

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327

February 6, 2006

CASE NO.: 2D06-47
L.T. No. : 04-CT-14406-SC

State Of Florida

v. Carole Mae Bjorkland,
Et Al.,

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

Petitioner shall supplement the petition within fifteen days with a response addressing the following questions.

Section 924.07(1)(h), Florida Statutes (2005), provides one interlocutory appeal per proceeding to the State as a matter of right, and this has been determined to be constitutional as applied to appeals from county court to circuit court. See Blore v. Fierro, 636 So. 2d 1329, 1331-32 (Fla. 1994); State v. Ratner, 902 So. 2d 267, 269 (Fla. 4th DCA 2005). Is review of the order of the Sarasota County Court properly taken as an appeal pursuant to this section? If not, what authority is there that the State did not have a right to appeal the county court order?

Florida Rule of Appellate Procedure 9.040(c) provides that if an improper remedy is sought the cause shall be treated as if the proper remedy was sought. The circuit court sitting in its appellate capacity treated the State's petition for writ of certiorari as an appeal, and then found it to be untimely. What authority is there that may contravene this provision and prohibit the circuit court from treating the petition as an appeal?

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

Tiffany Gatesh Fearing, A.A.G.

Jason M. Miller, A.S.A

Robert N. Harrison, Esq.

aw


James Birkhold
Clerk

