

IN THE SUPREME COURT OF FLORIDA

FRANKLIN HARRISON ROTHAUER,

Petitioner,

CASE NO.

DCA NO. 2D04-5515

v.

STATE OF FLORIDA,

Respondent.

PETITIONER-S BRIEF ON JURISDICTION

On Petition for Discretionary Review
From the District Court of Appeal of
Florida, Second District

MICHAEL J. SNURE
KIRKCONNELL, LINDSEY, SNURE
AND YATES, P.A.
P.O. Box 2728
Winter Park, FL 32790-2728
Telephone: (407)644-7600
Florida Bar No. 363235

WILLIAM R. PONALL
KIRKCONNELL, LINDSEY, SNURE
AND YATES, P.A.
P.O. Box 2728
Winter Park, FL 32790-2728
Telephone: (407) 644-7600
Florida Bar No. 421634

CHARLES R. MAYER
P.O. Box 267
Highland City, FL 33846
Telephone: (863) 644-6449
Florida Bar No. 051650

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STATEMENT OF THE CASE AND FACTS

Mr. Rothauser was charged by information with driving while his license was permanently revoked in violation of Section 322.341, Florida Statutes (2004). Section 322.341 was originally created by Chapter 98-223, Laws of Florida. The trial court dismissed the information, concluding that Fla. Stat. § 322.341 was unconstitutional based on the Florida Supreme Court's decision in *Department of Highway Safety and Motor Vehicles v. Critchfield*, 842 So. 2d 782 (Fla. 2003). In *Critchfield*, the Florida Supreme Court concluded that Chapter 98-223 violated the single subject rule contained in the Florida Constitution.

The Second District Court of Appeal reversed the trial court's decision, concluding that the Legislature's passage of Chapter 2003-25, Laws of Florida, with an effective date of July 1, 2003, cured the single subject violation contained in Chapter 98-223. Chapter 2003-25 was a general revision of the laws of Florida which readopted the Florida Statutes, including § 322.341. Therefore, the district court concluded that Fla. Stat. § 322.341 became a valid statute on July 1, 2003, and was effective on the date of Mr. Rothauser's offense, June 28, 2004. (Appendix A).

Mr. Rothauser filed a timely motion for rehearing, rehearing

en banc, and certification of great public importance. The Second DCA denied that motion. (Appendix B).

Mr. Rothauser filed a timely Notice to Invoke Discretionary Jurisdiction of the Florida Supreme Court in the Second DCA. In that notice, Mr. Rothauser asserted that the Second DCA's decision expressly and directly conflicts with the decision of the Fifth District Court of Appeal in *Jones v. State*, 872 So. 2d 938, 939 (Fla. 5th DCA 2004) (en banc), quashed on other grounds, *State v. Jones*, 908 So. 2d 1054 (Fla. 2005).

SUMMARY OF ARGUMENT

The Second District Court of Appeal's conclusion that a law enacted in violation of the single-subject rule is not void ab initio, but is rendered dormant and is subject to reenactment, expressly and directly conflicts with a decision of the Fifth District Court of Appeal. Based on that conflict, this Court should exercise its discretion to review the Second DCA's decision.

ARGUMENT

THE DECISION OF THE SECOND DISTRICT COURT OF APPEAL IN THIS CASE EXPRESSLY AND DIRECTLY CONFLICTS WITH A DECISION OF THE FIFTH DISTRICT COURT OF APPEAL.

This Court has discretionary jurisdiction to review a district court decision where that decision expressly and directly conflicts with a decision of another district court of appeal. Article V, Section 3(b)(3), FLA. CONST.; Fla. R. App. P. 9.030(a)(2)(A)(iv).

In this case, the Second DCA reversed the trial court's decision to dismiss the charge against Mr. Rothauser. The district court concluded that, after the Florida Supreme Court reached its decision in *Department of Highway Safety and Motor Vehicles v. Critchfield*, 842 So. 2d 782 (Fla. 2003), the Legislature cured the single-subject violation found in Chapter 98-223, Laws of Florida, through the passage of Chapter 2003-25, Laws of Florida. Chapter 2003-25 was a general reenactment bill which readopted the Florida Statutes. Therefore, the district court concluded that Fla. Stat. § 322.341, which was created by

Chapter 98-223, became a valid statute on July 1, 2003, the effective date of Chapter 2003-25. (Appendix A)

In reaching its decision, the Second DCA discussed the paradigm in which statutes enacted in violation of the single-subject rule are viewed. In doing so, the district court stated the following:

If laws unconstitutionally enacted as a result of single subject violations were viewed as Avoid@ from their inception, then it is obvious that they would need to be reenacted in a constitutional manner by a new bill with a single subject before they could ever be treated as constitutional. If they were viewed as Avoidable,@ then presumably any judicial determination voiding the law within the applicable period of time would require the legislature to reenact the law in a constitutional manner by a new bill with a single subject.

(Appendix A at 5) (emphasis added).

The Second DCA, however, held that a law enacted in violation of the single-subject rule is neither Avoid@ nor Avoidable,@ but concluded that such a law is merely rendered dormant until it is reenacted. (Appendix A at 5-6). The Second DCA's holding on this issue is expressly and directly contrary to the Fifth DCA's holding on the same issue in *Jones v. State*, 872 So. 2d 938, 939 (Fla. 5th DCA 2004) (en banc), quashed on

other grounds, *State v. Jones*, 908 So. 2d 1054 (Fla. 2005).*

In *Jones*, the Fifth DCA addressed the Legislature's attempt to retroactively apply a statute that had been reenacted after Chapter 99-188, Laws of Florida, had been declared unconstitutional in violation of the single-subject rule. In refusing to permit such retroactive application, **the Fifth DCA explicitly held that a law enacted in violation of the single-subject rule is void ab initio**, and is treated as it never actually existed and was never on the statute books. *Jones*, 872 So. 2d at 941.

* The Second DCA's holding in this case is also directly contrary to the Second DCA's holding on the same issue in *Williams v. State*, 870 So. 2d 213 (Fla. 2d DCA 2004), quashed on other grounds, *State v. Herndon*, 894 So. 2d 966 (Fla. 2005), and *Green v. State*, 839 So. 2d at 752 (Fla. 2d DCA 2003), quashed on other grounds, *State v. Green*, 887 So. 2d 1089 (Fla. 2004). In both those cases, the Second DCA concluded that a law enacted in violation of the single-subject rule is void ab initio. *Williams*, 870 So. 2d at 215; *Green*, 887 So. 2d at 752. Despite this intra-district conflict, the Second DCA denied Mr. Rothausser's motion for rehearing and rehearing en banc.

The Fifth DCA's decision in *Jones* was subsequently quashed by this Court, which concluded that Chapter 99-188 did not violate the single subject rule of the Florida Constitution. This Court, however, did not address the Fifth DCA's conclusion that laws enacted in violation of the single subject rule are void ab initio. The Fifth DCA has never receded from that conclusion.

Therefore, the Second DCA's decision in this case expressly and directly conflicts with the Fifth DCA's decision in *Jones*. As indicated by the Second DCA in this case, the continued viability of Fla. Stat. § 322.341, and the statutory amendments implemented by Chapter 98-223, hinges on whether a law enacted in violation of the single-subject rule is void ab initio (Fifth DCA), or is dormant and subject to reenactment (Second DCA). If such a law is considered void ab initio, it is treated like it never existed and a general reenactment bill like Chapter 2003-25 would not cure the single subject violation. The only way for the Legislature to reenact a statute under those circumstances would be passage of a new bill with a single subject.

Based on the express conflict between the Second DCA and the Fifth DCA, and because this issue is likely to occur with great frequency in the future, this Court should exercise its

discretion to review the Second DCA's decision and resolve the conflict.

CONCLUSION

Based on the express and direct conflict between the Second

DCA's decision in this case and the Fifth DCA's decision in *Jones*, this Court should exercise its discretion to review the Second DCA's decision and resolve the conflict.

CERTIFICATE OF SERVICE AND COMPLIANCE

I HEREBY CERTIFY that a copy of the foregoing has been provided by mail delivery to Susan D. Dunlevy, Assistant Attorney General, 3507 E. Frontage Road, Suite 200, Tampa, Florida 33607-7013, on this 17th day of July, 2006.

I FURTHER CERTIFY that this petition is submitted in Courier New 12-point font and thereby complies with the font requirements of Fla. R. App. P. 9.210(a)(2).

CHARLES R. MAYER, ESQ.
P.O. Box 267
Highland City, FL 33846
Telephone: (863) 644-6449
Florida Bar No. 051650

MICHAEL J. SNURE, ESQ.
KIRKCONNELL, LINDSEY, SNURE
& YATES, P.A.
P.O. Box 2728
Winter Park, FL 32790
Telephone: (407) 644-7600
Florida Bar No. 363235

WILLIAM R. PONALL, ESQ.
KIRKCONNELL, LINDSEY, SNURE
& YATES, P.A.
P.O. Box 2728
Winter Park, FL 32790-2728
Telephone: (407) 644-7600
Florida Bar No. 421634

Attorneys for Petitioner

APPENDIX TO PETITIONER'S BRIEF ON JURISDICTION

- "A" Opinion of the Second District Court of Appeal Reversing the Trial Court's Decision to Dismiss the Charge Against Mr. Rothauser

- "B" Order of the Second District Court of Appeal Denying Mr. Rothauser's Motion for Rehearing, Rehearing En Banc, and Certification of Great Public Importance

