

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA

STATE OF FLORIDA, :
 :
 Plaintiff :
 :
 Vs. :
 :
 CAROLE MAE BJORKLAND, et al.*, :
 :
 Defendant. :
 :

: CASE NO. 2005 CA
: LT No. 2004 CT 014406 SC

COPY

*Attached is a complete list of all cases

MOTION TO DISMISS PETITION FOR WRIT OF CERTIORARI

COMES NOW, the above named Defendants, by and through their undersigned attorney, and files this Motion to Dismiss Petition for Writ of Certiorari and says:

- 1. The State of Florida petitioned for the issuance of a Writ of Certiorari pursuant to Rule 9.100, seeking review of a non-final order dated November 2, 2005.
- 2. The Petition was filed was on December 2, 2005, 30 days after the rendition of the order under review.
- 3. The Petition was untimely filed.
- 4. A Petition pursuant to Rule 9.100 may be filed up to 30 days after the rendition of the Order; however, Rule 9.100 does not apply in this cause.
- 5. Rule 9.130 prescribes the procedures for the review of non-final orders.

6. Rule 9.130(a)(1) provides “[t]his rule applies to... appeals to the circuit court of non-final orders when provided by general law. Review of other non-final orders ... shall be by the method prescribed by rule 9.100.”

7. Statutes which afford the government the right to appeal in criminal cases should be construed narrowly. *Exposito v. State*, 891 So.2d 525 (Fla. 2004).

8. Rule 9.130 controls this appeal, for general law provides for appeal of the non-final Order of November 2, 2005. See Section 924.07(1)(h), Florida Statutes.

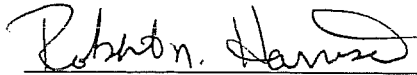
9. Rule 9.130(2) provides that “[a]ppeals of non-final orders in criminal cases shall be as prescribed by rule 9.140.”

10. Rule 9.140(2) provides “[t]he state as provided by general law may appeal to the circuit court non-final orders rendered in the county court.”

11. The appeal is commenced by the state filing a notice with the clerk of the lower tribunal within 15 days of the order to be reviewed. Rule 9.140(3).

12. Since the State did not appeal the order in the fifteen days allotted for such an appeal, the circuit court does not have jurisdiction. *Robinson v. City of Tampa*, 573 So.2d 1024 (Fla. 2d DCA 1991).

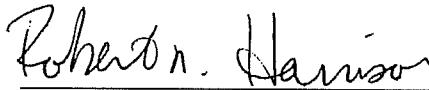
WHEREFORE, The Defendant requests that this Court to enter an order Dismissing the Petition for Writ of Certiorari.



Robert N. Harrison
825 S. Tamiami Trail, Suite 2
Venice, Florida 34285
(941) 485-8551
(941) 488-8932 Facsimile
Robert@HarrisonLawOffice.com
Florida Bar No. 612545
Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been furnished by regular U.S. mail to Jason Miller, State Attorney's Office, 2071 Ringling Boulevard, Sarasota, Florida 34237 this 6th day of December 2005.



Robert N. Harrison

*	
CAROLE MAE BJORKLAND	2005 CT 14406 SC
KRISTEN BENNETT	2005 CT 5705 SC
DARIN S. BUSHONG	2005 CT 1158 SC
KATHLEEN CHARLES	2004 CT 11430 SC
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LEWIS FRYE	2005 CT 7074 SC
KEVIN GAUL	2005 MM 10208 SC
JAY GROEPEL	2003 CT 1756 SC
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PIERRE SANTILLANA	2005 CT 8274
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CATHY GANGE	2003 CT 18650 SC
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LAWRENCE KALLAS	2005 CT 318 SC
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SHELBY RAE STEBBINS	2005-CT-18500 SC
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CARL COURY	2005 CT 13540
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RONALD LABASKY	2005 CT 12042
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MARCIA BARRETT	2005 CT 8445
DAVID BENNETT	2005-CT-17330 SC
MELISSA BENNETT	2005 CT 1286
KAREN BURNHAM	2005 CT 11691 SC
MARTHA BURNS	2005 CT 11691 SC
WILLIS CHAMBERS	2005 CT 7721 SC
BARBARA CHANDLER	2005 CT 11268
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GREG COWELL	2005-CT-15152 SC
JAMES DALE	2005 CT 10255 SC
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JASON ROSE	2005 CT 873
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MARK ELLIS	2005 CT 12841

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MICHAEL GANEY	2005 CT 9041 SC
MICHAEL GANEY	2005 MM5274 SC
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RICHARD KOSA	2005 CT 10966
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