

3-10

IN THE SUPREME COURT OF FLORIDA

PAUL PEREZ,)
)
 Petitioner,)
)
 vs.)
)
 STATE OF FLORIDA,)
)
 Respondent.)
 _____)

FILED

SID J. WHITE

FEB 18 1987

CLERK, SUPREME COURT

CASE NO. 79,027

Deputy Clerk

PETITIONER'S BRIEF ON JURISDICTION

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

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IN THE SUPREME COURT OF FLORIDA

PAUL PEREZ,)	
)	
Petitioner,)	
)	
vs.)	CASE NO. 70,027
)	
STATE OF FLORIDA,)	
)	
Respondent.)	
_____)	

PETITIONER'S BRIEF ON JURISDICTION

STATEMENT OF THE CASE AND FACTS

.The state charged Petitioner with lewd assault upon a three and a half year old child (§800.04, Fla. Stat.). Petitioner made a pre-trial motion to exclude the child victim's hearsay statements as well as a motion to compel the child to testify, arguing that this action was necessary to protect his constitutional right to confront his accuser. Following an evidentiary hearing, the trial court denied Petitioner's motions and determined that the child's hearsay statements were reliable and admissible and found that the child was "unavailable" to testify solely upon the substantial liklihood of severe mental harm to the child if it were required to testify in open trial proceedings. The trial court did not examine the child, although the Petitioner contended the court was required to do so in order to determine the child's competency. Petitioner entered a plea of

nolo contendere reserving the right to appeal the issues raised by the motion which issues the trial court found were dispositive of the case.

On appeal to the Fifth District Court of Appeal, the appellate court specifically found Section 90.803(23), Florida Statutes (1985), constitutional, in that the provisions met the requirements of the confrontation clause of the Federal Constitution (U.S. Const. Amend. VI) as interpreted by the United States Supreme Court in Ohio v. Roberts, 448 U.S. 56, 65 (1980), and of the Florida constitution (Art. I, §16, Fla. Const.). See Appendix and Perez v. State, 12 FLW 243 (Fla. 5th DCA, January 8, 1987).

SUMMARY OF ARGUMENT

Florida Rule of Appellate Procedure 9.030(2)(A)(i) provides that the Florida Supreme Court has discretionary jurisdiction to review a decision of a district court of appeal which expressly declares valid a state statute. Thus, in the instant case, wherein the court expressly declared Section 90.903(23) Florida Statutes (1985) constitutional, this Court has jurisdiction to accept the case for review.

ARGUMENT

THIS COURT HAS JURISDICTION TO ACCEPT
THE INSTANT CASE IN WHICH THE DISTRICT
COURT OF APPEAL SPECIFICALLY UPHELD THE
VALIDITY OF SECTION 90.803(23), FLORIDA
STATUTES (1985).

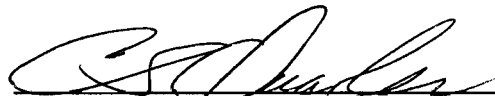
Florida Rule of Appellate Procedure 9.030(2)(A)(i) provides that this Honorable Court has discretionary jurisdiction to review a decision of a district court of appeal which expressly declares valid a state statute. In the instant case the District Court of Appeal specifically ruled Section 90.803(23), Florida Statutes (1985) to be constitutional, rejecting the argument that it violates the constitutional right to confrontation. The statute in question provides an additional exception to the hearsay rule relating to statements of child victims of sexual abuse or sexual offenses against a child. The statute involves an issue critical to the criminal justice system. This Court should accept the instant case for review and decide the constitutionality of Section 90.803(23), Florida Statutes (1985).

CONCLUSION

Based upon the reasons stated herein, Petitioner respectfully requests that this Honorable Court exercise its discretionary jurisdiction in the instant case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been hand delivered to the Honorable Robert A. Butterworth, Attorney General, in his basket at the Fifth District Court of Appeal and mailed to Mr. Paul Perez, 1112 Mabbette St., Kissimmee, Fla. 32741 on this 13th day of February 1987.



CHRISTOPHER S. QUARLES
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