

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

THOMAS BARTLEY SMITH,

Petitioner,

v.

CASE NO. 1D04-0285

STATE OF FLORIDA,

Respondent.

_____ /

Opinion filed May 31, 2005.

Petition for Writ of Certiorari - Original Jurisdiction.

William Mallory Kent, of the Law Office of William Mallory Kent, Jacksonville, for petitioner.

Charlie Crist, Attorney General; Edward C. Hill, Special Counsel, Criminal Appeals, Tallahassee, for respondent.

WOLF, C.J.

Both parties agree, and we concur, that the order on review is not an appealable non-final order. See Fla. R. App. P. 9.140(b)(1). We, however, treat the notice of appeal and subsequently filed initial brief as a petition for writ of certiorari and deny relief.

KAHN and POLSTON, JJ., CONCUR.