

DISTRICT COURT OF APPEALS, FOURTH DISTRICT

DALE NORMAN

Appellant/ Defendant,

CASE NO.: 4D12-3525

LT: 56-2012-MM-000530

v.

STATE OF FLORIDA

Appellee.

_____ /

Appeal from the County Court,
in and for St. Lucie County, Florida

Clifford Barnes, County Court Judge

**APPELLANT'S RESPONSE TO APPELLEE'S SECOND
MOTION TO DISMISS FOR LACK OF JURISDICTION**

Comes now the Appellant by and through his undersigned attorney and responds to the APPELLEE'S SECOND MOTION TO DISMISS FOR LACK OF JURISDICTION and says:

1. The issue raised by the State's motion is that the certification of questions by the trial court was insufficient to give this Court jurisdiction over the instant appeal.

2. This issue has already been addressed by this Court, appealed to the Florida Supreme Court through a writ of prohibition, and denied by the Supreme Court.

3. It must first be noted that absent any showing of prejudice to the State, there is no reason to dismiss an appeal because of technical defects. *Jones v. State*, 423 So.2d 520, 521 (Fla. 5th DCA 1982).

4. This should be especially true when as here, the alleged defect was caused through no fault of the Defendant, but based solely on which order the lower court used to include certified questions of great public importance.

5. The State asserts in its motion that the certification of questions of great public importance is defective because it is not contained within the “final judgment”. This begs the question of what is a final judgement.

6. The question what is a “final order” was answered by the Third DCA in *Smith v. State*, 902 So.2d 179 (Fla. 3d DCA 2005)(“in Florida the traditional test for determining the finality of an order is whether the order marks the end of judicial labor”).

7. Until this Court’s request for a written order of Judgment and Sentence on May 13, 2014, the final written order in this case, and the one which ended judicial labor, was the trial court’s order of August 22, 2012 denying Defendant’s motions to dismiss, and containing certified questions of great public importance.

8. The lower court complied by issuing a written order of Judgment and

Sentence, *nunc pro tunc* to August 14, 2012, leaving the final order in this case as the order of August 22, 2012.

9. Because the trial Court reserved jurisdiction at the trial to rule on the Defendant's motions to dismiss, the case in the lower Court was not final until both Judgment and Sentence, had been rendered, and the trial court ruled on the motions to dismiss. (Rec. 411).

10. The State attempts to claim that the order denying Defendant's motions to dismiss entered on August 22, 2012 was not a final order and therefore could not legally contain certified questions to grant jurisdiction to this Court.

11. At the time this appeal was filed, the final order ending judicial labor in this case was the order of August 22, 2012.

12. Certainly the State does not intend to argue that because of the trial Court's explicit compliance with the order of this Court, that Mr. Norman's case no longer affects the certified questions set forth by the trial court as affecting thousands of law enforcement officer and millions of law-abiding gun owners.

13. Such an argument would fly in the face of every case which has held that matters should be decided on their merits rather than irrelevant technicalities. *Puga v. Suave Shoe Corp.*, 417 So.2d 678 (Fla. 3d DCA 1982).

14. In an abundance of caution and in compliance with Rule 3.580, Fla.

R. of Crim. P., the Appellant has filed a motion with the lower tribunal within 10 days of its order of Judgment and Sentence, requesting the trial court grant a new trial or correct its Judgment and Sentence to include the previously certified questions of great public importance.

15. Prior to filing the motion for new trial or to amend and correct the final judgment, the undersigned contacted the assistant attorney general in this case and is authorized to represent that counsel took “no position” on the motion filed with the court below.

WHEREFORE, Appellant respectfully requests this Court deny APPELLEE'S SECOND MOTION TO DISMISS FOR LACK OF JURISDICTION, or in the alternative direct the lower court to amend its Judgment and Sentence to include the questions previously certified by the lower court.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was served via e-service this 18th day of June 2014 on the following:

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