which was whether the firearm was carried in a zippered guncase. It is apodictic that where there are material disputed facts, those questions should be left for the trier of fact to determine. Consequently, the motion to dismiss was properly denied.


Petitioner makes a convoluted argument that there exists conflict jurisdiction in this cause on the basis that the state allegedly agreed to the "relevant historical facts." This argument is fallacious. It is clear from page two of the slip opinion in this cause that there was always a very basic material disputed fact. In the cases of State v. Holliday, 431 So.2d 309 (Fla. 1st DCA 1983) and Kuhn v. State, 439 So. 2d 291 (Fla. 3rd DCA 1983), relied upon by petitioner, there was no dispute of material facts. In Holliday the state stipulated to the defendant's adoption of the evidentiary facts alleged in the state's traverse as part of the motion to dismiss. In Kuhn the state abandoned its traverse when it stipulated to the facts which the trial court subsequently relied upon in reaching its decision. On that basis those cases are inapposite to the case at bar where there was a material disputed fact which was never in any manner resolved.

CONCLUSION

Based on the foregoing argument, respondent respectfully submits that the Court should deny certiorari in the instant case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished this 24th day of August, 1984 by Mail/Courier to GARY CALDWELL, ESQUIRE, Assistant Public Defender, Harvey Building, 13th Floor, 224 Datura Street, West Palm Beach, Florida 33401.


OF COUNSEL