

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA
Petitioner,

CASE NO.: SC13-
Lower Case Nos.: 4D12-3525
56-2012-MM-000530

v.

DALE NORMAN
Respondent.

_____ /

**RESPONDENT’S MOTION TO STRIKE OR DISMISS PETITION FOR
WRIT OF PROHIBITION**

COMES NOW Respondent by and through his undersigned counsel and files Respondent’s Motion to Strike or Dismiss Petition for Writ of Prohibition and as grounds therefore states:

1. The issues raised in Petitioner’s Petition for Writ of Prohibition were adequately addressed by the court below.
2. The Petition for Writ of Prohibition fails to adequately plead the necessary elements for the relief sought from this Court.
3. The Petition for Writ of Prohibition fails to inform the Court of case law and rules of appellate procedure directly contrary to the claims of the Petitioner.
4. The Petitioner asserts that the county court has mandatory jurisdiction

over appeals pursuant to Rule 9.030(c), Fla. R. App. P.

5. Petitioner ignores Rule 9.030(b)(4), Fla. R. App. P, which explicitly provides for review by the District courts of appeals, of questions certified by the county court to be of great public importance, and Rule 9.160(f), Fla. R. App. P which provides that the DCA will decide all issues that would have been subject to appeal of the appeal were heard in the circuit court.

6. Petitioner also ignores Rule 9.160(b), Fla. R. App. P., which provides that “**Any** appeal of an order certified by the county court to be of great public importance **must** be taken to the district court of appeal.” *Emphasis added.*

7. Petitioner further ignores Rule 9.160(c) which states that provides an exception in criminal cases to the requirement for a conformed order to be attached to the notice of appeal.

8. As Petitioner sets forth, the language of Sec. 26.012(1) is clear. It states that the circuit court is the proper jurisdiction for appeals from the county courts, “except orders or judgments of a county court which are certified by the county court to the district court of appeal to be of great public importance and which are accepted by the district court of appeal for review.” Both of the necessary elements have been met. *See* Order of the 4th DCA in this case, dated 29 January, 2013 (stating that the 4th DCA has accepted jurisdiction).

9. Petitioner fails to cite to any case or rule which has held or states that the failure to attach a copy of the order appealed or set forth the fact of certification is a jurisdictional defect .

10. Substantial case law not cited by the Petitioner sets forth clearly the requirements to challenge jurisdiction where there is some technical defect in the notice of appeal.

11. The standard for dismissing an appeal due to technical defects is whether the notice of appeal gives the adverse party information sufficient to allow it to determine what order is being appealed with a reasonable degree of certainty and whether the party opposing the appeal has been prejudiced by an inability to determine what order is being appealed. *DeLoach v. DeLoach*, 274 So.2d 883 (Fla. 1973); *Ratner v. Miami Beach First National Bank*, 362 So2d. 273 (1978); *Aguir v. Doral Hotel and Country Club*, 599 So.2d 698 (Fla. 1st DCA 1992); *Casino, Inc. V. Kugeares*, 354 So.2d 936 (Fla. 2nd DCA 1978); *Jones v. State*, 423 So.2d 520 (Fla 5th DCA 1982).

12. In this case there was only one final order that could be appealed, the order finding Defendant Norman guilty and certifying certain questions to the DCA.

13. Because an order certifying questions of great public importance

must, pursuant to Rule 9.160(b), Fla. R. App. P., be appealed to the DCA, unless and until it declines to exercise jurisdiction there could be no real question as to what order was being appealed.

14. Furthermore, Petitioner has not claimed or alleged any prejudice to Petitioner due to the alleged technical defects therefore the petition for writ of prohibition must fail.

WHEREFORE Mr. Norman respectfully requests this Court strike or dismiss the Petition for Writ of Prohibition and allow this appeal to proceed before the Fourth District Court of Appeal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was served via e-service this 4th day of February 2013 on the following and filed and emailed to the court :

Office of the State Attorney, Bruce Colton
19th Judicial Circuit
411 South 2nd Street
Fort Pierce, FL 34950
balonso@sao19.org

Cynthia Comras, Esq.
Criminal Appeals Division
Office of the Attorney General
1515 N. Flagler Dr., Suite 900
West Palm Beach, FL 33401

Cynthia.Comras@myfloridalegal.com
CrimAppWPB@myflorida.com

FLETCHER & PHILLIPS

/s/ Eric J. Friday

Eric J. Friday

Fla. Bar No.: 797901

541 E. Monroe St. STE 1

Jacksonville FL 32202

Phone: 904-353-7733

Primary: familylaw@fletcherandphillips.com

Secondary: efriday@fletcherandphillips.com

Fender & Minton, P.A.

Ashley N. Minton

Florida Bar Number 23734

207 S. Second Street

Fort Pierce, Florida 34950

(772) 465-0029

ashleyatfendermintonlaw@gmail.com