

047

IN THE SUPREME COURT OF FLORIDA

CASE NO. 70,034

STATE OF FLORIDA,

Petitioner,

vs.

ARTURO J. ARRIAGADA,

Respondent,

**FILED**

SID J. WHITE

APR 22 1987

CLERK, SUPREME COURT

By Deputy Clerk

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ON PETITION FOR DISCRETIONARY REVIEW  
CERTIFIED QUESTION

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REPLY BRIEF OF PETITIONER ON THE MERITS

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## INTRODUCTION

The Petitioner, the State of Florida, was the Appellant in the District Court and the prosecution in the trial court. The Respondent, Arturo Arriagada, was the Appellee in the District Court and the defendant below. The parties will be referred to as they stand before this Court. The symbol "A" will be used to designate the Appendix to the initial brief. All emphasis has been supplied unless otherwise indicated.

QUESTION PRESENTED

WHETHER THE HOLDINGS IN JONES V. STATE, [477 SO.2D 566 (FLA. 1985)]; STATE V. G.P., [476 SO.2D 1272 (FLA. 1985)]; AND STATE V. C.C., [476 SO.2D 144 (FLA. 1985)], PRECLUDE THE STATE FROM SEEKING COMMON LAW CERTIORARI REVIEW OF NONAPPEALABLE INTERLOCUTORY ORDERS IN CRIMINAL CASES.

SUMMARY OF THE ARGUMENT

Based on this Court recent holding in Ramos v. State, No. 65, 964 and 66,811 (Fla. April 9, 1987), it is clear that the substantive right of appeal created by Section 924.07(8) Florida Statutes (1981) creates a state right to appeal interlocutory orders and as such this court must provide a procedure for said appeal.

## ARGUMENT

THE HOLDINGS IN JONES V. STATE, [477 SO.2D 566 (FLA. 1985)]; STATE V. G.P., [476 SO.2D 1272 (FLA. 1985)]; AND STATE V. C.C., [476 SO.2D 144 (FLA. 1985)], PRECLUDE THE STATE FROM SEEKING COMMON LAW CERTIORARI REVIEW OF NONAPPEALABLE INTER-LOCUTORY ORDERS IN CRIMINAL CASES.

In its initial brief, Petitioner set forth the proposition that since the State right to appeal is statutory, a statute giving such a right must be implemented, procedurally, by this Court. Specifically, Section 924.07(8) Florida Statutes (1981), gives the State the right to appeal all pretrial orders and therefore this Court must enact a procedural vehicle for said right. Since Rule 9.140(c)(1) does not provide for review for such orders, the only reasonable interpretation is that this Court has provided the certiorari procedure for review of said orders.

In response thereto, Respondent argued that the State's interpretation of State v. Creighton, 469 So.2d 735 (Fla. 1985) was overboard. Respondent argued it was strictly limited to its facts and there was no right to appeal interlocutory orders and therefore no procedure was necessary.

This Court in Ramos v. State, Case Nos. 65,964 and 66,811 (Fla. April 9, 1987) has agreed with Petitioner's

interpretation of State v. Creighton, and at same time rejected outright Respondent's limited interpretation.

Although the state is correct in asserting that the appellate rules apply in criminal as well as civil cases, this argument overlooks the fact that in criminal cases the state has only those rights of appeal as are expressly conferred by statute. Substantive rights conferred by law can neither be diminished nor enlarged by procedural rules adopted by this Court. State v. Furen, 118 So.2d 6 (Fla. 1960).

Slip Opin. Attached  
at page 6.


Based on the foregoing principle of law the state, pursuant to section 924.07(8) Florida Statutes 1981, has a statutory right to appeal pretrial orders. Since there is such a right this Court must provide for a procedure to implement this right and since there is no specific rule of procedure, the rule of procedure governing state appeal's of pretrial orders is common law certiorari.

**CONCLUSION**

Based upon the points and authorities contained herein, the State respectfully requests that this Court answer the certified question in the negative, quash the decision of the third district and reinstate the instant appeal.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing **REPLY BRIEF OF PETITIONER ON THE MERITS** was furnished by mail to **KAREN M. GOTTLIEB**, Attorney for Respondent, 1351 N.W. 12th Street, Miami, Florida 33125, on this 20 day of April, 1987.



**MICHAEL J. NEIMAND**  
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/dmc