

IN THE SUPREME COURT OF THE STATE OF FLORIDA

LEE HANSEN,

Petitioner,

v.

Case No. SC05-3493

STATE OF FLORIDA,

Respondent.

_____ /

ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

JURISDICTIONAL BRIEF OF RESPONDENT

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Milks v. State,
894 So. 2d 924 (Fla. 2005) 2, 4, 5

OTHER AUTHORITIES:

Art. V, § 3(b)(3), Fla. Const. 3, 4

§ 775.21, Fla. Stat. (2004) 1, 3, 4

§ 943.0435, Fla. Stat. (2004) 1

Fla. R. App. P. 9.030(a)(2)(A)(i)..... 3

STATEMENT OF THE CASE AND FACTS

The Fifth District Court of Appeal's opinion in Hanson¹ v. State, 905 So. 2d 1036 (Fla. 5th DCA 2005) stated:

Appellant challenges the statutory scheme that imposes burdens and restrictions upon him, such as registration and public notification, by virtue of his designation as a sexual predator. § 775.21, Fla. Stat. (2004). He argues that the statute violates his substantive due process rights under the United States and Florida Constitutions because the statute presumes that he is likely to repeat his crimes, a presumption that Appellant may not refute by contrary evidence. In rejecting Appellant's claim, we adopt the analysis of the court in *Doe v. Moore*, 410 F.3d 1337 (11th Cir. 2005), which rejected a similar attack on Florida's statutory scheme requiring registration and public notification of persons designated as sexual offenders. § 943.0435, Fla. Stat. (2004).

Id.

Petitioner timely filed a notice to invoke the discretionary jurisdiction of this Court. Petitioner filed an initial brief on jurisdiction. The State now responds.

¹ Petitioner's surname was spelled "Hanson" in the District Court, but is spelled "Hansen" in the instant matter.

SUMMARY OF THE ARGUMENT

This Court should decline to accept jurisdiction in the instant case. The Fifth District's opinion does not expressly declare valid a state statute. Additionally, the issue is not one of great public importance so as to warrant this Court exercising its discretionary jurisdiction. Though Petitioner has attempted to couch his argument in terms of substantive due process, it closely resembles the procedural due process argument this Court rejected in Milks v. State, 894 So. 2d 924 (Fla. 2005). This Court should decline to exercise jurisdiction in this matter.

ARGUMENT

THIS COURT SHOULD DECLINE TO ACCEPT
JURISDICTION IN THIS MATTER.

Petitioner seeks discretionary review with this Honorable Court under Article V, Section 3(b)(3) of the Florida Constitution. See also Fla. R. App. P. 9.030(a)(2)(A)(i). Article V, Section 3(b)(3) provides that the Florida Supreme Court may review a district court of appeal decision only if it "expressly declare[s] valid a state statute."

Respondent contends that the Fifth District's opinion in Hanson v. State, 905 So.2d 1036 (Fla. 5th DCA 2005), does not expressly declare valid a state statute. Rather, the Fifth District simply finds that the Florida Sexual Predators Act, Florida Statute section 775.21 (2004), was not violative of substantive due process and, as against this sole challenge, was constitutional. Thus, rather than expressly declaring the state statute valid, the District Court found no constitutional violation as to this single challenge. Since the opinion of the District Court does not expressly declare valid a state statute, this Court does not have jurisdiction in this matter.

Even if this Court were to find itself able to exercise discretionary jurisdiction in this case, Respondent urges this Court to decline to do so. Petitioner has failed to establish the issue presented to be one of sufficient public importance so as

to warrant this Court exercising its discretionary jurisdiction. The argument raised by Petitioner is that Florida Statute section 775.21, also known as the Florida Sexual Offender Act, violates his substantive due process rights because the statute presumes that he is likely to repeat his crimes, a presumption that Petitioner may not refute by contrary evidence. Id.

In footnote 3 of its opinion in Doe v. Moore, 410 F.3d 1337 (11th Cir. 2005), the Eleventh Circuit noted that the appellants in that case argued the Sex Offender Act violated substantive due process by creating an irrebuttable presumption of dangerousness. "Though they strain to place their argument in terms of substantive due process we find their argument closely resembles the procedural due process argument proposed in Connecticut Department of Public Safety [v. Doe], 538 U.S. 1, 6, 123 S.Ct. 1160, 1163 [(2003)]." The United States Supreme Court in Doe found that no liberty interest was implicated by Connecticut's statute because it turned "on an offender's conviction alone" and dangerousness "is of no consequence under" the law. Id. at 6-7. Similarly, Florida's statute does not turn on the dangerousness of the offender, merely the fact that person was convicted. Doe v. Moore, 410 F.3d at 1342 n.3. In Milks v. State, 894 So. 2d 924 (Fla. 2005), this Court rejected a procedural due process challenge to this same statute.

The Fifth District's opinion does not expressly declare valid a state statute. This Court already rejected Petitioner's basic argument in Milks. This Court should decline to exercise jurisdiction in this matter.

CONCLUSION

Based upon the arguments and authorities presented herein, Respondent respectfully requests this Honorable Court decline to accept jurisdiction in this case.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Jurisdictional Brief has been furnished by delivery to Brynn Newton, Assistant Public Defender, 112-A Orange Avenue, Daytona Beach, Florida 32114-4310, this 31st of August, 2005.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 12-point Courier New, in compliance with Florida Rule of Appellate Procedure 9.210(a)(2).

Respectfully submitted,
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APPENDIX

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