

IN THE SUPREME COURT OF FLORIDA

**FILED**  
SID J. WHITE

JUN 9 1989 C

CLERK, SUPREME COURT

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Deputy Clerk

KENNETH A. FORRESTER,  
PETITIONER,

-VS-

CASE NO. 74,166

STATE OF FLORIDA,  
RESPONDENT.

RESPONDENT'S BRIEF ON JURISDICTION

ROBERT A. BUTTERWORTH  
Attorney General

RICHARD E. DORAN ✓  
Attorney No. 325104  
Acting Director  
Criminal Division  
The Capitol  
Tallahassee, FL 32399-1050  
(904) 488-0600

COUNSEL FOR RESPONDENT

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STATEMENT OF THE CASE AND FACTS

For purposes of resolving the collateral issue of how a brief is to be filed pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), respondent accepts petitioner's statements as accurate.

SUMMARY OF ARGUMENT

The instant decision of the First District Court of Appeal is another in a long running series of decisions discussing the role of the Public Defender in the appellate process. The opinion expressly and directly affects the Public Defender in the performance of his constitutional duties. Respondent recognizes that the issues presented in the District Court's opinion are issues that will, in all probability, arise in other district courts of appeal as well. The result is the need for this Court to accept jurisdiction of this case.

Without taking a specific position on the propriety of the District Court's opinion, or the current practice of the Public Defender, Respondent nonetheless urges this Court to accept jurisdiction in this case.

ARGUMENT

ISSUE I

WHETHER THE FIRST DISTRICT'S OPINION IN THIS CASE EXPRESSLY AFFECTS THE PUBLIC DEFENDER, A CONSTITUTIONAL OFFICER.  
ART. V, SEC. 18, FLA.CONST.

Respondent agrees that this Court should accept this case and review the question of the role of the Public Defender vis-a-vis the appellate court system in light of **Anders v. California**, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967); **Person v. Ohio**, 488 U.S. \_\_\_\_\_, 109 S.Ct. 346, 102 L.Ed.2d 300 (1988) and **State v. Causey**, 503 So.2d 321 (Fla.1987).

Rightly or wrongly, the District Court of Appeal has issued an opinion which will radically alter the method of practice and procedure for the Public Defender's Office of the Second Judicial Circuit. Arguably, the impact of the court's decision will go to the core of the Public Defender's function as counsel for indigent criminal defendants both at trial and on appeal. Given the ever increasing caseload for all public defender agencies around the State, it is clear that the issue is one capable of repetition and therefore appropriate for this Court's view. Indeed, this issue is not new to the First District, rather it has a long litigation history. **Faust v. State**, 505 So.2d 8 (Fla.1st DCA 1987); **Stokes v. State**, 485 So.2d 875 (Fla.1st DCA 1986); **Smith v. State**, 496 So.2d 971

(Fla.1st DCA), **on remand**, 508 So.2d 540 (Fla.1st DCA 1987). See also **Haggins v. State**, 498 So.2d 953 (Fla.2d DCA 1986); **In Re Order On Prosecution of Criminal Appeals by the Tenth Circuit Public Defender and by Other Public Defenders**, 504 So.2d 1349 (Fla.2d DCA 1987); **In Re Order on Prosecution of Criminal Appeals by the Tenth Circuit Public Defender and by Other Public Defenders**, 523 So.2d 1149 (Fla.2d DCA 1987); and **State v. Davis**, 290 So.2d 30 (Fla.1974).

The standard for jurisdiction in this case is set forth in **Spradley v. State**, 293 So.2d 697, 701 (Fla.1974) wherein the court held:

To vest this court with certiorari jurisdiction a decision must directly, and, in some way exclusively affect the duties, powers, validity, formation, termination or regulation of a particular class of constitutional or state officers.

Respondent urges this Court to accept review of the instant decision in light of the above cases so as to provide the Public Defenders of this State a uniform standard for proceeding under **Anders** and **Penson**.

ISSUE II

WHETHER THE FIRST DISTRICT'S OPINION IN THIS CASE EXPRESSLY AND DIRECTLY CONFLICTS WITH THE RULES 4-1.6 AND 4-1.7 OF THE RULES REGULATING THE FLORIDA BAR WHICH THIS COURT HAS ADOPTED, **RULES REGULATING THE FLORIDA BAR**, 494 So.2d 977 (Fla.1986).

Respondent disagrees with the petitioner's contention that the instant opinion directly and expressly conflicts with the opinion issued by this Court in, **In Re Rules Regulating The Florida Bar**, 494 So.2d 977 (Fla.1986). Although the instant opinion might implicitly lead to some regulation of the public defender's practice, respondent does not see within the opinion anything more than an analysis and attempt to implement, the decisions of the United States Supreme Court in **Anders** and **Penson, supra**. Obviously, the District Court is making an effort to apply the federal constitutional protections to the right of effective assistance of counsel to a practical situation. Jurisdiction should not be accepted based on Issue II.

CONCLUSION

Respondent agrees that this issue needs to be resolved by this Court because it expressly affects the duties of the constitutionally created public defender's office. Respondent prays the Court will accept jurisdiction over the matter.

Respectfully submitted,

ROBERT A. BUTTERWORTH  
Attorney General



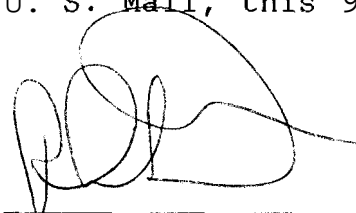
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RICHARD E. DORAN  
Attorney No. 325104  
Acting Director  
Criminal Division  
The Capitol  
Tallahassee, FL 32399-1050  
(904) 488-0600

COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Respondent's Brief on Jurisdiction has been forwarded to David A. Davis, Assistant Public Defender, Post Office Box 671, Tallahassee, FL 32302, via U. S. Mail, this 9th day of June 1989.



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Richard E. Doran  
Assistant Attorney General