

IN THE SUPREME COURT OF FLORIDA

CASE NO. 75,551

STATE OF FLORIDA,  
Petitioner,

vs.

ALLEN TASCARELLA, and  
BARBARA AMBS TASCARELLA,

Respondents.

**FILED**

SID J. WHITE

AUG 13 1990

CLERK, SUPREME COURT

By:

*[Signature]*  
Deputy Clerk

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ON PETITION FOR DISCRETIONARY REVIEW

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PETITIONER'S REPLY BRIEF ON THE MERITS

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TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF CONTENTS	i
TABLE OF CITATIONS	ii
SUMMARY OF THE ARGUMENT	1
ARGUMENT	
<u>POINT I</u>	
WHETHER THE TRIAL COURT ABUSED ITS DISCRETION IN EXCLUDING THE DEA AGENTS AS WITNESSES IN THE PROSECUTION AGAINST RESPONDENTS UNLESS AND UNTIL THEY GAVE A DEPOSITION WITHOUT FIRST COMPELLING RESPONDENTS TO COMPLY WITH THE REQUIRE- MENTS OF 28 C.F.R. §16.21 <u>ET SEQ.</u> ; THE FEDERAL REGULATION BINDING ON THE STATE COURT UNDER THE SUPREMACY CLAUSE OF THE UNITED STATES CONSTITU- TION?	2
<u>POINT II</u>	
WHETHER THE ISSUE RAISED BY THE QUESTION CERTIFIED TO BE ONE OF GREAT PUBLIC IMPORTANCE IS NOT NOW MOOT AS A RESULT OF THE IMPROPER DISCHARGE ORDER ISSUED BY THE TRIAL COURT WITHOUT JURISDICTION?	3
CONCLUSION	5
CERTIFICATE OF SERVICE	6

TABLE OF CITATIONS

<u>CASES</u>	<u>PAGE</u>
<u>Holly v. Auld,</u> 450 So.2d 217, 218 n. 1 (Fla. 1984)	4
<u>Pace v. King,</u> 38 So.2d 823 (Fla. 1949)	4
<u>Tau Alpha Holding Corp. v. Board of Adjustments,</u> 126 Fla. 858, 171 So. 819 (1937)	4
 <u>OTHER AUTHORITIES</u>	
28 C.F.R. §16.21	2

## SUMMARY OF ARGUMENT

POINT I - The trial court abused its discretion in excluding the DEA Agents as witnesses at the Respondents' trial unless they honored the subpoenas for deposition in contravention of the requirements of 28 C.F.R. §§16.21 et seq. Properly promulgated agency regulations implementing federal statutes have the force and effect of federal law which state courts are bound to follow. The action of a state court to compel an official of a federal agency to testify contrary to the agency's duly enacted regulations clearly thwarts the purpose and intended effect of the federal regulations. Such action plainly violates both the spirit and the letter of the Supremacy Clause.

The trial court had a perfect compromise that could be followed to avoid the conflict that arose herein. By compelling Respondents to comply with the requirements of the Federal Regulations, the court would have satisfied the purpose and effect of the State's Discovery Rule as well as the federal regulation. The ruling of the trial court below must be reversed.

POINT II. The District Court's decision of July 5, 1990 has not become final; the Respondent's were improperly discharged by the trial court at a time when it had no jurisdiction to do so; and the issue being before this Court on a question certified by the Fourth District Court of Appeal as being one of great public importance cannot be said to be a moot issue.

ISSUE

POINT I

THE TRIAL COURT ABUSED ITS DISCRETION IN EXCLUDING THE DEA AGENTS AS WITNESSES IN THE PROSECUTION AGAINST RESPONDENTS UNLESS AND UNTIL THEY "GIVE A DEPOSITION" WITHOUT FIRST COMPELLING RESPONDENTS TO COMPLY WITH THE REQUIREMENTS OF 28 C.F.R. §16.21 ET SEQ.; THE FEDERAL AGENTS WERE ONLY COMPLYING WITH FEDERAL REGULATION BINDING ON THE STATE COURT UNDER THE SUPREMACY CLAUSE OF THE UNITED STATES CONSTITUTION.

The State of Florida relies in the arguments made in its initial brief in reply to Issues I through III of Respondent Barbara Ambs Tascarella Answer Brief, and Issues I and II of Respondent Allen Tascarella's Answer Brief.

POINT II

THE PROSECUTION OF RESPONDENTS  
IS NOT MOOT.

In the third issue of Allen Tascarella's Answer Brief, Respondents<sup>1</sup> allege that because the Fourth District Court of Appeal denied the State's Motion for Rehearing, and the trial court improperly discharged the Respondents at a time when jurisdiction had not vested back in the trial court, the trial court does not have jurisdiction now to try the Respondents and that therefore the "matter is now moot." The State will respectfully point out that the argument is not only without merit, but has already been decided against Respondents by this Honorable Court.<sup>2</sup>

Upon receipt of the District Court's original Order issuing the writ of prohibition, the State filed a Motion for Rehearing. On Thursday, May 17, 1990, at approximately 3:30 p.m., telephonically the District Court ordered Respondents to file their response to the State's Motion for Rehearing by May 22, 1990. These facts were acknowledged by Respondents in their letter to the Clerk of this Court. Thus, when the trial court discharged the Respondents May 18, 1990, it had no jurisdiction to do so. On July 5, 1990, the District Court of Appeal, Fourth

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<sup>1</sup> This issue was only raised by Allen Tascarella in his Answer Brief, however subsequently Barbara Tascarella has moved to adopt Allen Tascarella's Answer Brief as her own.

<sup>2</sup> By order issued July 16, 1990, this Honorable Court denied Respondents' Joint Motion to Dismiss Appeal as moot.

District denied the State's motion for rehearing and issued its opinion granting the writ of prohibition.

The State points out that pending before this Honorable Court is a Petition to Invoke the Discretionary Review Jurisdiction of the Court to review the opinion issued by the Fourth District Court of Appeal on July 5, 1990. See Case No. 76,351. Stay of Mandate has been granted by the District Court pending resolution by this Court of the Petition to Invoke the Discretionary Jurisdiction of the Court (See Exhibit A). Therefore, the matter being presently before the Court, it cannot be said that the writ of prohibition was properly granted, that it has become final, or that the Respondents were properly discharged by the trial court at a time when it lacked jurisdiction over the Respondents.

In any event, the question presented to this Court in the instant case [FSC No. 75,551], is a question certified by the Fourth District Court of Appeal to be of great public importance. It is well settled that mootness does not destroy an appellate court's jurisdiction, when the questions raised are of great public importance or are likely to recur. Holly v. Auld, 450 So.2d 217, 218 n. 1 (Fla. 1984); Pace v. King, 38 So.2d 823 (Fla. 1949); Tau Alpha Holding Corp. v. Board of Adjustments, 126 Fla. 858, 171 So. 819 (1937). The case at bar meets these requirements. The district court properly certified its question as being one of great public importance, and this situation has occurred in other cases and will occur again. See, Federal policies

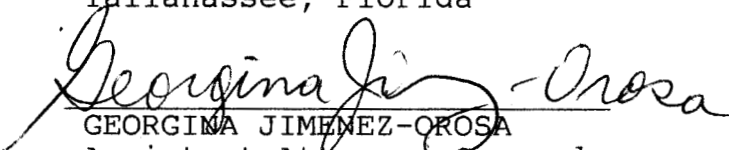
*jeopardize state's drug prosecutions*, Broward Review, March 12, 1990, Vol 31, No. 68, pp. 1, 4-5, attached hereto as Exhibit B. The Broward County State Attorney's Office and the Dade County State Attorney's Office anxiously await the resolution of the certified question by this Honorable Court as it will impact in many other cases presently at the trial courts level. Consequently, the issue raised by the certified question is not moot. Since the District Court's order of May 16, 1990, granting the writ of prohibition had not become final, the order of discharge rendered by the trial court May 18, 1990, is a nullity as the trial court lacked jurisdiction to enter a discharge order at that point.

CONCLUSION

WHEREFORE, based on the above and foregoing, the State respectfully requests this Court answer the modified certified question in the AFFIRMATIVE and REMAND the matter to the trial court with instructions to Respondents to comply with the requirements of 28 C.F.R. §§16.21 et seq. and Fla. R. Crim. P. 3.220(h).

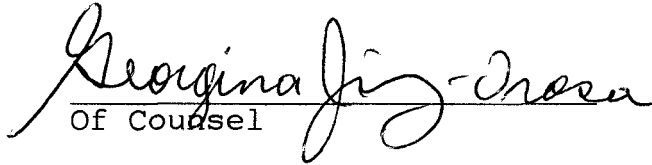
Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Petitioner's Reply Brief on the Merits has been furnished by Courier to: RICHARD L. ROSENBAUM, ESQUIRE, Counsel for Allen Tascarella, One East Broward Blvd., Penthouse, Barnett Bank Plaza, Ft. Lauderdale, FL 33301; and to GENE REIBMAN, ESQUIRE, Counsel for Barbara Ambs Tascarella, 600 Northeast Third Avenue, Ft. Lauderdale, FL 33304, this 10th day August, 1990.

  
Of Counsel

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A P P E N D I X

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INDEX TO APPENDIX

Order issued by the District Court of  
Appeal, Fourth District, granting stay  
of Mandate

EXHIBIT "A"

Newspaper article appearing in the March 12,  
1990 Edition of the Broward Review reference  
the constant recurrence of this type of cases

EXHIBIT "B"