

IN THE SUPREME COURT OF FLORIDA

JOSEPH JOHN FRANTZIS, :

Petitioner,

v.

CASE NO.

First DCA No. 1D11-2034

STATE OF FLORIDA,

Respondent. :

JURISDICTIONAL BRIEF OF PETITIONER

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JURISDICTIONAL BRIEF OF PETITIONER

PRELIMINARY STATEMENT

This case is presented on discretionary review from the decision of the Florida First District Court of Appeal in Frantzis v. State. No. IDl 1-2034 (Fla. 1st DCA, March 2, 2012. The trial proceedings were held in the Circuit Court for Duval County, Judge James L. Harrison, circuit judge, presiding.

STATEMENT OF THE CASE AND FACTS

Petitioner, Joseph Frantzis, was served with a Petition for involuntary commitment under the Jimmy Ryce Act on September 19, 2007. (R.I,1). The trial court, in an ex parte proceeding, found probable cause to have Mr. Frantzis declared a sexually violent predator and issued an order directing that he be taken into custody. (R.I, 110). On September 27, 2007, Mr. Frantzis, through appointed counsel, filed a document waiving his right to trial within thirty days, as codified under section 394.916(1), Florida Statutes. (R.I,112). The waiver acknowledged that Mr. Frantzis "may later notify the court that I am ready for trial and the court will schedule a trial date accordingly." (R.I, 112). Petitioner, pro se, filed a second "waiver of speedy trial" on October 19, 2010. (R.II,220).

Petitioner's hearing did not commence until March 21,2011. Notwithstanding the fact that two of three medical experts opined that Mr. Frantzis did not meet the criteria for qualification as a sexually violent predator the jury, by unanimous verdict, found Frantzis to be a sexually violent predator. (R.II,259; V,697). The trial court, accordingly, entered an order of involuntary civil commitment.

On direct appeal, Mr. Frantzis argued for the first time that he was entitled to release because the trial court lacked subject matter jurisdiction. Specifically, Petitioner argued that although he waived the thirty day period for commencement

of trial specified in section 394.916(1), Florida Statutes, he did not waive the 120 day limit on continuances specified in section 394.916(2), Florida Statutes. Mr. Frantz further argued that the 120 day period specified in section 394.916(2), Florida Statutes, is jurisdictional. According to Frantz, the trial court lost jurisdiction of the subject matter upon the expiration of the 120 day continuance period and he was, therefore, entitled to release.

The district court issued an opinion declaring, in part:

In State v. Goode, 830 So. 2d 817 (Fla. 2002), the supreme court found the 30 day provision in subsection (1) was not jurisdictional. We find no reason to treat the 120 day provision in subsection (2) differently.

Frantz v. State, slip op., No. 1D11-2034 (Fla. 1st DCA, March 2, 2012).

SUMMARY OF ARGUMENT

This Court possesses the discretion to exercise jurisdiction of the case because the opinion of the First District Court of Appeal expressly and directly conflicts with the decision of this Court in State v. Goode, 830 So. 2d 817 (Fla. 2002). Specifically, the decision below constitutes a "misapplication" or "erroneous extension" of the holding in Goode. This Court should accept jurisdiction to answer the next question to follow, logically and inevitably, the Goode decision, i.e., whether the 120 day limitation of continuances specified in section 394.916(2), Florida Statutes, is jurisdictional.

ARGUMENT

ISSUE

WHETHER THIS COURT HAS JURISDICTION OF THE CASE AND, IF SO, WHETHER THIS COURT SHOULD EXERCISE ITS JURISDICTION TO REVIEW THE DECISION OF THE DISTRICT COURT BELOW?

STANDARD OF REVIEW

The determination of jurisdiction is a legal question. Jacobsen v. Ross Stores, 882 So. 2d 431 (Fla. 1st DCA 2004). Legal questions are determined *de novo*. Engle v. Liggett Group Inc., 945 So. 2d 1246, 1259 (Fla. 2006).

MERITS

A. Jurisdiction

This Court possesses the discretion to review any decision of a district court which expressly and directly conflicts with a decision of the supreme court on the same question of law. Fla. R. App. P. 9.030(a)(2)(A)(iv). The decision of the district court below expressly and directly conflicts with the decision of this Court in State v. Goode, 830 So. 2d 817 (Fla. 2002). This Court therefore possesses the discretion to review the decision below.

The district court's opinion satisfies the "express and direct conflict" requirement. The district court expressed in words the rule of law upon which it

relied to render its decision. See Jenkins v. State, 385 So. 2d 1356 (Fla. 1980)(defining "express" as "to represent in words" or "to give expression to"). As for the "conflict" requirement, this Court has held that a

discussion of the legal principles which the court applied supplies a sufficient basis for a petition for conflict review.

Ford Motor Co. v. Kikis, 401 So. 2d 1341 (Fla. 1981).

Conflict exists because the district court "misapplied" State v. Goode. See e.g., Acensio v. State, 497 So. 2d 640, 641 (Fla. 1986). Specifically, the decision below represents an "erroneous extension" of the holding in State v. Goode. See, Anstead, Kogan, et al., The Operation & Jurisdiction of the Supreme Court of Florida, Nova L. Rev., p. 87 [12/28/2005 update] (conflict jurisdiction arises when the decision below misapplies controlling precedent).¹ The decision below satisfies the conflict requirement.

In State v. Goode, this Court considered the question whether the 30 day "speedy trial" provision of section 394.916(1), Florida Statutes, was jurisdictional. This Court concluded that the 30 day "speedy trial" provision was not jurisdictional because the statute also contained a provision for continuances beyond the 30 day period. A finding that the 30 day period was jurisdictional would be inconsistent with

¹ The updated version of 12/28/2005 is available at:
http://www.floridasupremecourt.org/pub_info/documents/juris.pdf

the legislative authorization for continuances upon expiration of the 30 day period as provided by section 394.916(2), Florida Statutes.

By this language, the legislature demonstrated that there will be instances when the trial court will retain jurisdiction beyond the thirty-day time period.

State v. Goode. 830 So. 2d at 828.

At the time of the Goode decision, section 394.916(2), Florida Statutes, provided:

The trial may be continued upon the request of either party and a showing of good cause, or by the court on its own motion in the interests of justice, when the person will not be substantially prejudiced.

State v. Goode. 830 So. 2d at 820, quoting section 394.916(2), Florida Statutes

(1999). Effective July 1, 2006, and applicable in this case, amended section

394.916(2), Florida Statutes, provides:

(2) The trial may be continued once upon the request of either party for not more than 120 days upon a showing of good cause, or by the court on its own motion in the interest of justice, when the person will not be substantially prejudiced. No additional continuances may be granted unless the court finds that a manifest injustice would otherwise occur.

§ 394.916(2), Fla. Stat. (2008).

In Goode, this Court reasoned that the thirty day speedy trial provision cannot be interpreted as jurisdictional because the Legislature clearly authorized the retention of jurisdiction by continuances pursuant to then section 394.916(2), Florida Statutes. The district court "misapplied" or "erroneously extended" the holding of Goode to the amended section 394.916(2), Florida Statutes, when opining:

We see no reason to treat the 120 day provision in subsection (2) differently [than the 30 day provision found not jurisdictional in State v. Goode].

The reasoning of Goode does not apply to the amended section 394.916(2), Florida Statutes. In Goode, the 30 day period was deemed "not jurisdictional" because the legislature specifically provided for the retention of jurisdiction beyond thirty days. In contrast, the amended section 394.916(2), Florida Statutes, provides a point certain beyond which continuances may not be granted, and terminates the statutory authority for commencement of the Jimmy Ryce adversarial hearing. The plain language of the amended section 394.916(2), Florida Statutes, evinces a legislative intent to force cases to trial within a specific time frame and to divest the trial court of the power to commence the adversarial hearing upon expiration of the statutorily prescribed period.

The district court, therefore, "misapplied" or "erroneously extended" Goode to the present case.

B. Exercise of jurisdiction

This Court should exercise jurisdiction. The decision below creates an erroneous rule of law that will infect a long line of Jimmy Ryce cases. Moreover, the present case exemplifies a question that flows logically and inevitably from State v. Goode. Goode held that the 30 day speedy trial provision is not jurisdictional. The next logical, and inevitable, question for the Court to decide is whether the 120 day limitation on continuances set forth in section 394.916(2), Florida Statutes, is jurisdictional. This Court should accept jurisdiction of the case in order to answer this question which will, doubtless, recur in many cases.

CONCLUSION

For the reasons expressed above, Petitioner Frantzis respectfully requests that the Court exercise its jurisdiction to review his case.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S.

mail to Charlie McCoy, Assistant Attorney General, The Capitol, PL-01, Tallahassee, FL 32399-1050, and by U.S. Mail to Appellant, Mr. Joseph Frantzis, SVP# 991051, Florida Civil Commitment Center, 13619 S.E. Hwy. 70, Arcadia, FL 34266-7829, on this %_ __ day of March, 2012.

CERTIFICATE OF FONT AND TYPE SIZE

I hereby certify that this brief was typed using Times New Roman, 14 point.

Respectfully submitted,

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

JOSEPH FRANTZIS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

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

CASE NO. 1D11-2034

_____/

Opinion filed March 02, 2012.

An appeal from the Circuit Court for Duval County.
James L. Harrison, Judge.

Nancy A. Daniels, Public Defender, and Richard M. Summa, Assistant Public
Defender, Tallahassee, for Appellant.

Pamela Jo Bondi, Attorney General, and Charlie McCoy, Senior
Assistant Attorney General, Tallahassee, for Appellee.

WOLF, J.

Appellant challenges a final order of civil commitment under the Jimmy
Ryce Act, sections 394.910-932, Florida Statutes (2007). Section 394.916(1)
provides the court shall conduct a trial within 30 days after the determination of
probable cause. Section 394.916(2) states the court may grant one continuance for
"not more than 120 days." Appellant argues the limit on continuances in
subsection (2) is jurisdictional. He asserts that because he was not brought to trial

within 150 days of the probable cause determination, the trial court lost subject matter jurisdiction over the proceedings. Therefore, he argues, he is entitled to a dismissal of the civil commitment action with prejudice.

In State v. Goode, 830 So. 2d 817 (Fla. 2002), the supreme court found the 30 day provision in subsection (1) was not jurisdictional. We find no reason to treat the 120 day provision in subsection (2) differently. Moreover, below appellant twice filed a waiver of his right to trial within 30 days of the probable cause determination, and much of the delay in the proceedings was attributable to him. We, therefore, find no merit in appellant's contentions.

We also determine the other issues he raised are without merit. Therefore, we affirm.

AFFIRMED. PADOVANO and
MARSTILLER, JJ., CONCUR.