

IN THE SUPREME COURT OF FLORIDA
Case No. SC10-1349

ANTOINE BOWENS,
Petitioner,

v.

THE STATE OF FLORIDA,
Respondent.

**STATE OF FLORIDA'S
SUGGESTION OF MOOTNESS**

Respondent, the State of Florida, suggests that this case, currently pending in this Court for a determination of jurisdiction, has become moot due to the transfer and reassignment of Assistant Public Defender Jay Kolsky, who sought withdrawal due to a heavy workload from his ongoing representation of the petitioner Antoine Bowens. Because Mr. Kolsky no longer represents Bowens, the underlying factual basis for this litigation no longer exists. In support of this suggestion, the State asserts as follows:

1. Bowens seeks review of a decision of the Third District, which granted the State's petition for writ of certiorari and reversed a trial court order that permitted attorney Kolsky to withdraw from his representation of Bowens, who was facing a first-degree felony charge. State v. Bowens, 39 So. 3d 479, 480 (Fla. 3d DCA 2010). Kolsky asserted that, with a caseload of 164 third-degree felony cases, he could not provide diligent and competent representation to Bowens. Id.

The Third District found that the order granting the motion to withdraw departed from the essential requirements of the law, concluding that “there was no evidence of actual or imminent prejudice to Bowens’ constitutional rights.” Id. at 481.

2. Additionally, in a one-sentence statement, the Third District summarily denied Bowens’ cross-petition for certiorari, in which he challenged the constitutionality of section 27.5303(1)(d), Florida Statutes. Bowens, 39 So. 3d at 482. The Third District then certified the following question to this Court:

Whether section 27.5303(1)(d), Florida Statutes (2007), which prohibits a trial court from granting a motion for withdrawal by a public defender based on “conflicts arising from underfunding, excessive caseload or the prospective inability to adequately represent a client,” is unconstitutional as a violation of an indigent client’s right to effective assistance of counsel and access to the courts, and a violation of the separation of powers mandated by Article II, section 3 of the Florida Constitution as legislative interference with the judiciary’s inherent authority to provide counsel and the Supreme Court’s exclusive control over the ethical rules governing lawyer conflicts of interests?

Id.

3. Bowens invoked this Court’s jurisdiction on the basis of the certified question, and filed a jurisdictional brief asserting additional grounds he claimed supported this Court’s review, including that the decision below expressly affected a class of constitutional officers and expressly and directly conflicted with decisions of this Court. The State filed a response brief opposing jurisdiction. This case was fully briefed on the jurisdictional issue on August 26, 2010.

4. Bowens additionally sought consolidation in this Court with another case in which the Court has accepted jurisdiction: Public Defender v. State of Florida, Case No. SC09-1181. In that case, the office of the Public Defender of the Eleventh Judicial Circuit (PD-11) is appealing a decision in which the Third District determined that the entire public defender's office could not withdraw from an entire class of felony cases, representing approximately 11,693 cases at that time, solely on the basis of the office's average caseload. State v. Public Defender, Eleventh Judicial Circuit, 12 So. 3d 798, 805 (Fla. 3d DCA 2009). The State filed a response opposing consolidation of these cases. On July 19, 2010, the Court deferred ruling on that motion until after it determines whether to exercise jurisdiction in this case.

5. It recently was brought to the attention of counsel for the State that on or around September 13, 2010, Assistant Public Defender Kolsky transferred from the PD-11 division responsible for Bowens' case. Counsel for petitioner has confirmed that attorney Kolsky no longer represents Bowens.

6. Because the issues before the Third District were dependent on the particular facts of Kolsky's workload and his representation of Bowens, the State respectfully suggests that those issues are resolved, the factual predicate for this case no longer exists, and Bowens' claims are moot. The issue of the constitutionality of section 27.5303(1)(d), Florida Statutes (2007), as set forth in

the Third District's certified question, is one that is capable of repetition. As noted in the State's response to Bowens' motion for consolidation, however, the Third District's summary disposition of the constitutionality of the statute makes it unclear whether that court passed upon its certified question.¹ Therefore, it is respectfully suggested that because attorney Kolsky no longer represents Bowens, the issues properly before this Court for review are no longer live; instead, they are moot.

7. Counsel for petitioner has been contacted and indicated that they oppose the relief requested.

8. Accordingly, based on the fact that Assistant Public Defender Jay Kolsky no longer represents Bowens, the State respectfully suggests that this case has become moot.

¹ See St. Resp. to Mot. to Consolidate 2-3, filed July 13, 2009. The response continued: "Because the Third District did not mention, discuss, or analyze the issues within the certified question, it is questionable whether it passed upon them. See Pirelli Armstrong Tire Corp. v. Jensen, 777 So. 2d 973, 974 (Fla. 2001) ("Because in rendering its decision, the Second District did not pass upon the question certified to this Court, we are without jurisdiction to review this case."); Gee v. Seidman & Seidman, 653 So. 2d 384 (Fla. 1995); *but see* Weiland v. State, 732 So. 2d 1044, 1047 (Fla. 1999)."

Respectfully Submitted,

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