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IN THE SUPREME COURT OF FLORIDA

CASE NO. 66,787

THE STATE OF FLORIDA,

Petitioner,

vs.

I. P., a juvenile,

Respondent.

FILED

STATE

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Chief Deputy Clerk

ON DISCRETIONARY REVIEW

BRIEF OF RESPONDENT ON THE MERITS

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INTRODUCTION

The respondent, I. P., was the appellee in the District Court of Appeal of Florida, Third District, and the respondent in the trial court, the Circuit Court of the Eleventh Judicial Circuit of Florida in and for Dade County (Juvenile-Family Division). The petitioner, the State of Florida, was the appellant in the District Court of Appeal and the petitioner in the trial court. The parties will be referred to in this brief as they stood before the trial court.

The symbol "A" will be utilized to designate the appendix to this brief. All emphasis is supplied unless the contrary is indicated.

STATEMENT OF THE CASE AND FACTS

Respondent rejects the Statement of the Case and Facts set forth in the Brief of Petitioner as based upon matters which were not before the District Court of Appeal in this cause.¹ The following chronology of events is set forth in the documents which were before the court below:

- 1) On January 4, 1985, the state filed a notice of appeal from an order of the trial court which dismissed a petition for delinquency (A. 1).
- 2) On February 12, 1985, respondent filed a motion to dismiss the appeal (A. 2).
- 3) On March 19, 1985, the District Court of Appeal issued an order dismissing the appeal and certified that its decision passed upon a question of great public importance (A. 3-4).

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Respondent has filed, simultaneously with this brief, a motion to strike the appendix to the brief of petitioner, upon which its Statement of the Case and Facts is based.

QUESTION PRESENTED

WHETHER COMMON-LAW CERTIORARI IS UNAVAILABLE FOR REVIEW OF FINAL ORDERS OF CIRCUIT COURTS IN JUVENILE-DELINQUENCY CASES UNDER CHAPTER 39, FLORIDA STATUTES (1983).

SUMMARY OF ARGUMENT

The District Court of Appeal dismissed petitioner's purported appeal from a final order in a juvenile-delinquency case. This Court's decision in State v. C.C., 10 F.L.W. 435 (Fla. Aug. 29, 1985), holds that the state has no right of appeal from final or interlocutory orders in juvenile-delinquency cases. Petitioner's argument that the court below should have treated the improper appeal as a petition for writ of common-law certiorari is foreclosed by this Court's decision in State v. G.P., 10 F.L.W. 469 (Fla. Aug. 30, 1985), which holds that the state may not seek certiorari review of final or interlocutory orders in juvenile-delinquency cases.

ARGUMENT

COMMON-LAW CERTIORARI IS UNAVAILABLE FOR REVIEW OF FINAL ORDERS OF CIRCUIT COURTS IN JUVENILE-DELINQUENCY CASES UNDER CHAPTER 39, FLORIDA STATUTES (1983).

In State v. C.C., 10 F.L.W. 435 (Fla. Aug. 29, 1985), this Court held that the state has no right of appeal from final or interlocutory orders in juvenile-delinquency cases brought under Chapter 39, Florida Statutes (1983). The dismissal of the purported appeal in this case, taken from an order dismissing a delinquency petition (A. 1), was indisputably proper under the

C.C. holding.

In State v. G.P., 10 F.L.W. 469 (Fla. Aug. 30, 1985), this Court held that the state has no right to seek review of unappealable orders in juvenile-delinquency cases by common-law certiorari:

In State v. C.C. [citation omitted] we held that the right of appeal given in section 39.14, Florida Statutes (1981), does not extend to the state. We also agreed with the district court in C.C. that interlocutory review is available only in cases in which an appeal may be taken as a matter of right.

In the instant case the third district reached the same result and held that, because the state has no right to appeal under section 39.14, it also has no right to have a juvenile order reviewed by writ of certiorari. [citation omitted]. We agree with the district court. Chapter 39, dealing with juveniles, is a purely statutory creation which does not give the state the right of appeal. The state has no greater right by certiorari. We approve the district court's decision.

Ibid; accord, J.P.W. v. State, 10 F.L.W. 486 (Fla. Aug. 30, 1985). This precedent, which is controlling in this case,² requires approval of the order of dismissal of the court below.³

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And which is unaccountably ignored in petitioner's brief.

3

Petitioner's attempt to litigate the merits of its improper appeal, is, of course, of no avail, since the court below did not have jurisdiction to review the trial court's order. And, in any event, those arguments cannot be raised here, since the merits of the improper appeal were never before the District Court of Appeal. E.g., Trushin v. State, 425 So.2d 1126, 1130 (Fla. 1982); Simmons v. State, 305 So.2d 178, 180 (Fla. 1974).

CONCLUSION

Based upon the foregoing, respondent requests this Court to approve the decision of the District Court of Appeal in this cause.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing brief of respondent was forwarded by mail to the Office of the Attorney General, Randi Klayman Lazarus, Assistant Attorney General, 401 N.W. Second Avenue, Miami, Florida 33128 this 2nd day of December, 1985.

Elliot H. Scherker
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