

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,)	
)	
Petitioner)	CASE NO. SCO9-1407
)	DCA CASE: 4D09-2335
vs.)	
)	
ARTHUR BLAIR,)	
)	
Respondent)	
)	
_____)	

RESPONDENT’S BRIEF ON THE MERITS

On Certification of Conflict from the District Court of Appeal of Florida
Fourth District

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PRELIMINARY STATEMENT

Petitioner was the prosecution and Respondent was the defendant in the Criminal Division of the Circuit Court of the Fifteenth Judicial Circuit of Florida, In and For Palm Beach County. In this brief, parties will be referred to as Petitioner or State and Respondent.

In this brief the following references will be made:

“T” Transcript of the bond hearing held on June 10, 2009.

(Pages T1 - 16)

“SB” Petitioner’s Initial Brief on the Merits

(Pages SB1 - 17)

STATEMENT OF THE CASE AND FACTS

Respondent, Arthur Blair, accepts the Statement of the Case and Facts set forth in the Petitioner's initial brief, with the following additions and exceptions:

Respondent was charged with misdemeanor Driving Under the Influence [DUI hereafter] in the County Court of Palm Beach County [Case No. 50-2008MM002275A]. He was arrested and released after processing. He was given a court date on the misdemeanor case. It is undisputed that the court date was cancelled and that Respondent was told that the State had entered a nolle prosequere.

On February 15, 2008, the State refiled the case as a felony DUI [50-2008CF002566A]. The facts, as contained in the District Court opinion are as follows:

The trial court ordered petitioner, Arthur Blair, held without bond after he failed to appear for a court date on a felony DUI charge. Blair had never been arrested on the felony charge and he did not receive notice of the court date. Blair had been arrested for misdemeanor DUI and appeared at a scheduled court date for that charge. At that time, he was advised that the court appearance had been cancelled and that the misdemeanor case had been nolle prossed. Unbeknownst to Blair, the state had filed an information charging felony DUI, but the uncontested evidence at the bond hearing showed that Blair did not receive notice of the felony charge.

Blair v. State, 15 So. 3d 758, 759 (Fla. 4th DCA 2009).

Respondent was later arrested on a bench warrant. At the bond hearing held on June 10, 2009, Respondent testified that he went to the Jail Courthouse on Gun Club Road and was told that the case had been nolle prossed (T4). Respondent also stated that no one told him that the case had been refiled or that he needed to provide an updated address (T7). The State called no witnesses and presented no evidence at the bond hearing.

The Fourth District granted the writ of habeas corpus and certified conflict with *Ricks v. State*, 961 So.2d 1093 (Fla. 5th DCA 2007). *Blair*, 15 So. 3d at 760. The State petitioned this Court for discretionary review and this Court ordered briefs on the merits.

SUMMARY OF THE ARGUMENT

The Fourth District Court of Appeal's opinion in this case is the correct statement of the law for pretrial detention. It is completely consistent with Article 1, Section 14, of the Florida Constitution, the Florida Statutes, and the rules of this Court governing pretrial release. The decision also relies on, and is supported by, this Court's decision in *State v. Paul*, 783 So.2d 1042 (Fla. 2001). The District Court correctly held that the trial court must comply with the constitutional and statutory safeguards for pretrial detention as codified in Section 903.0471, *Florida Statutes*. Both the United States and Florida Constitutions guarantee a criminal defendant the basic and organic right to pretrial release which may be denied only under very narrow and limited circumstances, and Section 903.0471 contains an express presumption in favor of release. An exception exists when the State establishes that no condition of release can reasonably protect the community, assure the presence of the accused, or assure the integrity of the judicial process. Petitioner, the State, failed to establish that Respondent met this exception or any other ground for pretrial detention pursuant to Section 907.041.

The District Court also correctly found that the trial court failed to make findings of fact and conclusions of law as required both by the statute and the rules of this Court.

The District Court further held that the trial court failed to make a determination that Respondent's failure to appear was even willful. This is especially significant in light of the uncontested evidence presented at the bond hearing indicating that Respondent went to the Courthouse on the original misdemeanor charge and was told that the State had entered a nolle prosequere. It was also uncontested that Respondent was never told that the State had refiled the charge as a felony and that Respondent never actually received notice of his felony court date.

The District Court correctly granted the writ of habeas corpus and remanded the case to the trial court to hold a bond hearing and release the Respondent on reasonable conditions *unless* the court determined that the failure to appear was willful *and* that "no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process." *Blair*, 15 So. 3d at 760. This is the correct procedure required by the Florida Constitution, the Statute, and the rules of this Court. This Court should affirm the District Court's decision.

ARGUMENT

THE DISTRICT COURT CORRECTLY HELD THAT THE TRIAL COURT MUST COMPLY WITH THE CONSTITUTIONAL AND STATUTORY REQUIRMENTS FOR PRETRIAL RELEASE AS CODIFIED IN SECTION 907.041, FLORIDA STATUTES.

Petitioner, the State of Florida, seeks to have this Court reverse the Fourth District's ruling in this cause and hold that, “on the facts of this particular case, the trial court did not need to explicitly determine whether conditions of release were appropriate.” [SB16]. However, Petitioner’s position is not supported by the facts or the law. Contrary to Petitioner’s assertion, the District Court’s opinion is not a case of “form over substance” [PB4, 11]. The protection against the deprivation of liberty without due process of law is a fundamental right of every American. “Indeed, the citizens of a free society can conceive of no greater injury than the continued unjust deprivation of liberty.” *Rowell v. Holt*, 850 So 2d 474, 480 (Fla. 2003).

Constitutional Basis for Pretrial Release

The Fourteenth Amendment to the United States Constitution prohibits the State from depriving a person of liberty without due process of law. The Eighth Amendment also prohibits excessive fines, bails or punishments. In Florida, pretrial release has long been recognized by this Court as a basic constitutional

right. See e.g. *Ex parte McDaniel*, 97 So. 317 (Fla. 1923). In *McDaniel*, this Court held that “the denial of the right to bail is a deprivation of liberty without due process of law, in violation of the Constitution, as well as a denial of the organic right to bail.” *Id.* at 149. *Mathis v. Starr*, 152 So.2d 161, 162 (Fla. 1963).

Our state constitution is very specific regarding the right to pretrial release.

Unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime or violation of municipal or county ordinance shall be entitled to pretrial release on reasonable conditions. If no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained.

Art. I, § 14, *Fla. Const.* This provision expressly lists the two exceptions where a court may deny pretrial release as well as the burden on the State to establish each exception. The case below is not a capital or life felony so the first exception is irrelevant to the issue here. This case deals solely with the second exception of whether no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process.

Florida Statutes and Court Rules

Both this Court and the Legislature have enacted Rules of Court and Statutes to carry out the protections provided in this section of the Florida Constitution’s

Declaration of Rights. The Legislature enacted Section 907.041, *Florida Statutes*, which establishes safeguards and criteria for the denial of pretrial release. The Legislature has also frequently amended this statute. In the same manner, this Court adopted *Fla. R. Crim. P.* 3.132 which establishes the procedures for pretrial detention. Significantly, both the statute and the rule require that a pretrial detention order contain both findings of fact and conclusions of law which demonstrate that the constitutional and statutory criteria for pretrial detention have been met. *See Fla. R. Crim. P.* 3.132(c)(2); § 907.041(4)(i), *Fla. Stat.* (2008); *Blair*, 15 So. 3d at 759.

Section 907.041(3)(a) embodies an expression of legislative intent that there is a presumption in favor of pretrial release.

It is the intent of the Legislature to create a presumption in favor of release on nonmonetary conditions for any person who is granted pretrial release...Such person shall be released on monetary conditions if it is determined that such monetary conditions are necessary to assure the presence of the person at trial or at other proceedings, to protect the community from risk of physical harm to persons, to assure the presence of the accused at trial, or to assure the integrity of the judicial process.¹ [Emphasis supplied].

¹As indicated by the ellipsis, the statute also contains the words” unless such person is charged with a dangerous crime as defined in subsection (4).” The provision is inapplicable here, and Respondent’s crime is s not one of the listed “dangerous crimes” contained in the section.

Id. This presumption is consistent with the rights and privileges granted by Article 1, Section 14 of the Florida Constitution.

The statute also specifies certain considerations and limitations on the right to pretrial release, none of which are applicable here. In fact, at the bond hearing, Petitioner offered no evidence that Respondent met any of the constitutional or statutory criteria to be held without bond.

Much like Section 907.041, this Court has adopted rules of procedure which comport with the provisions of Article 1, Section 14, regarding pretrial release.

Florida Rule of Criminal Procedure, 3.131 provides:

(a) Right to Pretrial Release. Unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime or violation of municipal or county ordinance shall be entitled to pretrial release on reasonable conditions. If no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained.²

Id. Like the statute, the rule tracks the language of the Article 1, Section 14, and provides for the same exceptions.

²Both *Fla.. R. Crim. P.* 3.131 and 3.132 have recently been amended by this Court. The effective date of the amendments is January 1, 2010. See ***In Re: Amendments to the Florida Rules of Criminal Procedure***, 34 Fla. L. Weekly S629 (Fla. November 19, 2009); and ***In Re: Amendments to the Florida Rules of Criminal Procedure 3.132***, 34 Fla. L. Weekly S538 (Fla. September 17, 2009).

In *State v. Paul*, 783 So.2d 1042, this Court made clear that the constitution required adherence to the safeguards established by statute and rule.

Our decision today to adopt the Fourth District's reasoning in *Paul* is influenced by our concern that adopting the Third District's view would leave the judiciary, the State, and defendants without ascertainable criteria, precise standards, and procedural protections presently existing in the comprehensive statutory scheme and rules, and thus potentially run afoul of a defendant's constitutional rights. For example, the Third District opines that “[i]n the case of a minor bond violation, particularly of a noncriminal nature, the court may want to reinstate bond.” *Houser*, 719 So.2d at 309. Yet, if the decision to grant pretrial release is addressed only to the “sound discretion of the trial court,” appellate review would consist only of a broad abuse of discretion standard.

Id. at 1051. This Court clearly viewed the safeguards provided by the statute as a necessity rather than form over substance.

Petitioner cites the particular circumstances of this case as grounds for reversal. However, the facts here demonstrate the correctness of the District Court’s decision below. The District Court’s opinion to reverse the trial court was supported on three grounds. First and foremost, the trial court made no finding that Respondent’s failure to appear for court was willful and the record is devoid of any evidence that his failure to appear was intentional. *Blair*, 15 So. 3d at 759. Second, the transcript of the bond hearing shows that the trial court made no inquiry into whether there were “any conditions of release [which could]

reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process” as required by Article 1, Section 14. And third, the trial court failed to enter an order containing “findings of fact and conclusions of law showing that the constitutional and statutory criteria for pretrial detention are met” as required by Rule 3.132(c)(2), and §907.041(4)(i), Fla. Stat. (2008). *Id.*

As to the first ground, the lack of willfulness, there is no factual dispute that Respondent went to the courthouse and was told that the State had nolle prossed the misdemeanor charge. There is also no factual dispute that Respondent was unaware that he had any further obligation to the court system either to provide additional information or to check for a new court date. It is also undisputed that Respondent did not receive notice of his felony court date. As the District Court correctly pointed out, unbeknownst to Respondent, “the state had filed an information charging felony DUI, but the uncontested evidence at the bond hearing showed that Blair did not receive notice of the felony charge. The trial court did not find the failure appear to willful. The record is devoid of evidence to suggest that [Respondent] willfully failed to appear.” *Id.*

As to the second ground, the transcript reflects that there was no inquiry into whether there were any other means to protect the community, assure Respondent’s presence at trial, or assure the integrity of the judicial process.

As for the third ground for the District Court's opinion, both the statute and the rule require that a pretrial detention order contain both findings of fact and conclusions of law which demonstrate that the constitutional and statutory criteria for pretrial detention have been met. That was clearly not done here.

The record and transcript demonstrate that Respondent's failure to appear on the refiled felony case was unintentional and not willful. The trial court did not consider any other conditions of release which could assure Respondent's presence. The court also failed to make the required findings of fact and conclusions of law. Petitioner's argument would have this Court do away with the the requirement that a trial court strictly follow the required safeguards when depriving a person of the fundamental right to liberty. This argument is contrary to the constitution, statutes and the rulings of this Court.

The relief Petitioner seeks is difficult to fathom. In its brief, Petitioner states that:

While Petitioner is not challenging the legitimacy of this Court's holding in *State v. Paul*, Petitioner contends that there are certain situations where ruling that the trial court must make specific findings of fact as to the application of pretrial detention leads to the application of the principle "form over substance." Petitioner contends that the instant case is one of those situations.

[SB11]. Petitioner is not disputing the controlling nature of this Court's decision in *Paul*, 783 So.2d at 1042, nor is it suggesting the District Court in any way

departed from the requirements of *Paul*. Instead Petitioner asserts that the District Court's opinion places "form over substance." [SB11]. That is simply not the case. The District Court did not grant the writ of habeas corpus because the trial court failed to make some "talismanic incantation"³ regarding the denial of pretrial release. Instead, the District Court's concluded that Article 1, Section 14; Section 907.041, *Florida Statutes*, and the rules of this Court require a trial court to follow the procedural and substantive safeguards set forth in Florida Constitution, the statutes and rules of court.

Furthermore, the District Court's order granting the writ of habeas corpus did not direct the trial court to automatically release Respondent. Instead, it instructed the trial court to release Respondent *unless* it found that the failure to appear was willful *and* no conditions of release could reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process. The District Court simply told the trial court to follow the law.

Upon remand, on July 9, 2009, the trial court did just that and released Respondent on his own recognizance. Thus, after following the statute, the trial court determined that Respondent could be released. The situation here is clearly

³ See *California v. Prysock*, 453 U.S. 355,359 (1981)

not one of “form over substance” at Petitioner suggests. Instead, the requirements of the statute are a necessity to insure a basic and fundamental right.

CONCLUSION

Based upon the foregoing arguments and authorities cited, Respondent respectfully requests this Honorable Court to affirm the decision of the District Court of Appeal

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this initial brief has been furnished to Assistant Attorneys General Celia Terenzio, and Myra Fried, Counsel for Petitioner, Office of the Attorney General, 1515 N. Flagler Drive, Ninth Floor, West Palm Beach, Florida 33401-3432, by courier, this 28th day of November, 2009.

John M. Conway
Assistant Public Defender

CERTIFICATE OF FONT SIZE

I HEREBY CERTIFY that this pleading has been prepared with Times New Roman 14 point font.

John M. Conway
Assistant Public Defender