

IN THE SUPREME COURT OF FLORIDA

RONALD COTE

Petitioner

vs.

Case No. SC00-1327

STATE OF FLORIDA,

Respondent

DISCRETIONARY REVIEW OF DECISION OF THE
DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

BRIEF OF RESPONDENT ON THE MERITS

ROBERT BUTTERWORTH
ATTORNEY GENERAL

ROBERT J. KRAUSS
Senior Assistant Attorney General
Chief of Criminal Law, Tampa
Florida Bar No. 0238538

TIMOTHY A. FREELAND
Assistant Attorney General
Fla. Bar No. 539181
Westwood Center
2002 N. Lois, Suite 700
Tampa, Florida 33607

COUNSEL FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF THE CASE AND FACTS 1

SUMMARY OF THE ARGUMENT 2

ARGUMENT 3

WHETHER THE SECOND DISTRICT COURT OF APPEAL'S DECISION IN COTE V. STATE, 760 SO. 2D 162 (FLA. 2D DCA 2000) EXPRESSLY AND DIRECTLY CONFLICTS WITH THE FIFTH DISTRICT COURT OF APPEAL'S DECISION IN N.T. V. STATE, 682 SO. 2D 688 (FLA. 5TH DCA 1996) ON THE SAME QUESTION OF LAW AS TO WHETHER PROSECUTION AND PUNISHMENT FOR BOTH INDIRECT CRIMINAL CONTEMPT IN THE CIRCUIT COURT, JUVENILE DIVISION, AND A VIOLATION OF COMMUNITY CONTROL IN THE CIRCUIT COURT, CRIMINAL FELONY DIVISION, BASED ON THE SAME CONDUCT, VIOLATED CONSTITUTIONAL GUARANTEE AGAINST DOUBLE JEOPARDY WHERE THE JUVENILE COURT HAD NO JURISDICTION TO ACCEPT PETITIONER'S PLEA BECAUSE PETITIONER HAD PREVIOUSLY BEEN TRANSFERRED FOR PROSECUTION TO ADULT FELONY COURT? (Restated by Respondent)

CONCLUSION 19

CERTIFICATE OF FONT COMPLIANCE 19

CERTIFICATE OF SERVICE 20

TABLE OF AUTHORITIES

CASES

Cote v. State,
25 Fla. L. Weekly D676 (Fla. 2d DCA 2000) 6

Lisak v. State,
433 So. 2d 487 (Fla. 1983) 16,17

N.T. v. State,
682 So. 2d 688 (Fla. 5th DCA 1996) 6,7,8

State v. Griffith,
675 So. 2d 911 (Fla. 1996),he 5,6,12

Williams v. State,
737 So. 2d 1141 (Fla. 4th DCA 1999) 6

Worley v. State,
396 So. 2d 1153 (Fla. 2d DCA 1981) 6

OTHER AUTHORITIES

Fla. Const., Art. I. sec. 9 7

U.S. Const. Amend. V 7

Florida Statutes Sec. 39.052 (3)5 (1996) 3

Florida Statutes Sec. 985.201 (1997) 5

Florida Statutes Sec. 26.012(2)(c) 10

Florida Statutes Sec. 39.022 10

Florida Statutes Sec. 39.052(3)(1996) 11

Florida Statutes Sec. 39.052(3)(5)(d)(1996) 11

Florida Statutes Sec. 985.227(3) 15

Florida Statutes Sec. 985.227(3) (1997) 13

STATEMENT OF THE CASE AND FACTS

Respondent accepts Petitioner's Statement of the Case and Facts for the purposes of this appeal.

SUMMARY OF THE ARGUMENT

The Juvenile Division had no jurisdiction over Petitioner once the State filed an information with the felony division, and any actions taken by the juvenile court judge were a nullity, void even in the absence of any objection from the State.

ARGUMENT

WHETHER THE SECOND DISTRICT COURT OF APPEAL'S DECISION IN COTE V. STATE, 760 SO. 2D 162 (FLA. 2D DCA 2000) EXPRESSLY AND DIRECTLY CONFLICTS WITH THE FIFTH DISTRICT COURT OF APPEAL'S DECISION IN N.T. V. STATE, 682 SO. 2D 688 (FLA. 5TH DCA 1996) ON THE SAME QUESTION OF LAW AS TO WHETHER PROSECUTION AND PUNISHMENT FOR BOTH INDIRECT CRIMINAL CONTEMPT IN THE CIRCUIT COURT, JUVENILE DIVISION, AND A VIOLATION OF COMMUNITY CONTROL IN THE CIRCUIT COURT, CRIMINAL FELONY DIVISION, BASED ON THE SAME CONDUCT, VIOLATED CONSTITUTIONAL GUARANTEE AGAINST DOUBLE JEOPARDY WHERE THE JUVENILE COURT HAD NO JURISDICTION TO ACCEPT PETITIONER'S PLEA BECAUSE PETITIONER HAD PREVIOUSLY BEEN TRANSFERRED FOR PROSECUTION TO ADULT FELONY COURT? (Restated by Respondent)

Petitioner, a juvenile who was sixteen years old at the time of the offense, was charged by the State in adult felony court pursuant to F.S. 39.052(3)(a)5(b)(1996) with burglary of a dwelling with assault or battery, a first degree felony punishable by life imprisonment (R. 001). He entered a plea of no contest to this charge (R. 020) and the felony court, pursuant to F.S. 39.059(1)(1996) elected to impose juvenile sanctions against Petitioner. Petitioner was sentenced in adult felony court on September 18, 1997 to juvenile sanctions, including community control, and was ordered to attend a level 8 commitment program as a condition thereof.

The Order of Commitment erroneously indicated that it was entered in the juvenile division, and indicated that Petitioner had entered a plea to a juvenile petition rather than to a felony information filed in adult court (R. 019-030).

On July 30, 1998, Petitioner violated the terms of his community control (R. 044-045) and even though Petitioner had been previously filed upon as an adult, an Order to Show Cause was issued, apparently in error, by the Juvenile Division of the Circuit Court (R. 032). The State filed no charging document in the Juvenile Division. Several other cases, apparently not related to the instant case but all bearing Juvenile Division case numbers, were also included with the Order to Show Cause which was issued by the Juvenile Court on August 3, 1998 (R. 032). On August 6, 1998 a disposition hearing was held and Petitioner entered pleas of guilty to all charges, including the felony charge of violating his community control. This plea was erroneously accepted by the Juvenile Division judge (R. 047), and Petitioner was determined to be in contempt of court and was sentenced to fifteen days in detention (R. 048- 052).

The State then filed a Petition for Violation of Community Control on August 7, 1998 in the Felony Division.

Petitioner filed a motion to dismiss on double jeopardy grounds, asserting that he had already been charged with violating the terms of his community control by the Juvenile Division, and that he had entered a plea to those charges and had been sentenced by the Juvenile Division (R. 065, 066). The trial court denied this motion, finding that because Petitioner had been filed on in adult court, the Juvenile Division had no jurisdiction to accept a plea on a case arising out of adult court (T. 106). Petitioner then entered a plea to the violation, reserving his right to appeal the dispositive motion to dismiss.

Petitioner appealed to the Second District Court of Appeal. The Second District affirmed the trial court's actions, finding that the Juvenile Division had no divisional jurisdiction to hear a felony case in the absence of an order from the felony court transferring jurisdiction to the Juvenile Division. The Second District stated:

"No court order transferring divisions or consolidating the felony case with other pending juvenile cases was entered. We conclude that the juvenile division was without divisional authority jurisdiction to act upon Mr. Cote's alleged violations. Jurisdiction of a court is frequently invoked by statutory law. Section 985.201, Florida Statutes (1997), confers in the circuit courts exclusive original jurisdiction of proceedings 'in which a child is alleged to have committed a

delinquent act or violation of law.' As stated by our supreme court in State v. Griffith, 675 So. 2d 911, 913 (Fla. 1996), '[t]he Juvenile Justice Act vests the juvenile division with the exclusive jurisdiction over all proceedings in which a child allegedly violates the law unless ... juvenile jurisdiction is waived.' Here, juvenile jurisdiction was waived because the information against Mr. Cote was directly filed in the felony division. Accordingly, the juvenile proceeding did not come within the specified grant of jurisdictional authority awarded by section 985.201, Florida Statutes (1997), see Williams v. State, 737 So. 2d 1141 (Fla. 4th DCA 1999), nor could the parties confer jurisdiction upon the court by stipulation or by failure to object to its action, see Worley v. State, 396 So. 2d 1153 (Fla. 2d DCA 1981). Although juvenile court and criminal court are divisions of the circuit court, defense counsel cannot fail to object to the juvenile court judge's exercise of authority and then, when the client is convicted, seek a remedy later. The trial court's resources are not to be consumed in such a manner. See Griffith, 675 So. 2d at 913-914. Here, in fairness, we must also point out that the error went unnoticed by the State.

We conclude that the juvenile division was without divisional authority jurisdiction to act upon Mr. Cote's alleged violations. therefore, the juvenile court judge could not legally impose sanctions, and the constitutional prohibition against double jeopardy was not implicated when the felony division judge imposed sentence."

Cote v. State, 25 Fla. L. Weekly D676 (Fla. 2d DCA 2000).

THIS COURT'S CONFLICT JURISDICTION

Petitioner asserts that this Court has jurisdiction because the decision of the Second District in Cote conflicts with the decision in N.T. v. State, 682 So. 2d 688 (Fla. 5th DCA 1996). In N.T., the juvenile defendant plead to having committed a delinquent act and was placed on community control. When he subsequently violated the terms of that community control, the trial court issued an Order to Show Cause, and the State simultaneously filed a Petition based on the same facts, alleging that N.T. had violated the terms of his community control. At the hearing, N.T. moved to dismiss one of the two charges on the grounds of double jeopardy. The trial court denied the motion, and N.T. was found to have violated the terms of his community control, and was also found to be in contempt of court for violating the trial court's Order. On appeal, the Fifth District concluded that this was improper:

“Here, the state contends that ... the double jeopardy clause does not bar contempt proceedings against N.T. The State suggests that section 39.0145, Florida Statutes (1995), allows a trial court to initiate contempt proceedings against juveniles when sanctions for violating community control are no longer available or appropriate. It is the state's view that, by enacting this statute, the legislature sought to prescribe cumulative punishment for a single act...

In our view, this provision seeks to ensure that trial judges consider

alternative sanctions before placing juveniles in secure detention facilities for contempt of court and in no way authorizes the imposition of cumulative punishments. Accordingly, we hold that N.T.'s prosecution for contempt of court arising out of his violation of community control is barred as violating the double jeopardy clause. U.S. Const. Amend. V; Fla. Const., Art. I. sec. 9."

N.T. v. State, 682 So. 2d 688 at 690 (Fla. 5th DCA 1996).

Plainly, the facts of N.T. are significantly different from the facts of the present case. In N.T., the defendant was faced with both an Order to Show Cause as well as a Petition alleging violation of his community control, all filed within the Juvenile Division, all arising out of the same facts. This is not at all the issue which this Court is asked to resolve; were the only issue here the question of whether or not a defendant in either juvenile or felony court faced with contempt of court and violation of community control based on the same facts, the State would agree that one of the two charges was improperly brought. Rather, the issue to be addressed here is whether the Juvenile Division retains jurisdiction over a criminal case once felony charges have been filed and that case has been transferred to the felony division. Consequently, the State would ask this Court to deny Petitioner the relief that he seeks, on the grounds that the issue presented in the present case does not conflict with the

holding in N.T.; the State does not dispute the application of the prohibition against double jeopardy in cases where the trial court has proper jurisdiction over the charges before it. N.T. fails to address the real issue here, which is the question of whether the juvenile division retains jurisdiction to the extent that it may impose a sentence in a case which has, by law, been transferred to felony court. It is the State's position that the juvenile division has no authority to consider a case under these circumstances. Let us now turn to the merits of Petitioner's claim.

MERITS OF PETITIONER'S CLAIM

The Constitution of the State of Florida was amended in 1950 to permit the creation of the juvenile court. Article I section 15(b) declares:

"When authorized by law, a child as therein defined may be charged with a violation of law as an act of delinquency instead of crime and tried without a jury or other requirements applicable to criminal cases. Any child so charged shall, upon demand made as provided by law before a trial in a juvenile proceeding, be tried in an appropriate court as an adult. A child found delinquent shall be disciplined as provided by law" (emphasis added).

This constitutional amendment left it up to the Florida Legislature to pass appropriate laws to govern the regulation

of the juvenile system. One aspect of the amendment, however, is important to our discussion. Plainly, the Florida Constitution provides that where the appropriate "demand" has been made, a child must ("shall") be tried as an adult; the Florida Constitution requires only that a proper demand be made as provided by law. As we shall see, the applicable provision which currently determines when a child is to be treated as an adult requires only that when a child who has committed a felony is at least sixteen years of age, the State may at that point elect to treat that child as an adult, and file the case in the felony division. It is constitutionally mandated, at this point, that the child shall be treated as an adult. Let us now turn to the specific laws which govern the prosecution of a child as an adult, and examine in more detail the rule regarding which court shall have jurisdiction over that child's case.

The Legislature specifies in Florida Statute Section 26.012(2)(c) that the circuit court has jurisdiction over all cases relating to juveniles. The circuit court has many divisions, of course, including separate felony and juvenile divisions. Florida Statute Section 39, and more recently Section 985, both govern the manner in which juveniles are

prosecuted, and it is in these chapters where we shall ascertain the procedure for prosecuting a child as an adult.

Chapter 985 of the Florida Statutes became effective October 1, 1997. Certain parts of 985 are applicable only to cases where the crime involved was committed after the effective date. It is the State's position that certain other parts of Chapter 985 are applicable to the instant case, because Petitioner's violation of community control did not occur until after the effective date of Chapter 985. However, in an abundance of caution, let us first examine Chapter 39, which contains the law which was in effect at the time the substantive offence was committed.

Florida Statute Section 39.022 establishes the circuit court's exclusive jurisdiction over children charged with both delinquent acts and violations of law. The distinction between the juvenile and felony divisions of the circuit court is underscored by Section 39.022(b), which mandates that where it is determined at any time during the prosecution of any person presumed to be an adult that said person was a child at the time of the offense, that person's case and all related papers are to be immediately transferred to the juvenile division. Plainly, the legislature's intent is to place a distinct wall between the felony and juvenile divisions, to the extent that

even where prosecution of a charge has already commenced, the case must be transferred to the proper court once the defendant's juvenile status is established.

The specific statute governing transfer of a child out of the juvenile division for felony prosecution is found in Florida Statute Section 39.052(3)(1996). Under this subsection, the State Attorney may file an information charging a felony offense against any child who is at least 16 years of age at the time the alleged offense was committed; in some cases, direct filing as an adult is mandated. The record before us does not clearly indicate whether or not the State's decision to file an information in this case was mandated or not, but for the purposes of our analysis the distinction is moot; it is not disputed that the State properly filed upon the Petitioner as an adult, because he met the criteria for permitting the State to do so. More importantly, the statute makes clear that once the information is filed, the case is to be transferred to the felony division for prosecution, and that child is henceforth to be treated in all respects as an adult for any subsequent violations of state law. Florida Statute Section 39.052(3)(5)(d)(1996). It is the State's position, based upon the statutory authority cited here, that once the Petitioner's case was transferred to felony division

of the circuit court for prosecution as an adult, the juvenile division was divested of authority to rule on any aspect of Petitioner's case.

This Court has previously recognized the jurisdictional distinction between the juvenile and felony divisions of the circuit court. In State v. Griffith, 675 So. 2d 911 (Fla. 1996), this Court noted: "The Juvenile Justice Act vests the juvenile division with exclusive jurisdiction over all proceedings in which a child allegedly violates the law unless, in compliance with the Act, juvenile jurisdiction is waived or the juvenile falls under a statutory exception. Accordingly, in certain circumstances, children may be tried as adults and exposed to adult sanctions." Id at 913. It is the State's position that once the State filed an information in the felony division, the Juvenile Division no longer had jurisdiction over any aspect of Petitioner's case. Hence, even though the Juvenile Division issued an Order to Show Cause requiring Petitioner to appear, this action was done in error; the Juvenile Clerk's office should have transferred the case immediately to the felony division, and the sitting juvenile court judge, likewise, should have taken action to dismiss the Order to Show Cause and transfer the case to the proper court once it came before him. In any event, regardless of the

compound errors committed by the Juvenile Division here, the actions taken by that court were in fact a nullity despite the fact that Petitioner entered an admission to the Order, because the Juvenile Division had no divisional authority jurisdiction to act in Petitioner's case.

The State's position is grounded on the fact that jurisdiction over how and where a child is prosecuted is strictly a matter of legislation. Where the legislature has clearly dictated that once the State files an information in the felony division that a juvenile is to be treated as an adult thenceforth, it is clear that this language is intended to divest the juvenile division of any further jurisdiction over that case. Of significance is the legislature's then newly enacted Florida Statute Section 985.227(3) (1997), which became effective October 1, 1997:

(a) Once a child has been transferred for criminal prosecution pursuant to information and has been found to have committed the presenting offense or a lesser included offense, the child shall be handled thereafter in every respect as if an adult for any subsequent violation of state law, unless the court imposes juvenile sanctions under s. 985.233.

(B) When a child is transferred for criminal prosecution as an adult, the court shall immediately transfer and certify to the appropriate court all preadjudicatory cases that pertain to that child which are pending in juvenile court, including, but not limited to, all cases involving

offenses that occur or are referred between the date of transfer and sentencing in adult court and all outstanding juvenile disposition orders. The juvenile court shall make every effort to dispose of all predispositional cases and transfer those cases to the adult court prior to adult sentencing. It is the intent of the Legislature to require all cases occurring prior to the sentencing hearing in adult court to be handled by the adult court for final resolution with the original transfer case.

This subsection of Chapter 985 became effective October 1, 1997, just a few weeks after Petitioner entered his plea to the substantive offenses. However, as opposed to certain other subsections of Chapter 985, this subsection became effective regardless of the date of the substantive offense. Consequently, the State would assert that it is controlling over Petitioner's case, and should have controlled the procedures used by the Juvenile Division in handling Petitioner's case. Plainly, it was the Juvenile Division's responsibility to transfer Petitioner's file to the Felony Division once the initial Petition alleging a violation of Petitioner's community control was filed with the clerk's office. The fact that this was not done, however, does not give the Juvenile Division authority to take action to dispose of Petitioner's violation as a juvenile case. It makes no sense for a juvenile who has been filed on as an adult to be

bounced back and forth between adult court and juvenile court, merely because the paperwork has been filed in the wrong place. Rather, it is the State's position that the Legislature plainly intended for the juvenile's case to be handled entirely by the Felony Division once an information has been filed there. The language of Section 985.227(3) makes this plain.

Petitioner may assert, however, that the Statute makes an exception for those cases where the adult court has elected to impose juvenile sanctions. The Statute does indicate that the child is to be treated as an adult in all cases except where the sentencing court imposes juvenile sanctions under s. 985.233. What is the meaning of this language? It is the State's position that this language is not intended to authorize the re-transfer of the felony case back to the Juvenile Division. Rather, it is intended to authorize the treatment of the young felony offender as a juvenile for sentencing purposes, and to allow the juvenile to have access to the juvenile sanctions imposed by the felony court. It does not extend so far, however, as to authorize the Juvenile Division to exercise authority over the case in the event of a violation of the terms of the juvenile's sentence.

It is unfortunate that the Juvenile Division elected to issue an Order to Show Cause on a case which had already been transferred to the felony division, and it is similarly unfortunate that Petitioner was brought into the Juvenile Division court and entered an admission to the charge. However, as this Court has previously held, where there is no statutory authority giving the Juvenile Division jurisdiction to accept the plea, the actions of the Juvenile Division judge are a nullity. Lisak v. State, 433 So. 2d 487 (Fla. 1983). In Lisak, the juvenile defendant, who was facing a capital felony, entered a plea which was accepted by the juvenile division judge. Florida law at that time prohibited the holding of an adjudicatory hearing until twenty one days after the child's arrest, unless the State filed a waiver. The purpose of the waiting period was to give the State an opportunity to present the case to a grand jury for indictment. This Court concluded that the juvenile judge's acceptance of the plea was a nullity. Because the statute plainly prohibited it, the court had no jurisdictional authority to accept a plea under those circumstances.

The other significance of Lisak is the fact that the State did not voice any objection to the trial court's accepting the plea. Nevertheless, this Court concluded that

even in absence of any objection from the State, the act of accepting a plea was, in fact, of no consequence where the court had no jurisdiction to do so. Just as the Florida Constitution grants the Legislature the authority to make laws governing how and where a juvenile accused of delinquent acts may be treated as an adult, the Legislature has determined that once the State files an information in felony court charging that juvenile with violating the law, the juvenile is thereafter to be treated as an adult; the juvenile division no longer has any jurisdiction to rule over any aspect of the case. Once jurisdiction has been transferred from the juvenile division to the felony division, it is improper for the juvenile division to attempt to impose sanctions against that defendant, even where the felony court has imposed juvenile sanctions; jurisdiction remains with the felony division.

Appellant asserts that because the State failed to voice any objection to the proceedings below, that the State has therefore waived any right to complain. However, this Court has previously recognized that the rulings of the juvenile court acting at a time when it has no jurisdiction to act, are void; its actions are a nullity, void even in the absence of objection. Lisak, supra. Plainly, the authority of the trial court in the area of juvenile law is governed by the laws

enacted by the Legislature. There is no common law right to special treatment just because one is a juvenile offender. The Legislature has long recognized the State's authority to prosecute certain juvenile offenders as adults, and it makes little sense to conclude that the juvenile division retains concurrent jurisdiction with the felony division over such cases.

Instead, it is more logical to conclude that once a juvenile offender's case is transferred to the felony division, the sentencing court retains jurisdiction over its own cases. There is statutory authority for this conclusion. In Florida Statute 985.228, enacted October 1 of 1997, subsections (4) and (5) both state in effect, that whether or not the sentencing court decides to withhold adjudication, the court "shall thereafter have full authority under this chapter to deal with the child as adjudicated." Indeed, the Order of Commitment signed by the trial judge contains similar language- "the Court retains authority over the discharge of the child from commitment..." (R. 030). The State would suggest that this language is meant to provide the sentencing court, whether that court is in the Juvenile or Felony Division, authority to continue exercising jurisdiction over the juvenile offender's case; if the case has been transferred

to the Felony Division, it is the Felony Division that retains jurisdiction, and not the Juvenile Division.

In conclusion, the State would assert that the Juvenile Division had no authority or jurisdiction to issue an Order to Show Cause, as there was nothing in the Juvenile Division from which such an Order could issue. In the absence of jurisdiction, the juvenile division had no authority to accept an admission from the Petitioner. The fact that it did so is of no consequence, is a nullity, and void even in the absence of any objection from the State. This Court should therefore affirm the Second District's decision.

CONCLUSION

WHEREFORE this Honorable Court should affirm the decision of the trial court and the Second District Court of Appeal.

Respectfully Submitted

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

ROBERT J. KRAUSS
Senior Assistant Attorney
General
Chief of Criminal Law, Tampa
Florida Bar No. 0238538

TIMOTHY A. FREELAND
Assistant Attorney General
Fla. Bar. No. 539181
Westwood Center
2002 N. Lois Ave Suite 700
Tampa, FL 33607
(813) 873-4739

CERTIFICATE OF FONT COMPLIANCE

The undersigned hereby certifies that the foregoing brief is prepared in 12 point Courier New, a font which is not proportionately spaced.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Richard Albertine, Assistant Public Defender, Criminal Justice Center, 14250 49th Street North, Clearwater, Florida 33762 this _____day of March, 2001.

OF COUNSEL FOR RESPONDENT