

IN THE SUPREME COURT OF FLORIDA

**FILED**  
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APR 5 1990  
FLORIDA SUPREME COURT  
Deputy Clerk

PATRICK ANTHONY REYNOLDS,

Petitioner,

v.

CASE NO. 75,680

STATE OF FLORIDA,

Respondent.

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JURISDICTIONAL BRIEF OF RESPONDENT

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OTHER AUTHORITIES

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JURISDICTIONAL BRIEF OF RESPONDENT

PRELIMINARY STATEMENT

Petitioner, PATRICK ANTHONY REYNOLDS, appellant below, will be referred to herein as "Petitioner." Respondent/Appellee, the State of Florida, will be referred to herein as "the State." References to the record on appeal will be by the symbol "R" followed by the appropriate page number.

STATEMENT OF THE CASE AND FACTS

For the purposes of this jurisdictional brief, respondent accepts petitioner's statement of the case and facts.

SUMMARY OF ARGUMENT

Respondent acknowledges the existence of conflict between the decision in the instant case and prior decisions of other district courts of appeal. However, respondent asserts there is no need for this court to exercise its discretionary review powers.

ARGUMENT

THIS COURT SHOULD NOT EXERCISE ITS DISCRETIONARY REVIEW AUTHORITY BECAUSE IT HAS ALREADY RESOLVED THE CONFLICT BETWEEN THESE DECISIONS. (RESTATED).

As stated by the First District court of Appeals, the decision in this case does conflict with Pearson v. State, 514 So.2d 374, 375 (Fla. 2nd DCA 1987) review dismissed. 525 So.2d 881 (Fla. 1988), and Parrish v. State, 540 So.2d 870, 871 (Fla. 3rd DCA 1989), review denied, State v. Parrish, 549 So.2d 1014 (Fla. 1989).

However, there is no need for this court to use its discretionary review powers to resolve this conflict. This court's decisions in the cases of Kibler v. State, 546 So.2d 710, 712 (Fla. 1989), and Reed v. State, 15 F.L.W. 115 (Fla. March 1, 1990), have made further review of this issue unnecessary.

In those cases, this court clarified the standards and procedures to be used by trial courts when presented with the assertion; that a "strong likelihood" exists that jurors are being challenged on the basis of their race. In Kibler, the court stated that:

Under the procedure prescribed by Neil, the objecting party must ordinarily do more than simply show that several members of a cognizable racial group have been challenged in order to meet his initial burden.

In Reed, this court held that the trial judge is vested with broad discretion in determining when peremptory challenges are being exercised on the basis of race. Further, this court held that a trial judge's determination of this issue should not be reversed unless he abused his discretion.

These cases evince a continued adherence to a proposition expressed in State v. Slappy, 522 So.2d 18 (Fla. 1988). The proposition is that it is not appropriate to create a bright line rule defining "strong likelihood", because what constitutes a "strong likelihood" under Neil does not lead itself to precise definition. Thus, to the extent that Pearson and Parrish create a bright line rule, that "a strong likelihood" of racial discrimination is always established by the use of a single peremptory challenge against the only member of a cognizable group, they have been overruled by decisions of this court.

Since the First District's interpretation of the "strong likelihood" language of State v. Neil, 457 So.2d 481 (Fla. 1984) is in accord with the standards set out in Kibler and Reed, and because the reasoning of Pearson and Parrish lacks continued viability, this court should decline to exercise its discretionary review power.

CONCLUSION

Based on the above cited authorities and reasoning respondent urges this court to decline to exercise its discretionary jurisdiction.

Respectfully submitted,

ROBERT A. BUTTERWORTH  
ATTORNEY GENERAL



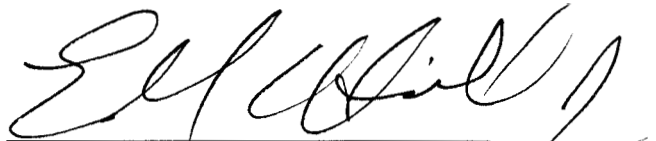
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been forwarded by U.S. Mail to Kathleen Stover, Assistant Public Defender, Fourth Floor North, 301 South Monroe Street, Tallahassee, Florida, 32301, this 12 day of April, 1990.



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