IN THE SUPREME COURT OF FLORIDA

CASE NO. 66,731

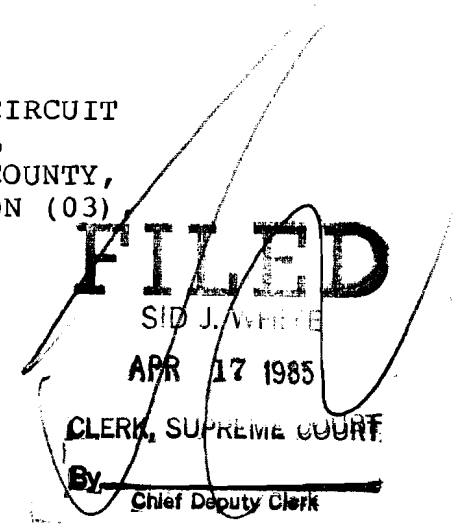
MARSHA L. LYONS AND THE CIRCUIT FOR THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA, CRIMINAL DIVISION (03),

Petitioners,

vs.

METROPOLITAN DADE COUNTY,

Respondent.



On Petition for Discretionary Review

ANSWER BRIEF OF RESPONDENT, METROPOLITAN DADE COUNTY, ON JURISDICTION

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I. PRELIMINARY STATEMENT

MARSHA L. LYONS and the Circuit Court in and for Dade County, Florida, Criminal Division, have petitioned for discretionary review of the Third District Court of Appeal's denial of the Motion for Rehearing. The Third District granted METROPOLITAN DADE COUNTY's Petition for Writ of Certiorari, quashed the trial court's award of $25,000, which exceeded the statutory fee limit, and remanded the cause to the trial court with directions to award fees not in excess of the statutory limit.

"App." will be used to represent Appendix.

II. JURISDICTIONAL ISSUE

DOES THE THIRD DISTRICT COURT OF APPEAL'S HOLDING THAT THE STATUTORY FEE LIMITS OF FLORIDA STATUTES SECTION 925.036 ARE MANDATORY AND THAT THE TRIAL COURT LACKS AUTHORITY, EVEN UNDER DEMONSTRABLY EXTREME CIRCUMSTANCES, TO AWARD FEES EXCEEDING SUCH LIMITS, CONFLICT WITH DECISIONS OF THIS HONORABLE COURT OR OTHER DISTRICT COURTS OF APPEAL?[1]

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[1] Despite the assertions of MARSHA L. LYONS's Brief on Jurisdiction at pages 1, footnote 1, and 10, the fact that the Fourth District Court of Appeal has certified certain questions is irrelevant to the issue of whether this Honorable Court has conflict jurisdiction of the instant matter. The Fourth District's certification of questions in Okeechobee County v. Jenning et al., No. 83-1179 (Fla. 4th DCA March 6, 1985)(10 F.L.W. 572), and Martin County v. Mackemson, No. 83-1138 (Fla. 4th DCA March 6, 1985) (10 F.L.W. 569), does not thereby entitle Petitioner to discretionary review of the instant case. Moreover, Mackemson and Jenning do not conflict with the Third District Court's holding. The Fourth District in both decisions upheld the mandatory nature of Section 925.036 and denied any exceptions for extraordinary cases.

III. STATEMENT OF THE FACTS AND CASE

Respondent, METROPOLITAN DADE COUNTY, supplements and disagrees with Petitioner, MARSHA L. LYONS's Statement of Facts and Case as explained below.

The Honorable Thomas E. Scott appointed MARSHA L. LYONS, Special Assistant Public Defender, in September of 1981, when the fee statute read:

> 925.036 Appointed counsel; compensation. - (1) An attorney appointed pursuant to s. 925.035 or s. 27.53 shall, at the conclusion of the representation, be compensated at an hourly rate fixed by the chief judge or senior judge of the circuit in an amount not to exceed the prevailing hourly rate for similar representation rendered in the circuit; however, such compensation shall not exceed the maximum fee limits established by this section . . . . If the attorney is representing a defendant charged with more than one offense in the same case, the attorney shall be compensated at the rate provided for the most serious offense for which he represented the defendant. This section does not allow stacking of the fee limits established by this section.
> (2) The compensation for representation shall not exceed the following:
> (a) For misdemeanors and juveniles represented at the trial level: $1,000.
> (b) For noncapital, nonlife felonies represented at the trial level: $2,500.
> (c) For life felonies represented at the trial level: $3,000.
> (d) For capital cases represented at the trial level: $3,500.
> (e) For representation on appeal: $2,000. Florida Statutes Section 925.036 (1981).

The maximum fee limits at the time of MARSHA L. LYONS's appointment in three cases were $3,500 for Case No. 81-19702, a capital case, and $2,500 each for Case Nos. 81-22454 and 81-05341, both non-life, noncapital felonies. The maximum Ms. Lyons could thus receive under the statute was $8,500.00.

Contrary to the assertions on page 5 of Ms. Lyons's Statement of Facts, Florida Statutes Section 925.036 does not limit the amount of time Special Assistant Public Defender can spend. The statute simply places a cap on the award of fees.

METROPOLITAN DADE COUNTY concurs that MARSHA L. LYONS moved at some stage of the proceedings to appoint another attorney and that Judge Scott sua sponte sought to waive the fee limits. However, Judge Scott never contacted the County Attorney's Office or ROBERT A. GINSBURG, County Attorney, to seek the County's approval of an excessive fee award. Indeed, Judge Scott stated that he would contact the County Attorney if Ms. Lyons wanted him to do so. See, Petitioner's App. 11B, at 5. There is no indication in the Record that Ms. Lyons even requested that Judge Scott contact the County Attorney. The first time the County Attorney's Office received notice of this matter was upon receipt of Ms. Lyons's Motion for Attorney's Fees and Costs in June of 1984. Neither the County nor the County Attorney's Office waived the $8,500 fee limit.

IV. SUMMARY OF ARGUMENT

Petitioner has not established any conflict between the Third District Court of Appeal's decision in the instant case and the three decisions she cites. Metropolitan Dade County v. Bridges, 402 So.2d 411 (Fla. 1981), established that the fee limits found in Florida Statutes Section 925.036 are mandatory and provide no exception for extraordinary circumstances. Moreover, the concurring opinion in Bridges determined that the only basis for challenging Section 925.036 would be in a class of cases or lawyers in which defendants' sixth amendment rights were violated. MARSHA L. LYONS has failed to present such a challenge.

Rose v. Palm Beach County, 361 So.2d 135 (Fla. 1978), involving a directory witness fee statute, recognized that the Legislature's will is supreme in setting limits on court-appointed attorney's fees. Citing a portion of a footnote in Broward County v. Wright, 420 So.2d 401 (Fla. 4th DCA 1982), MARSHA L. LYONS misconstrues dictum in Wright to state that courts could declare Section 925.036 unconstitutional in a demonstrably extreme case. The majority in Wright may be referring to dissents or the concurring opinion's criteria of a "class of cases or lawyers". All three cases cited by Petitioner, Bridges, Rose and Wright, are thus consistent with the Third District's decision.

V. ARGUMENT

THE THIRD DISTRICT'S DECISION DOES NOT CONFLICT WITH DECISIONS CITED BY PETITIONER THAT IMPOSE MANDATORY FEE LIMITS WITHOUT EXCEPTION.

The Third District Court's opinion does not conflict with any decision of other district courts or this Honorable Court. All the decisions cited in MARSHA L. LYONS's brief support the Third District Court of Appeal's opinion.

This Honorable Court in Metropolitan Dade County v. Bridges, 402 So.2d 411 (Fla. 1981), established that the statutory fee limits are mandatory and that trial courts have no inherent authority to waive such limits under extraordinary circumstances. Justice Alderman, writing for the plurality, held "that the maximum fee schedule in section 925.036 is mandatory..." Bridges, supra, at 415. The plurality in Bridges, supra, at 413, found that "the trial court erred in construing [Section 925.036] by adding the language which would permit the trial court to award fees higher than those specified by statute where the court determined exceptional circumstances to exist". (emphasis added).

The concurring opinion of Justices Sundberg and England joined in the plurality's opinion that Section 925.036 is constitutional in so far as assaults made upon it by attorney Ross in Bridges. Chief Justice Sundberg

opined that statutory fee limits could be declared unconstitutional only if defendants' sixth amendment rights to competent counsel were violated by Section 925.036 as to "lawyers or types of cases as a class". Bridges, supra, at 414-415. The Chief Justice specifically found that a challenge to the statute "should not be entertained on an individual lawyer or individual case basis . . ." Bridges, supra, at 416.

The trial court herein made the same mistake Chief Justice Sundberg found fatal to the claim in Bridges. Judge Thomas Scott's Order was based solely on an assertion that State v. Robert Patton was extraordinary. Judge Scott did not find that Section 925.036 has led to ineffective assistance of counsel in a class of cases nor did he find that MARSHA L. LYONS rendered ineffective assistance of counsel. Therefore, the Third District's decision and the concurring opinion in Bridges are consistent.[2]

Rose v. Palm Beach County, 361 So.2d 135 (Fla. 1978), a ruling limited to the witness fee statute, is also consistent with the Third District's decision. While Rose recognized that in certain limited circumstances courts

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[2] The only "conflict" is between the Third District in this case and the dissents in Bridges that opine that extraordinary circumstances justify a waiver of fee limits. However, as stated above, the plurality and concurring opinions in Bridges specifically reject the dissents' "extraordinary circumstances" test.

possess the inherent power to do things reasonably necessary for the administration of justice, this Honorable Court also reaffirmed that statutes providing for the rates of compensation of court appointed attorneys concern a subject over which the Legislature exercises sole control. Rose, supra, at 137, n.5.

After miscontruing Rose, Respondent cites a portion of first footnote in Broward County v. Wright, 420 So.2d 401 (Fla. 4th DCA 1982). The decision in Wright quashed an order awarding a fee in excess of the statutory limits.

In footnote 1 of Wright, supra, at 402, which is only partially cited by Petitioner, the Fourth District in dictum expresses its belief that the Supreme Court "left the door open slightly" for a future constitutional challenge to Section 925.036. The footnote cites Bridges's test of whether or not the sixth amendment right to counsel was violated.

A portion of the footnote in Wright advocates that in a "demonstrably extreme case" several members of the Supreme Court held that a fee in excess of the statute could be awarded. If the Wright majority opinion is referring to cases that satisfy the tests enunciated by the concurring and plurality opinions in Bridges as "demonstrably extreme cases", then the Wright court is consistent with Bridges and consistent with quashing the

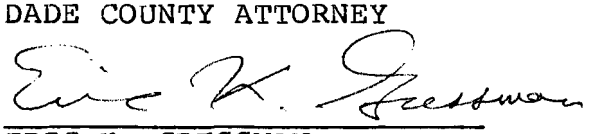
Order in the instant matter. The Wright court also may be referring to the dissents in Bridges that enunciate that in extraordinary cases the fee limits can be waived. In any case, Wright's dictum provides no conflict with the Third District's holding in the instant case.

VI. CONCLUSION

None of the cases cited by Respondent conflict with the Third District ruling in this case. All of the decisions support the finding that statutory fee limits for Special Assistant Public Defenders are mandatory and that courts have no inherent authority to override those limits even in extraordinary cases. Therefore, there is no jurisdiction to review this matter.

Respectfully submitted,

ROBERT A. GINSBURG
DADE COUNTY ATTORNEY



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VII. CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Answer Brief of Respondent, Metropolitan Dade County, on Jurisdiction and Respondent's Appendix were hand delivered to: Marsha L. Lyons, Esquire, 201 Alhambra Circle, Suite 1200, Coral Gables, Florida 33134; and The Eleventh Judicial Circuit (Criminal Division-03), Metropolitan Justice Building, at 1351 N.W. 12th Street, Miami, Florida 33125, this 15th day of April, 1985.

Eric K. Gressman

ERIC K. GRESSMAN
Assistant County Attorney