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IN THE SUPREME COURT OF FLORIDA

CASE NO. SC14-2003

JERMAINE HARRIS, et al.,

Petitioner,

vs.

TIMOTHY RYAN, Director,
Miami-Dade County Corr. and Rehabilitation Dept.,
and **THE STATE OF FLORIDA,**

Respondents.

* * * * *

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

* * * * *

RESPONDENT'S BRIEF ON JURISDICTION

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INTRODUCTION

The Respondent, the State of Florida, was the appellee in the Third District Court of Appeal and the prosecution in the trial court of the Eleventh Judicial Circuit, in and for Miami-Dade County. The Petitioner was the appellant and the defendant, respectively in the lower courts. In this brief, the parties will be referred to as they appear before this Honorable Court.

The symbol "A" refers to the Appendix attached to this jurisdictional brief, which solely includes a conformed copy of the district court's opinion. "PJB" refers to Petitioner's jurisdictional brief. Unless otherwise indicated, all emphasis has been supplied by Respondent.

STATEMENT OF THE CASE AND FACTS

Respondent accepts Petitioner's Statement of the Case and Facts appearing on page 3 of his jurisdictional brief to the extent that it is non-argumentative and accurate, and sets forth the following additional facts:

In its opinion below, citing §903.047(1)(a), Fla. Stat.(2014)¹, *inter alia*, the district court ruled that pretrial intervention ("PTI") is a discretionary form of pretrial release and therefore falls within the pretrial release statute, under which the prosecution of a defendant who does not fulfill obligations may continue at the discretion of the prosecuting authority. (A. 2-3).

¹ Section 903.047, Fla. Stat. (2014), entitled "Conditions of Pre-trial Release," provides in pertinent part:

- (1) As a condition of pretrial release, whether such release is by surety bail bond or recognizance bond or in some other form, the defendant shall:

- (a) Refrain from criminal activity of any kind.

SUMMARY OF THE ARGUMENT

Petitioner fails to demonstrate that the decision of the Third District Court of Appeal expressly and directly conflicts with a decision of this Court or another district court of appeal on the same question of law, or that it falls under any of the subdivisions provided in Fla. R. App. P. 9.030(a)(2), or Art. V, Section 3(b)(3), Fla. Const. (1980), for review by this Court. Express and direct conflict simply does not appear within the four corners of the Third District's decision. As such, this Court should decline to exercise discretionary jurisdiction in this matter.

ARGUMENT

THIS COURT SHOULD DECLINE DISCRETIONARY JURISDICTION IN THIS CAUSE SINCE THE DECISION BELOW DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH A DECISION OF THIS COURT OR ANOTHER DISTRICT COURT OF APPEAL ON THE SAME QUESTION OF LAW.

Petitioner seeks review through conflict jurisdiction pursuant to Article V, Section 3(b)(3), Fla. Const. (1980) and Fla. R. App. P. 9.030(a)(2)(A)(iv), which provides that the discretionary jurisdiction of the Supreme Court may be sought to review a decision of a district court of appeal which expressly and directly conflicts with a decision of another district court of appeal or of the Supreme Court on the same question of law. Petitioner, however, presents no legitimate basis for the invocation of this Court's discretionary jurisdiction.

Petitioner's allegation that the district court's decision below expressly and directly conflicts with this Court's decisions in Parker v. State, 843 So. 2d 871 (Fla. 2003), and Cleveland v. State, 417 So. 2d 653 (Fla. 1982), approving State v. Cleveland, 390 So. 2d 364 (Fla. 4th DCA 1980), is incorrect and misinterprets the holdings in those cases. Furthermore, the facts of those cases are materially different from those involved in the instant case.

In Parker, this Court was not presented with, nor did it address, any question involving PTI or a defendant's release to the PTI program. As such, nowhere in Parker did this Court state that "PTI and pretrial release are separate systems with separate purposes," as Petitioner contends. (PJB at 6). Nor did this Court "hold that pretrial intervention (PTI) is not part of the judicial process." (PJB at 5).

And, in Cleveland, this Court did not address any issue involving revocation of the defendant's pretrial release. Instead, it dealt only with a defendant who was refused admittance to the PTI program based on the prosecutor's lack of consent. Accordingly, this Court there necessarily did not decide whether the PTI program fell within the pretrial release statutes.

Because the facts in the instant case are not substantially the same controlling facts as those involved in the cases alleged as conflicting by Petitioner, this Court's discretionary jurisdiction cannot be invoked on a conflict basis. See Wilson v. Southern Bell Telephone and Telegraph Co., 327 So. 2d 220, 221 (Fla. 1976) (where there was no direct conflict between decision of district court of appeal and any other appellate decision since same principles were applied to

reach different results on *different facts*, the supreme court lacked jurisdiction to proceed on certiorari basis); Nielson v. City of Sarasota, 117 So. 2d 731, 734-35 (Fla. 1960) (stating that the principal situations justifying the invocation of discretionary jurisdiction because of alleged conflicts are (1) the announcement of a rule of law which conflicts with a rule previously announced by the court, or (2) the application of a rule of law to produce a different result in a case which involves *substantially the same controlling facts* as a prior case), accord Mancini v. State, 312 So. 2d 732, 733 (Fla. 1975). Indeed, it is clear that no express and direct conflict exists between the Third District's instant decision and the decisions in Parker or Cleveland. Furthermore, it is well established that any inherent or "implied" conflict cannot serve as a basis for the discretionary jurisdiction of this Court. See Department of Health & Rehabilitative Services v. National Adoption Counseling Service, Inc., 498 So. 2d 888, 889 (Fla. 1986). Accordingly, since Petitioner has not shown any express and direct conflict of decisions within the four corners of the district court's opinion, this Court's jurisdiction has not been established. See Reaves v. State, 485 So. 2d 829, 830 (Fla. 1986); Jenkins v. State, 385 So. 2d 1356, 1359 (Fla. 1980).

CONCLUSION

Wherefore, based upon the foregoing argument and authorities cited herein, Respondent respectfully requests that this Honorable Court DECLINE to accept discretionary jurisdiction of this cause.

Respectfully submitted,

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CERTIFICATE OF SERVICE AND FONT COMPLIANCE

I HEREBY CERTIFY that a true and correct copy of the foregoing Respondent's Brief on Jurisdiction was furnished by email to Brian L. Ellison, Asst. Public Defender, Counsel for Petitioner, at appellatedefender@pdmiami.com, on this 12th day of December, 2014, and that the 12 point Courier New font used in this brief complies with the requirements of Fla. R. App. P. 9.210(a)(2).

/s/ Douglas J. Glaid

DOUGLAS J. GLAID

Senior Assistant Attorney General

APPENDIX

Third District Court of Appeal

State of Florida

Opinion filed October 1, 2014.

Not final until disposition of timely filed motion for rehearing.

Nos. 3D14-1595; 3D14-1594; 3D14-1593
Lower Tribunal Nos. 14-2996, 14-2997A; 14-1395; 14-1292

Jermaine Harris, et. al.,
Petitioners,

vs.

Timothy Ryan, Director, and
The State of Florida,
Respondents.

Appeals from the Circuit Court for Miami-Dade County, Miguel M. de la O,
Judge.

Carlos J. Martinez, Public Defender, and Brian L. Ellison, Assistant Public
Defender, for petitioners.

Pamela Jo Bondi, Attorney General, and Douglas J. Glaid, Senior Assistant
Attorney General, for respondents.

Before WELLS, SUAREZ and FERNANDEZ, JJ.

FERNANDEZ, J.

In these consolidated petitions for writs of habeas corpus, petitioners
Jermaine Harris, Rolando Gonzalez, and Lamothe Jean, challenge the revocation of

their release to pretrial intervention (“PTI”) after respondent State of Florida charged each defendant with the commission of a new crime in violation of pretrial release conditions. We deny the petitions because the trial court did not abuse its discretion when it denied the petitioners’ motions for bond.

This Court reviews conditions of a pretrial release under an abuse of discretion standard. See Hernandez v. Roth, 890 So. 2d 1173, 1174 (Fla. 3d DCA 2004). Sections 903.047(1)(a), 903.0471, and 907.041(4)(c)7, Florida Statutes (2014), provide for revocation of the defendants’ pretrial release under the circumstances presented in these cases. Under section 903.047(1)(a), Florida Statutes (2014), as a condition of pretrial release, a defendant shall “[r]efrain from criminal activity of any kind.” Section 903.0471, Florida Statutes (2014), provides that “a court may, on its own motion, revoke pretrial release and order pretrial detention if the court finds probable cause to believe that the defendant committed a new crime while on pretrial release.” Further, section 907.041(4)(c)7, Florida Statutes (2014), provides that a court may, within its discretion, order pretrial detention if a defendant violates pretrial release conditions.

PTI is a discretionary form of pretrial release. See § 948.08(1)–(2)¹, Fla. Stat. (2013). The prosecution of a defendant on pretrial release for PTI who does

¹ Section 948.08 provides as follows:

948.08 Pretrial intervention program

not fulfill his or her obligations may continue at the discretion of the prosecuting authority. See Cleveland v. State, 417 So. 2d 653, 654 (Fla. 1982) (section 944.025, Florida Statutes (1979), allows the state attorney to continue prosecution if defendant is not fulfilling his obligations under the program or if the public interest requires). Further, the Florida Supreme Court in Cleveland noted that the state attorney's decision to reinstate prosecution is discretionary and not subject to judicial review. Id. Therefore, the pretrial intervention program falls within the pretrial release statute's meaning, and the trial court did not abuse its discretion in its revocation of the defendants' bonds.²

(1) The department shall supervise pretrial intervention programs for persons charged with a crime, before or after any information has been filed or an indictment has been returned in the circuit court. Such programs shall provide appropriate counseling, education, supervision, and medical and psychological treatment as available and when appropriate for the persons released to such programs.

(2) Any first offender, or any person previously convicted of not more than one nonviolent misdemeanor, who is charged with any misdemeanor or felony of the third degree is eligible for release to the pretrial intervention program on the approval of the administrator of the program and the consent of the victim, the state attorney, and the judge who presided at the initial appearance hearing of the offender. However, the defendant may not be released to the pretrial intervention program unless, after consultation with his or her attorney, he or she has voluntarily agreed to such program and has knowingly and intelligently waived his or her right to a speedy trial for the period of his or her diversion. The defendant or the defendant's immediate family may not personally contact the victim or the victim's immediate family to acquire the victim's consent under this section.

² It is noteworthy that at no time in the three consolidated cases was there a finding of no probable cause which would require a release of the defendants without condition; indeed, the State filed an information in each of the defendant's

Neither does the revocation of the defendants' bonds constitute a violation of due process. In Parker v. State, 843 So. 2d 871, 879–80 (Fla. 2003), the Florida Supreme Court determined that a trial court's revocation of a defendant's pretrial release after the defendant committed another crime while on bond for pending charges was not a due process violation. The Florida Supreme Court found that an adversarial hearing was not required and that section 903.0471, Florida Statutes (2000) is consistent with article 1, section 14 of the Florida Constitution. Id.

The Florida Supreme Court has, in fact, construed section 903.0471 broadly to authorize trial courts to revoke a defendant's pretrial release when a second crime is committed from jail even when a defendant has not been physically released from custody. See Santiago v. Ryan, 109 So. 3d 848, 849 (Fla. 3d DCA 2013). This Court held in Williams v. Spears, 814 So. 2d 1167, 1170 (Fla. 3d DCA 2002), that "[t]he integrity of the judicial process is undercut if the courts do not have effective tools to use where a defendant free on bail commits a further crime." See also Perry v. State, 842 So. 2d 301, 303 (Fla. 5th DCA 2003) (finding that a court may revoke bail "based solely on a probable cause affidavit").

Furthermore, the defendants signed a waiver form upon acceptance into the pretrial intervention program which stated, "I understand that if I violate the rules of the program which have been explained to me and which I have agreed to, that

cases, charging each defendant, and judicial approval was obtained prior to placing each defendant in PTI.

my case will be returned to court for prosecution.” Additionally, the program’s rules and regulations provided that the defendants “must not get re-arrested for any criminal offense” while in the program. The defendants do not dispute that they were arrested for new crimes.

For these reasons, the defendants’ subsequent criminal activity while released within the pretrial intervention program was sufficient to warrant the revocation of their bonds. We therefore deny the petitions in these consolidated appeals because the trial court did not abuse its discretion.

Petitions denied.