

IN THE SUPREME COURT OF FLORIDA

CASE NO.SC_____

DCA NO: 3D14-1595; 3D14-1594; 3D14-1593

JERMAINE HARRIS, et. al.,

Petitioners,

-VS-

TIMOTHY RYAN, Director,
Miami-Dade County Corrections
and Rehabilitation Department
and **THE STATE OF FLORIDA**,

Respondents.

BRIEF OF PETITIONER ON JURISDICTION

ON PETITION FOR DISCRETIONARY REVIEW
FROM THE DISTRICT COURT OF APPEAL OF
FLORIDA, THIRD DISTRICT

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STATEMENT OF CASE AND FACTS¹

The Third District's opinion in *Harris v. Ryan*, 3D14-1593 (Fla. 3d DCA Oct. 1, 2014), concerns three consolidated petitions for writ of habeas corpus. Essentially, the three petitioners were placed in a pretrial intervention program (PTI), pursuant to section 948.08, and prosecution was suspended. (A. 1-2). While in that program, all three petitioners were arrested for new charges on bondable offenses, and they were taken into custody to be held with no bond. (A. 1-2). The rationale for the detention was that the new charges violated the conditions of "pretrial release," governed not by section 948.08, but rather sections 903.047(1)(a), 903.0471, and 907.041, Florida Statutes. (A. 2-4).

In a consolidated petition for writ of habeas corpus to the Third District, the petitioners contended that they could not be held pretrial without bond because they had been in PTI (and *not* on pretrial release) when the new offenses were allegedly committed. (A. 2). The Third District denied the petitions, and held that since "PTI is a discretionary form of pretrial release," the conditions of pretrial release applied. (A. 2). The petitioners now seek this Court's discretionary review of the Third District's opinion based on conflict with this Court's prior holdings.

¹ This is a petition for discretionary review on the ground that the Third District Court of Appeal's decision, *Harris v. State*, 3D14-1593 (Fla. 3d DCA Oct. 1, 2014), conflicts with Florida law. The opinion is attached to this brief as the Appendix, which is paginated separately and identified herein as "A."

SUMMARY OF ARGUMENT

This Court has held that PTI is a diversionary program within the discretion of the *prosecution*. Defendants admitted into PTI are therefore in the custody and control of the prosecuting attorney while criminal proceedings are suspended. Moreover, this Court has held that “pretrial release” provisions concern “the integrity of the *judicial* process.” During the pendency of criminal proceedings, the judiciary is charged with sole discretion over a defendant’s pretrial release. Thus, PTI falls under prosecutorial authority, and pretrial release falls under judicial authority. Were the two schemes to overlap, prosecutors and judges would lose the authority granted to them by the Legislature and this Court.

Contrary to those holdings, the Third District has determined in *Harris* that “PTI is a discretionary form of pretrial release” within the meaning of sections 903.047, 903.0471, 907.041 Florida Statutes. Accordingly, the conditions of pretrial release apply to defendants who have been placed in PTI. Upon failing to complete PTI due to new charges, defendants (like the *Harris* petitioners) are to be treated as if they had been on pretrial release, and the new charges may be the basis for pretrial detention. Thus, this Court should exercise its discretionary review to resolve the conflict, which has statewide ramifications regarding the release of defendants prior to trial.

ARGUMENT

BY DEEMING PTI A FORM OF PRETRIAL RELEASE, THE THIRD DISTRICT'S *HARRIS* OPINION CONFLICTS WITH THIS COURT'S HOLDING THAT PTI IS A MATTER OF PROSECUTORIAL DISCRETION AND THAT PRETRIAL RELEASE IS A MATTER OF JUDICIAL DISCRETION.

This Court and the Fourth District Court of Appeal hold that pretrial intervention (PTI) is not part of the judicial process. Instead, it is strictly a prosecutorial function in which criminal proceedings are suspended pending completion of the program, “similar to nolle prosequi situation.” As the Fourth District held, “[t]he determinative issue is whether diversion into the Florida pretrial intervention program is a prosecutorial or a judicial decision. **We conclude that the program as established by the Legislature is within the prosecutorial rather than the judicial realm.**” *State v. Cleveland*, 390 So. 2d 364, 365 (Fla. 4th DCA 1980) (emphasis added). On review, this Court approved that decision, holding:

The pretrial diversion [PTI] is essentially a conditional decision not to prosecute **similar to the nolle prosequi situation** postulated by *Jogan*. It is a pretrial decision and does not divest the state attorney of the right to institute proceedings if the conditions are not met. **The pretrial intervention program is merely an alternative to prosecution and should remain in the prosecutor's discretion** In addition, section 944.025(4), Florida Statutes, allows the state attorney to continue prosecution

if defendant is not fulfilling his obligations under the program or if the public interest requires. **The fact that the state attorney has this discretion to reinstate prosecution is consistent with the view that the pretrial diversion consent by the state attorney is a prosecutorial function.**

Cleveland v. State, 417 So. 2d 653, 654 (Fla. 1982) (emphasis added). Further, in *Parker v. State*, 843 So. 2d 871, 881 (Fla. 2003), this Court held that the purpose of the pretrial release laws are to “assure the integrity of the judicial process.”

Accordingly, since PTI is a “prosecutorial function,” defendants in such programs are not “in the judicial realm,” and are released as if in a “nolle prosequi situation.” Consistent with this rule, the PTI statute, section 948.08 (Fla. Stat. 2014), does not incorporate by reference the pretrial release statutes or otherwise indicate that a defendant’s right to bond or pretrial release would be revoked due to incompleteness of a PTI program. Rather, the PTI statute directs that non-completion of the program shall lead to a “*Resumption* of pending criminal proceedings.” §948.08(4), Fla. Stat. (emphasis added).

As explained in *Parker*, the separate system of “pretrial release” is limited in scope to matters in the judicial process. Thus, according to this Court, PTI and pretrial release are separate systems with separate purposes, under the sole discretion of the prosecution and the judiciary, respectively. *See, e.g., Walker v. Lamberti*, 29 So. 3d 1172, 1175 (Fla. 4th DCA 2010) (“Because the potential

sanctions are serious, and the [PTI] agreement waives important rights – such as the right to speedy trial and pretrial release, the requirements and potential sanctions for violations of PTI should be set forth clearly . . .”).

In its *Harris* opinion, the Third District took the opposite view. Departing from *Cleveland* and *Parker*, the Third District recognized no division between the prosecutorial realm (PTI) and the judicial realm (pretrial release). Rather, the Third District concluded that PTI and pretrial release are essentially one and the same.

The question in *Harris* was whether a defendant could violate the rules of pretrial release while in PTI – in other words, whether pretrial release conditions apply to those in PTI despite the suspension of criminal proceedings. The defendants in *Harris* asserted that while they were in PTI, only the conditions of that program were in force. Although violating the terms of PTI could result in being taken out of the program, they would still be entitled to release pending trial because there could have been no violation of the pretrial release rules.²

The Third District disagreed, and found that the defendants could violate pretrial release conditions despite being in PTI. It did not matter that the defendants had not been notified as to the full scope of their release conditions.

² By operation of statute, a violation of pretrial release with a new offense is a ground for pretrial detention. §903.0471, Fla. Stat. (2014). There is no such provision in the PTI statute, section 948.08.

(A. 4-5). Due process was not violated because the defendants were notified that a condition of PTI was not to pick up new charges, which (as no disputes) is a condition of pretrial release. (A. 4-5).

Thus, this conflict has created an important question for this Court to resolve: *Are defendants in PTI subject to the terms of pretrial release despite the suspension of prosecution and no notice of those additional conditions?* If the answer is yes, then PTI is no longer a prosecutorial function because it would, in effect, be subsumed by the pretrial release rules and give the authority over PTI to the judiciary. Another consequence is that defendants could lose the right to bond without notice that the pretrial release rules were ever in effect while they were diverted to PTI during the suspension of prosecution.

If the answer to that question is no, then defendants in PTI are bound strictly to the terms of that program, and new charges while in PTI cannot be a basis for detention under the pretrial release rules. Such defendants, like the petitioners in this case, would still be entitled to release upon leaving PTI, as no violation of the pretrial release rules could have been possible.

CONCLUSION

Based on the foregoing facts, authorities and arguments, the Petitioners respectfully request this Court to exercise its discretionary jurisdiction to review the decision of the Third District Court of Appeal.

Respectfully submitted,

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BY: _____

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CERTIFICATE OF FONT

Undersigned counsel certifies that the type used in this brief is 14 point proportionately spaced Times Roman.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered by email to Doug.Glaid@myfloridalegal.com and CrimAppMIA@Myfloridalegal.com the Office of the Attorney General, Criminal Division, 444 Brickell Avenue, Suite 650, Miami, Florida 33131, this 17th day of October, 2014.

/s/Brian Ellison

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