

IN THE SUPREME COURT OF FLORIDA

ANTHONY WILLIAMS,

Petitioner,

v.

CASE NO. SC03-1660

STATE OF FLORIDA,

Respondent.

-----/

ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

MERIT BRIEF OF RESPONDENT

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SUMMARY OF ARGUMENT

On the basis of Pullen v. State, 802 So.2d 1113 (Fla. 2001), cert. denied, 536 U.S. 915 (2002), the State agrees with the lower court's conclusion that the principles of Anders v. California, 386 U.S. 738 (1967), should apply to sexually violent predator involuntary civil commitment proceedings. The liberty interests at issue in Baker Act proceeding, which, according to Pullen, are subject to Anders, are similar to those at issue under the Sexually Violent Predators Involuntary Civil Commitment Act.

This Court should reject the argument by Williams that a consultation requirement should be made applicable to all Anders appeals in Florida as such a consultation requirement would be redundant and would cause unwarranted and unnecessary expense and misuse of attorney time to the detriment of the legal defense system.

ARGUMENT

Jurisdiction

This Court has jurisdiction pursuant to article V, section 3(b)(4), of the Florida Constitution.

ISSUE

ARE THE ANDERS PROCEDURES
APPLICABLE TO CRIMINAL CASES TO BE
FOLLOWED IN CASES INVOLVING
APPEALS FROM JIMMY RYCE COMMITMENT
ORDERS?

Standard of Review

"If the ruling consists of a pure question of law, the ruling is subject to de novo review. See, e.g., Philip J. Padovano, Florida Appellate Practice § 9.4 (2nd ed. 1997)." State v. Glatzmayer, 789 So.2d 297, 301 n.7 (Fla. 2001).

Argument

Williams argues that "[i]t appears that this Court's precedent, Pullen v. State, 802 So.2d 1113 (Fla. 2001), cert. denied, 536 U.S. 915 (2002), compels the conclusion that Anders procedures should be employed in appeals from civil commitment orders under the Jimmy Ryce Act." (IB at p. 9). The State concurs.

As noted by the lower court:

If Anders applies to Baker Act cases, then it clearly applies to cases arising out of the Jimmy Ryce Act. The Supreme Court has determined that the fundamental right of liberty is curtailed by the short-term hospitalization of persons pursuant to the Baker Act, and that the Anders procedure is,

therefore, appropriate. Given that determination, it appears that the curtailment of liberty for extended periods under the Jimmy Ryce Act should compel the Anders review process.

Williams v. State, 852 So.2d 433, 435 (Fla. 5th DCA 2003).

On the basis of Pullen v. State, the State agrees with the lower court's conclusion that the principles of Anders v. California, 386 U.S. 738 (1967), should apply to sexually violent predator involuntary civil commitment proceedings. The liberty interests at issue in Baker Act proceeding, which, according to Pullen, are subject to Anders, are similar to those at issue under the Sexually Violent Predators Involuntary Civil Commitment Act.

In addition to addressing the question certified to this Court, Williams argues that a consultation requirement "should be made applicable to all Anders appeals in Florida." (IB at p. 11). However, Williams acknowledges that the United States Supreme Court has not imposed a consultation requirement in any of its subsequent cases addressing Anders issues, and that he has not been able to identify any state or lower federal court that has adopted a consultation requirement as part of the Anders procedure. Nonetheless, he urges this Court to adopt such a requirement based on the reasoning in the dissenting opinion in Commonwealth v. Torres, 630 A.2d 1250 (Pa. Super. 1993).

Initially, the State would ask this Court not to address "a claim that was not first subjected to the crucible of the jurisdictional process set forth in article V, section 3,

Florida Constitution."¹ Further, as Petitioner was "provide[d] procedural and substantive rights designed and intended to apply to *civil proceedings*...",² the issue of the alleged necessity of adding a consultation requirement to the Anders procedure in criminal proceedings is not properly before this Court. Should this Court decide to address Petitioner's argument regarding the addition of a consultation requirement to "all Anders appeals in Florida," the State would ask this Court to follow, notwithstanding the criminal posture of the case, the reasoning of the majority in Commonwealth v. Torres.

In Commonwealth v. Torres, the majority reasoned that:

[w]hat is essential to making a determination of frivolousness and fulfilling the duty under Anders to advise the defendant adequately of counsel's actions and his rights is communication with defendant by providing a copy of the Anders brief, the motion to withdraw and a letter explaining counsel's actions and the defendant's alternative recourses. Prior communication may or may not be necessary for counsel to fulfill adequately his responsibility, depending on the circumstances of the particular case.

We believe counsel is presumed to act professionally and ethically in this process and will engage in such communication as required by each case and his prior involvement in the case. Appellate review should provide a sufficient opportunity to evaluate the sufficiency of the communication in the same manner as we determine adequacy of the record in any other situation.

Commonwealth v. Torres, 630 A.2d at 1252-53.

¹Major League Baseball v. Morsani, 790 So.2d 1071, 1080 n.26 (Fla. 2001).

²Westerheide v .State, 767 So.2d 637, 646 (Fla. 5th DCA 2000).

The Superior Court of Pennsylvania also recognized that such a consultation requirement would be redundant, and would cause unwarranted and unnecessary expense and misuse of attorney time to the detriment of the legal defense system. Id. See also Russo v. Attorney General of Illinois, 780 F.2d 712, 715 (7th Cir.) (finding actual consultation with defendant prior to filing motion to withdraw and accompanying Anders brief not constitutionally required), cert. denied, 476 U.S. 1185 (1986).

The district court's certified question regarding the application of Anders procedures to Jimmy Ryce Commitment Orders should be answered in the affirmative. This Court should reject the argument by Williams that a consultation requirement should be made applicable to all Anders appeals in Florida.

CONCLUSION

Based on the arguments and authorities presented herein, Respondent respectfully requests that this Court answer the certified question of great public importance from the Fifth District Court of Appeal in the affirmative.

SIGNATURE OF ATTORNEY AND CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished by U.S. Mail to: Beverly Pohl, Esq., and Bruce Rogow, Esq., Broward Financial Center, Suite 1930, Fort Lauderdale, Florida 33394, on April _____, 2004.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the font requirements of Fla. R. App. P. 9.210.

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