

IN THE SUPREME COURT OF FLORIDA

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SID J. WHITE
SEP 8 1985
CLERK, SUPREME COURT
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ANTHONY L. WRIGHT,)
Petitioner,)
v.)
STATE OF FLORIDA,)
Respondent.)

CASE NO. 67,445

RESPONDENT'S BRIEF ON JURISDICTION

JIM SMITH
ATTORNEY GENERAL

MARGENE A. ROPER
ASSISTANT ATTORNEY GENERAL
125 N. Ridgewood Ave.
Fourth Floor
Daytona Beach, Fl. 32014
(904) 252-1067

COUNSEL FOR RESPONDENT

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CITATION OF AUTHORITIES

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SUMMARY OF THE ARGUMENT

The decision in State v. Neil, 457 So.2d 481 (Fla. 1984), is retroactive only as to companion cases and death cases, which the instant case is not, hence there is only surface conflict between the instant case and other cases applying Neil retroactively.

ARGUMENT

THE DECISION OF THE FIFTH DISTRICT COURT OF APPEAL DOES NOT DIRECTLY AND EXPRESSLY CONFLICT WITH THE DECISIONS IN ANDREWS V. STATE, 459 So. 2d 1018 (Fla. 1984); JONES V. STATE, 464 So.2d 547 (Fla. 1985); JONES V. STATE, 466 So.2d 301 (Fla. 3d DCA 1985); AND FRANKS V. STATE, 467 So. 2d 400 (Fla. 4th DCA 1985).

It is true, as petitioner notes, that this court and the Third and Fourth District Courts of Appeal have applied State v. Neil, 457 So.2d 481 (Fla. 1984), to so called "pipeline" cases, while the Fifth District Court of Appeal held that Neil should apply only to those cases going to trial subsequent to the decision in Neil. There is, in effect, superficial conflict among the various decisions.

While there is "surface" conflict, the instant case can be distinguished from the other cases. This court never stated that Neil applied to all cases in the pipeline. The court in Neil, which was decided on state law grounds, adopted the procedure enunciated in People v. Thompson, 79 A.D. 2d 87, 435 N.Y.S. 2d 739 (1981), which mandates that such decisions are retroactive only to companion cases and all death cases. See, People v. Wheeler, 22 Cal.3d 258, 583 P.2d 748, 148 Cal.Rptr. 890 (1978). This case is neither, hence the distinction.

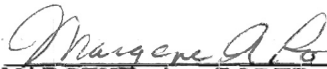
The respondent will leave to the discretion of the court, the determination of whether such principles need to be enunciated for the benefit of lower courts in the state of Florida.

CONCLUSION

For the reasons expressed herein, respondent would reiterate that only "surface" conflict exists among the district court and this court on the Neil issue and would suggest that such is not sufficient to invoke this court's discretionary jurisdiction.

Respectfully submitted,


JIM SMITH
ATTORNEY GENERAL


MARGENE A. ROPER
ASSISTANT ATTORNEY GENERAL
125 N. Ridgewood Ave.
Fourth Floor
Daytona Beach, Fl. 32014
(904) 252-1067

COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing Respondent's Brief on Jurisdiction has been furnished by mail to Brynn Newton, Assistant Public Defender, 112 Orange Avenue, Suite A, Daytona Beach, Florida 32014, and counsel for the petitioner this 30th day of August, 1985.


MARGENE A. ROPER
COUNSEL FOR RESPONDENT