

**IN THE SUPREME COURT OF FLORIDA**

STATE OF FLORIDA,

Petitioner,

v.

Case No.: SC13-  
Lower Case Nos.: 4D12-3525;  
562012-MM-000530

DALE NORMAN,

Respondent.

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**PETITION FOR WRIT OF PROHIBITION**

Pursuant to rule 9.100, Petitioner, State of Florida, respectfully petitions this Court for a writ of prohibition restraining the Fourth District Court of Appeal from acting without jurisdiction or in excess of its jurisdiction in this case. As grounds in support, Petitioner states:

**I. BASIS FOR INVOKING JURISDICTION**

This Court has jurisdiction to issue a writ of prohibition under Article V, section 3(b)(7) of the Florida Constitution and Florida Rule of Appellate Procedure 9.030(a)(3). Prohibition is the proper remedy to oppose jurisdiction when a controlling statute explicitly authorizes jurisdiction in another tribunal. *See Department of Agric. and Consumer Servs. v. Bonanno*, 568 So. 2d 24 (Fla. 1990); *Atlantic Foundation v. Gurlacz*, 582 So. 2d 10 (Fla. 1st DCA 1991), *receded from on*

*other grounds* 599 So. 2d 674.

## **II. STATEMENT OF THE FACTS**

1. On August 22, 2012, the trial court entered an order denying Respondent's Motions to Dismiss 1 through 5, certifying issues of great public importance. (Appendix #1, Order Denying Defendant's Motions and Certifying Issues of Great Public Importance).

2. On August 29, 2012, Respondent filed his Notice of Appeal in county court, appealing only his "Judgment of Conviction and Sentence," which was "rendered by the [county court] on August 14, 2012." (Appendix #2, County Court Docket; Appendix #3, Notice of Appeal).

3. The Notice of Appeal does not make reference to the certificate issued by the county court judge or attach the county court order containing the certificate.

4. On October 5, 2012, the Fourth District Court of Appeal, noting that "[i]t appearing that Appellant has invoked the discretionary jurisdiction of this court to review of a final order, otherwise appealable to the Circuit Court, in which the County Court has certified a question of great public importance," ordered respondent to file a jurisdictional brief with an accompanying appendix within 10 days of the order. (Appendix #4, October 5, 2012 Order).

5. On November 7, 2012, Petitioner filed its Motion to Dismiss for Lack

of Jurisdiction, arguing that the circuit court had exclusive jurisdiction over Respondent's appeal of his "judgment and sentence," pursuant to Florida Rule of Appellate Procedure 9.030(c) and section 26.012, Florida Statutes. (Appendix #5, Motion to Dismiss for Lack of Jurisdiction; Appendix #6, Fourth District Court of Appeal's docket).

6. On January 8, 2013, the Fourth District Court of Appeal issued an order denying Petitioner's Motion to Dismiss for Lack of Jurisdiction. (Appendix #7, January 8, 2013 Order).

### **III. THE NATURE OF THE RELIEF SOUGHT**

Petitioner requests that this Court: (1) issue an order requiring the Respondent to show cause why relief should not be granted; and (2) issue a writ of prohibition restraining the Fourth District Court of Appeal from exercising jurisdiction over this appeal, when pursuant to Florida Rule of Appellate Procedure 9.030(c), section 26.012, Florida Statutes, and section 924.08, Florida Statutes, the circuit court has mandatory jurisdiction over Respondent's appeal of his "judgment and sentence."

### **IV. ARGUMENT**

The document that invokes appellate jurisdiction in appeals of criminal cases is the Notice of Appeal. *See Fla. R. App. P. 9.110(b) and 9.140(b)(3)*. Moreover, the filing of the Notice of Appeal is significant because it marks the transfer of

judicial power from the lower tribunal to the appellate court. *See Vasilinda v. Lozano*, 631 So. 2d 1082 (Fla. 1994).

Section 26.012(1), Florida Statutes, states that the circuit courts “shall have” appellate jurisdiction of appeals from county courts except appeals of county court orders or judgments declaring invalid a state statute or a provision of the Florida Constitution and 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. *See* §26.012(1), Fla. Stat.; *see also* Fla. R. App. P. 9.030(c). Furthermore, section 924.08, Florida Statutes, provides that “appeals from final judgments in misdemeanor cases tried by county courts shall be to the circuit courts.” *See* §924.08, Fla. Stat. While a district court can potentially exercise “discretionary jurisdiction” over orders from the county court when the county court has certified an appealable order as one of great public importance, to properly seek discretionary review, the appellant must timely file his Notice of Appeal, make reference to the certificate issued by the county court, and attach the county court order containing the certificate to his Notice of Appeal. *See* Fla. R. App. P. 9.030(b)(4) and 9.160.

While Respondent can appeal a county court order to the district court, when the county court certifies an issue of great importance, Respondent has not properly

done so in this case. Respondent's Notice of Appeal, which identifies the "Judgment of Conviction and Sentence . . . rendered by the [county court] on August 14, 2012," is insufficient on its face to confer jurisdiction in the Fourth District Court of Appeal. (App. #3). Instead, pursuant to Florida Rule of Appellate Procedure 9.030(c), section 26.012, Florida Statutes, and section 924.08, Florida Statutes, the circuit court has mandatory jurisdiction over Respondent's appeal of his judgment and sentence. *See Leahy v. Batmasian*, 679 So. 2d 12 (Fla. 4th DCA 1996); Fla. R. App. P 9.030(c); §26.012, Fla. Stat.; §924.08, Fla. Stat.

For these reasons, the Petitioner respectfully submits that the Fourth District Court of Appeal lacks jurisdiction over Respondent's misdemeanor appeal of his judgment and sentence from county court. Because the Fourth District Court of Appeal is attempting to exercise jurisdiction over this appeal unlawfully, this Court should issue a writ of prohibition.

Respectfully submitted,

PAMELA JO BONDI  
Attorney General

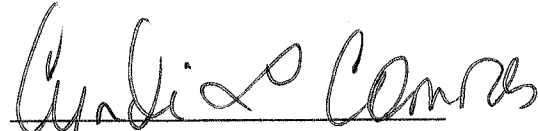


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CERTIFICATE OF SERVICE

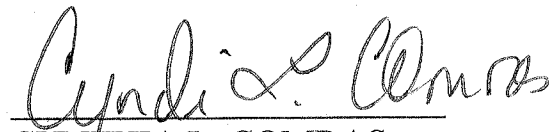
I HEREBY CERTIFY that a copy of the foregoing has been furnished via electronic mail to: **Eric J. Friday, Esq.**, at familylaw@fletcherandphillips.com and efriday@fletcherandphillips.com; and to **Office of the State Attorney, Bruce Colton**, at balonso@sao19.org; and via U.S. mail to: **Fourth District Court of Appeal**, Attn: Marilyn Beuttenmuller, 1525 Palm Beach Lakes Blvd., West Palm Beach, FL 33401; **Office of the State Attorney, Bruce Colton**, 19th Judicial Circuit, 411 South 2nd Street, Ft. Pierce, FL 34950 on January 24<sup>th</sup>, 2013.



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Assistant Attorney General

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the font requirements set forth in Florida Rule of Appellate Procedure 9.210(a)(2) by using Times New Roman 14-point font.



CYNTHIA L. COMRAS  
Assistant Attorney General