

IN THE SUPREME COURT OF FLORIDA

KENNETH R. ROBERTS,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Case No. SC05-1245

DCA NO.: 2D04-2597

ON PETITION FOR REVIEW FROM
THE SECOND DISTRICT COURT OF APPEAL
STATE OF FLORIDA

JURISDICTIONAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE AND FACTS

On June 9, 2005, the Second District Court of Appeal issued an order denying Appellant's pro se "motion for transcripts/orders and to preserve any and all tape recordings/error pages in transcripts from Robert Demptster & Asso. [sic] Court Reporters" without prejudice to the appellant seeking to remove counsel and to proceed pro se or to the appellant's attorney to raise any issues regarding the record in a properly filed motion. See Attached Appendix. Petitioner filed a "Notice of Appeal" of this order in this Court on June 20, 2005. In this Notice, Petitioner alleged that he was appealing a Second District order which passes on a question certified to be of great public importance. On September 9, 2005, Petitioner filed a Jurisdictional Brief.

SUMMARY OF THE ARGUMENT

Pursuant to Rule 9.030, Fla. R. App. P., Petitioner has alleged no grounds which warrant the discretionary jurisdiction of this Court. Therefore, the State respectfully asks this Honorable Court to deny jurisdiction of this case.

ARGUMENT

WHETHER THE DISCRETIONARY JURISDICTION OF THE SUPREME COURT MAY BE SOUGHT TO REVIEW DECISION OF DISTRICT COURT OF APPEAL THAT PASS UPON A QUESTION CERTIFIED TO BE OF GREAT PUBLIC IMPORTANCE. APPELLATE RULES AND PROCEDURE, RULE 9.030(A)(2)(A)(V). (AS STATED BY PETITIONER)

The discretionary jurisdiction of the Supreme Court may be sought to review:

(A) decisions of district courts of appeal that

(i) expressly declare valid a state statute;

(ii) expressly construe a provision of the state or federal constitution;

(iii) expressly affect a class of constitutional or state officers;

(iv) expressly and directly conflict with a decision of another district court of appeal or of the supreme court on the same question of law;

(v) pass upon a question certified to be of great public importance;

(vi) are certified to be in direct conflict with decisions of other district courts of appeal;

(B) orders and judgments of trial courts certified by the district court of appeal in which the appeal is pending to require immediate resolution by the supreme court, and

(i) to be of great public importance, or

(ii) to have a great effect on the proper administration of justice;

(C) questions of law certified by the Supreme Court of the United States or a United States court of appeals that are determinative of the cause of action and for which there is no controlling precedent of the Supreme Court of Florida.

Fla. R. App. P. 9.030(2). See Art. V § 3(b), Fla. Const.

Appellant claims to invoke this Court's jurisdiction under Rule 9.030(2)(A)(v) based on a question certified to be of great public importance by the district court. For this alleged certified question Petitioner relies on a the Second District's order denying a pro se motion in his pending direct appeal in which he is represented by counsel. However, the Second District has not certified a question of great public importance in this case under Rule 9.030(2)(A)(v). In fact, the case is still pending in the Second District and is still in the briefing stage. The order in question simply denied Petitioner's unauthorized pro se motion without prejudice to his seeking to remove counsel and proceed pro se. Therefore, this Court does not have jurisdiction to hear this matter.

CONCLUSION

Respondent respectfully requests that this Honorable Court decline to accept jurisdiction to review this case.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Kenneth R. Roberts, Columbia Correctional Institution, 216 S.E. Corrections Way, Lake City, Florida 32025, this ____ day of November, 2005.

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 12-point Courier New, in compliance with Fla. R. App. P. 9.210(a)(2).

Respectfully submitted,

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