

IN THE SUPREME COURT OF FLORIDA

ROBERT GLEN FIKE,
Petitioner,
vs.
Respondent.

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CASE NO. 66,024

RESPONDENT'S BRIEF ON JURISDICTION

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ARGUMENT

THE DECISION OF THE FIFTH DISTRICT COURT OF APPEAL DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH THE DECISIONS OF POPE V. STATE, 268 SO.2D 173 (FLA. 2D DCA 1972), AND ROGERS V. STATE, 336 SO.2D 1233 (FLA. 4TH DCA 1976).

The statement of the district court judges that they deem certain decisions to be in conflict with their decision in this case does not suffice as a certification of direct and express conflict. Art. V, § 3(b)(4), Fla. Const.; Stevens v. Jefferson, 436 So.2d 33, 35 (Fla. 1983) (Boyd, J., dissenting). Respondent respectfully submits that no express and direct conflict exists to warrant this Court's exercise of its discretion.

In the instant case, the information alleged that Fike "did unlawfully and feloniously sell or deliver to another person, cannabis." The Fifth District Court of Appeal determined that this information alternatively charged a felony or a misdemeanor. If the information sufficiently charges a felony, the circuit court has jurisdiction. § 26.012(2)(d), Fla. Stat. (1983); McPhadder v. State, 450 So.2d 1264 (Fla. 1st DCA 1984); Linsey v. State, 446 So.2d 1074 (Fla. 1984). The sale of cannabis, regardless of amount, is a felony. § 893.13(1)(a)(2), Fla. Stat. (1983).

Pope v. State, 268 So.2d 173 (Fla. 2d DCA 1972), is distinguishable from the instant case, because the information at issue in Pope was insufficient to charge a felony. In that case, the felony court did not acquire jurisdiction because

the "allegata of the accusatory writ omit the essentials to make out a felony. If a crime is charged at all, it is a misdemeanor." Pope, at 176. Here, the district court correctly found that the information alleged either a felony or a misdemeanor, and therefore properly invoked the jurisdiction of the circuit court.

Rogers v. State, 336 So.2d 1233 (Fla. 4th DCA 1976), is also easily distinguishable from the instant case and so does not present an express and direct conflict with this decision. The precise issue in Rogers was whether dismissal by the county court for lack of jurisdiction barred subsequent prosecution in circuit court as violative of double jeopardy. In Rogers, the court determined that the felony prosecution was not barred because the county court did not have jurisdiction. "We hold that the first information the state filed was as invalid as the one in the Pope case because it too failed to show whether the appellant was charged with a misdemeanor or a felony." Rogers, at 1236.

Both case relied upon by Petitioner concerned informations which wholly failed to charge a felony. The instant case charges either a felony or a misdemeanor. Therefore, no express or direct conflict of law exists such that this Court should exercise its extraordinary jurisdiction.

CONCLUSION

Based on the foregoing arguments and authorities presented, Respondent respectfully prays this Honorable Court decline to exercise its discretionary jurisdiction in this cause.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing Respondent's Brief on Jurisdiction has been furnished, by delivery, to Lucinda H. Young, Assistant Public Defender for Petitioner (1012 S. Ridgewood Avenue, Daytona Beach, Florida 32014), this 5th day of November, 1984.

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