

IN THE SUPREME COURT OF FLORIDA

CASE NO. 63,974

A.O., a juvenile,

Petitioner,

vs.

THE STATE OF FLORIDA,

Respondent.

FILED

SEP 6 1983

SID J. WHITE
CLERK SUPREME COURT

Chief Deputy Clerk *pl*

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ON PETITION FOR DISCRETIONARY REVIEW

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BRIEF OF RESPONDENT ON THE MERITS

JIM SMITH
Attorney General
Tallahassee, Florida

RICHARD E. DORAN
Assistant Attorney General
Department of Legal Affairs
401 N. W. 2nd Avenue (Suite 820)
Miami, Florida 33128
(305) 377-5441

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INTRODUCTION

The Petitioner, A.O. was the juvenile respondent in the trial court and the appellant in the Third District Court of Appeal. The Respondent, the State, was the petitioner in the trial court and the appellee in the District Court. The parties will be referred to as they stood before the trial court. The symbol "R" will refer to the record on appeal before the District Court.

STATEMENT OF THE CASE AND FACTS

On November 19, 1981 the petitioner, A.O. was declared a dependant child and ordered by the court to obey his mother, keep a curfew, and go to school.¹

Florida filed a petition for delinquency against A.O. alleging that the child:

Has willfully violated an order of the court dated November 19, 1981 and is in contempt of court pursuant to §§39.412 and 39.01(8), Florida Statutes to wit: 1. That he was truant from school on or about January 26, 27, 28, 1982; and February 1, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 1982.....(R. 1, 4).

¹The record does not reflect whether the child was represented by counsel during the dependency hearing. Judge Jorgenson makes note of this in his dissent, A.O. v. State, 433 So.2d 22, 23 (Fla. 3d DCA 1983). However, petitioner has never raised that type of due process issue. The due process issue was discussed by this court in D.T.H. v. State, 348 So.2d 1155 (Fla. 1977).

The child originally plea guilty to this charge. (R. 12, 16). However, by stipulation, the plea was withdrawn and a plea of nolo contendere entered with a specific preservaton of the right to appeal the adjudication of delinquency in light of J.M.J. v. State, 389 So.2d 1208 (Fla. 1st DCA 1980). (R. 12, 27-29). The trial court accepted the plea, adjudicated the child delinquent and committed him to the custody of the Department of Health and Rehabilitative Services for an indeterminate period of time. (R. 3, 11, 12).²

On appeal, the Third District Court of Appeal affirmed the adjudication of delinquency and commitment order on the authority of section 39.01(8), Fla.Stat. and the decision of this court in R.M.P. v. State, 419 So.2d 618 (Fla. 1982), in a two to one decision, A.O. v. State, 433 So.2d 22 (Fla. 3d DCA 1983).

As pointed out in Petitioner's Notice to Invoke Discretionary Jurisdiction, the District Court certified the question to be one of great public importance.

²The court's March 18, 1982 order of commitment indicates the delinquent act was a violation of a court order. (R. 11). The court recommended in preferred order, placement with the following: (1) Associated Marine Institutes (Monroe County), (2) Associated Marine Institutes (Dade County), and (3) Here-Is-Help residential program. It should be noted that section 39.09(e) mandates the placement of the child in one of these programs unless space is not currently available. It is not clear which program the child finally enrolled in.

ISSUE ON APPEAL

WHETHER A JUVENILE MAY BE ADJUDICATED A DELINQUENT BASED UPON A FINDING OF CONTEMPT FOR VIOLATION OF A PREVIOUS ORDER ADJUDICATING HIM A DEFENDANT?

ARGUMENT

A JUVENILE WHO WILLFULLY DISOBEYS A
VALID COURT ORDER MAY BE HELD IN
CONTEMPT OF COURT AND ADJUDICATED
DELINQUENT UNDER SECTION 39.01(8)
FLORIDA STATUTES (1981).

Section 39.01 et seq. Florida Statutes, provides that children who are under a court's supervision as dependent children or delinquent children, may be adjudicated delinquent for acts or omissions which constitute contempt of court. §§39.01(8), 39.09 F.S. (1981). If a child is found to have committed a criminal offense³ the court has the option of more serious punishments under Section 39.111. Obviously the petitioner could not be summarily thrown into "institutions populated by young offenders who have committed real "crimes. . ." as feared by the dissenting judge in A.O. v. State, supra. Such a drastic measure could only be justified if the court followed the provisions of §39.111(5)(b), in light of §39.111(5)(a) and (6)(c). Any court action along this line would have to be supported by a "specific finding of fact and the reasons for the decision to impose adult sanctions." §39.111(6)(d). This order is subject to appeal. Batch v. State, 405 So.2d 302, 304 (Fla. 4th DCA 1981).

³Criminal contempt is a crime under Florida law. Aaron v. State, 284 So.2d 673, 675 (Fla. 1973). The federal government handles juvenile contemptors in a similar manner. 42 U.S.C. §5633 (g)(12)(a).

Contrary to petitioner's assertion, a child's contempt of court does not have to be an action involving something besides a "habitualness of dependent behavior. . .", (Petitioner's Brief, p. 6), to justify the court's finding the child to be a delinquent. R.M.P. v. Jones, 419 So.2d 618, 620 (Fla. 1982); Rule 8.270 F.R.J.P. (1983); and section 38.22 F.S. (1981).

In this case, the petitioner was not adjudicated delinquent because he would not go to school. He was so treated because he refused to obey an order of the court. As is stated in the 1977 committee note to Rule 8.270 F.R.J.P. one who is found in contempt of court is subject to fine or imprisonment. Use of the chapter 39 mechanism, in lieu of the court's inherent and statutory powers, avoids the harsh sanction of detention and allows a court to consider more appropriate sanctions.⁴ As the record indicates, the trial court's order of commitment recommended educational and residential treatment for the petitioner. These recommendations must be followed by H.R.S. §39.09(3)(e).

Petitioner misleads the court in asserting that he is being punished more severely than other contemptuous

⁴In D.H. v. Polen, 396 So.2d 1189, 1190 (Fla. 4th DCA 1981) an order placing a child in detention for contempt was upheld on the authority of R.M.P. v. State, 392 So.2d 301 (Fla. 1st DCA 1981) which this court affirmed at 419 So.2d 618, supra.

juveniles who are placed in secure detention facilities for specific periods of time. In arguing this point petitioner has apparently ignored. §39.001(2)(a):

THE PURPOSES OF THIS CHAPTER ARE:
(a) to protect society more effectively by substituting for retributive punishment, whenever possible, methods of offender rehabilitation. . .

Under petitioner's view of the law, society could place him in jail but could not enroll him in less harsh programs such as the Dade Marine Institute.

The legislature clearly desires to protect the best interest of children in Chapter 39. However, the legislature made it very clear that contempt of court is a delinquent act, that it is the duty of the State Attorney to decide if filing a petition alleging delinquency is in the best interest of the public and the child⁵, and that it is the jurisdiction of the circuit courts to hold adjudicatory hearings and dispose of the case pursuant to the guidelines provided in the chapter. The plain language of section 39.01(8) cannot be set aside or altered merely to satisfy petitioner's desire for a "truant" exception to the contempt of court language of the section. In the Interest of J.F., 304 So.2d 713, 716 (Fla. 3d DCA 1980). Statutory amendment

⁵Section 39.04(e) and 39.05(1).

is the province of the legislature not the court. See, e.g. Purifoy v. State, 359 So.2d 446 (Fla. 1978).

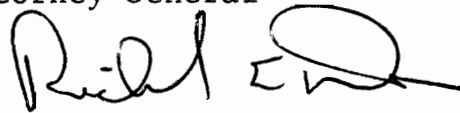
Had petitioner listened to and obeyed the order of the court he would not be in this situation. The lower court's ruling should be affirmed.

CONCLUSION

Based upon the above-cited legal authority the State of Florida respectfully urges this court to affirm the decision of the Third District Court of Appeals and the judgment and disposition of the trial court in this cause.

Respectfully submitted,

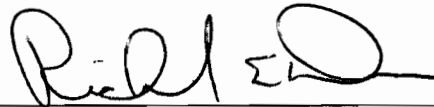
JIM SMITH
Attorney General



RICHARD E. DORAN
Assistant Attorney General
Department of Legal Affairs
401 N.W. 2nd Avenue (Suite 820)
Miami, Florida 33128
(305) 377-5441

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing BRIEF OF RESPONDENT ON THE MERITS was furnished by mail to BRUCE A. ROSENTHAL, Assistant Public Defender, 1351 N. W. 12th Street, Miami, Florida 33125, on this 2ND day of September, 1983.



RICHARD E. DORAN
Assistant Attorney General

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