IN THE SUPREME COURT OF FLORIDA

CASE NO. 64,268

DEPARTMENT OF CORRECTIONS,

Petitioner,

vs.

IVIA JEAN NEWSOME,

Respondent.

_____/

JURISDICTIONAL BRIEF OF PETITIONER DEPARTMENT OF CORRECTIONS

JIM SMITH
ATTORNEY GENERAL

PAMELA LUTTON-SHIELDS
ASSISTANT ATTORNEY GENERAL

DEPARTMENT OF LEGAL AFFAIRS
The Capitol - Suite 1502
Tallahassee, Florida 32301
(904) 488-6730

ATTORNEYS FOR PETITIONER

TABLE OF CONTENTS

TABLE OF CITATIONS

STATEMENT OF THE CASE AND FACTS

Respondent was sexually battered by Eddie Dixon, an inmate who escaped from a Department of Transportation (DOT) work crew. Petitioner, Department of Corrections (DOC), was sued along with DOT, for negligent supervision of Dixon. At the time of his assault on Respondent, Dixon was in the custody of DOC serving a five year youthful offender sentence[1] for armed robbery.

Dixon had been assigned to a DOT work crew by officials at Hillsborough Correctional Institution, the DOC youthful offender institution where Dixon was housed. Under the terms of the contract between DOT and DOC inmate laborers were made available to DOT. The contract provided that the inmate workers, while away from the institution, were to be directly supervised by DOT employees. Thus, there were no DOC personnel guarding the work detail from which Dixon escaped.

The trial court granted a motion by DOC for summary judgment on the grounds that Dixon was not in the physical custody of DOC at the time of his escape and therefore DOC was not liable for any negligence in the supervision of Dixon. The court further held that the assignment of Dixon to a DOT work squad was an immune

[1]Dixon's sentence was two years of incarceration to be followed by three years in a community control program. See, Ch. 958, Fla. Stat. (1979).

planning level function upon which liability could not be based. On appeal, the First District Court of Appeal reversed the summary judgment in favor of DOC.

ARGUMENT ON JURISDICTION

The appellate court's reversal was based upon the language of Section 945.11(1), Florida Statutes (1979), which provides:

> The department [of corrections] is authorized to enter into agreements with such political subdivisions of the state, as defined by s. 1.01(9), and with such agencies and institutions of the state as might, under supervision of employees of the department [of corrections], use the services of inmates of correctional institutions and camps . . . .

the court expressed the view that Section 945.11(1) imposes a nondelegable duty upon DOC to directly supervise inmates assigned to DOT work crews, thereby rendering DOC vicariously liable for any negligence in DOT's supervision of the inmates. This holding conflicts with Mastrandea v. J. Mann, Inc., 128 So.2d 146 (3rd DCA 1961). The Mastrandea court explained the circumstances under which a party will be held vicariously liable for the acts of an independent contractor. Quoting verbatim from 27 Am. Jur. Independent Contractors, Section 49, pp. 526-527, the court stated:

> As a general rule, if a statute or municipal ordinace requires one to do a certain thing or to take certain precautions for the protection of persons on or near his property, he cannot delegate such duty to an independent contractor and be released from liability in case the contractor fails to perform it. In order that the employer may be charged with liability, however, the terms of the statute or ordinance in question must be of such a tenor as to subject him to a definite obligation. . . . (emphasis added)

In the instant case, Section 945.11(1) does not subject DOC to a "definite obligation" to directly supervise inmate workers loaned to other agencies. The appellate court expressly recognized as much in footnote two of its opinion in this case which acknowledged that "Section 945.11[is] not a legislative mandate that DOC employees 'directly supervise' the inmates while at the work detail." See, HRS v. O'Neal, 400 So.2d 28 (1st DCA 1981).

Additional support for the conclusion that Section 945.11 does not impose a "definite obligation" upon DOC to directly supervise DOT work squads is found in the 1979 Appropriations Act. The DOT budget included funds for "contractual services with the Department of Corrections" with the proviso language that DOT "continue the contract with [DOC] for inmate labor, supervision of which should be gradually phased over to [DOC] . . . ." Ch.79-212, §1, Laws of Fla, Item 1213A. (Appendix, A-2). Obviously, the 1979 Legislature was not of the view that DOC was statutorily responsible for the direct supervision of inmate crews working for DOT. Otherwise, it would not have directed DOT to phase the supervision of inmate labor over to DOC. Thus, since DOC did not have a "definite obligation" to directly supervise inmates on DOT work crews by virtue of Section 945.11(1), the decision of the First District Court of Appeal in this case holding DOC liable for the acts of DOT, an independent contractor, directly conflicts with the Mastrandea case.

The resolution of this question is of substantial significance to DOC. The programs by which inmate labor is made available to state agencies and other government entities are in serious jeopardy if the First District Court of Appeal's decision in this case stands.

CONCLUSION

Wherefore, based upon the foregoing arguments and authorities, DOC prays that the court will accept jurisdiction and proceed to hear this case on the merits.

Respectfully submitted,

JIM SMITH
Attorney General

PAMELA LUTTON-SHIELDS
Assistant Attorney General

DEPARTMENT OF LEGAL AFFAIRS
The Capitol - Suite 1502
Tallahassee, Florida 32301
(904) 488-6730

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to JOEL S. PERVIN, ESQUIRE, 708 Jackson Street, Tampa, Florida 33602 and JOEL D. EATON, ESQUIRE, 25 W. Flagler Street, Suite 1201, Miami, Florida 33130 this 26th day of September, 1983.

PAMELA LUTTON-SHIELDS