SUPREME COURT OF FLORIDA

JACK A. GRIFFITH,

Petitioner,

vs. CASE NO. 66,742

FLORIDA PAROLE AND
PROBATION COMMISSION,

Respondent.

_____/

ANSWER BRIEF OF RESPONDENT

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TABLE OF CONTENTS

CITATIONS OF AUTHORITY

PRELIMINARY STATEMENT

Petitioner, Jack A. Griffith, shall be referred to herein as "Petitioner". Respondent, Florida Parole and Probation Commission, shall be referred to alternatively as "Respondent" and "Commission".

SUMMARY OF ARGUMENT

Article V, §4(b)(2), Florida Constitution confers jurisdiction upon the district courts of appeal to directly review administrative action, as prescribed by general law. Pursuant to former § 120.52(10)(d), Fla.Stat. (1981) the district courts of this state assumed jurisdiction of numerous appeals under the auspices of § 120.68 Fla. Stat. With the enactment of Chapter 83-78, §1, Laws of Florida, now § 120.52(11)(d) Fla. Stat. (1983) jurisdiction of the district courts to entertain appeals brought by prisoners and parolees for any purpose, other than challenging proceedings had under §§ 120.54(3)-(5),(9) and 120.56, Fla. Stat., has been divested. To this end, all such appeals pending at the time the statute was enacted must be dismissed for lack of jurisdiction. More importantly for purposes of these proceedings, because the provisions of former § 120.52 (10)(d), Fla. Stat. (1981) were remedial or procedural in nature, those appeals which were pending but not yet disposed of at the time of enactment of Chapter 83-78, Laws of Florida must also be dismissed. This is so because the right to direct appellate review of final action taken by the Commission, other than action related to rule-making, has been eliminated without a saving clause.

Petitioner's appeal fell squarely within this rule; accordingly, this appeal was properly dismissed.

STATEMENT OF THE CASE AND FACTS

This case comes before the Court by way of certification of a question of great public importance by the First District Court of Appeal. The cause of action arises out of the First District's second dismissal of Petitioner's appeal which was reinstated by this Court in an earlier proceeding.[1]

By order dated March 21, 1985, this Court elected to treat Petitioner's latest Motion to Reinstate Appeal and for a Writ of Mandamus as a Petition for Review pursuant to Article V, Section 3(b)(4), Florida Constitution (1980). The question certified by the district court is as follows:

> Did the enactment of Chapter 83-78, Laws of Florida, terminate Section 120.68 appeals by prisoners from Florida Parole and Probation Commission final action pertaining to presumptive parole release dates where such appeals had not been determined on the effective date of that legislative act?

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[1] Griffith v. FPPC, Case No. 62,067

ARGUMENT

ENACTMENT OF CHAPTER 83-78, LAWS OF FLORIDA TERMINATED SECTION 120.68 APPEALS BY PRISONERS FROM FLORIDA PAROLE AND PROBATION COMMISSION FINAL ACTION PERTAINING TO PRESUMPTIVE PAROLE RELEASE DATES WHERE SUCH APPEALS HAD NOT BEEN DETERMINED ON THE EFFECTIVE DATE OF THE ACT.

The question presented by this case was first certified as one of great public importance in Rothermel v. FPPC, 441 So.2d 663 (Fla. 1st D.C.A. 1983). In that case the appellant sought review by § 120.68, Fla. Stat. appeal of final agency action. The Commission, however, moved to dismiss the appeal citing, inter alia, the enactment of Chapter 83-78, Laws of Florida which precluded inmates and parolees from challenging final Commission action except as it relates to rule-making.[2]

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[2] Chapter 83-78, Section 1, Laws of Florida which now exists as § 120.52(11)(d), Fla. Stat. (1983), amended former § 120.52(10(d), Fla. Stat., providing in pertinent part:

> "Prisoners as defined in s. 944.02(5) may obtain or participate in proceedings under s. 120.54(3),(4),(5), or (9), or s. 120.56 and may be parties under s. 120.68 to seek judicial review of those proceedings. Prisioners shall not be considered parties in any other proceedings and may not seek judicial review under s. 120.68 of any other agency action."

Granting the Commission's Motion to Dismiss, the First District reasoned that statutes which relate only to remedies or procedure do not fall within the general rule against retrospective operation. Further, as it could not be said that the right of appeal conferred by Article V, Section 4(b)(2), Florida Constitution is a vested right, it must be concluded that any action pending at the time of repeal of the statutorily prescribed cause of action must die in the absence of a saving clause:

> [3] Since no clear intent is expressed in the subject legislation, its provisions will apply retrospectively if they are remedial or procedural and do not affect substantive or vested rights. There can be little doubt that the relevant portions of Chapter 83-78 are of the kind which affect only remedial or procedural statutory provisions. It is generally recognized that no vested rights exist as to a particular remedy or mode of procedure. 16A Am.Jur.2d Constitutional Law § 672; Sullivan v. Mayo, 121 So.2d 424 (Fla. 1960); Turner v. United States, supra.
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> Rothermel, supra, at 664
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> [4] Although there is a constitutional right to appeal "as a matter of right, from final judgments or orders of trial courts" in Florida, Article V, Section 4(b)(1), Florida Constitution, the right to appeal from administrative action is as "prescribed by general law." Article V, Section 4(b)(2), supra, footnote 2. That right cannot rise to the level of a vested right if the legislature may alter it as

was done in this case. The general rule should, therefore, apply:

> When the right of appeal is cut off, a pending appeal dies, just as when a statutory cause of action is cut off by repeal without saving clause a pending action upon it dies... The appellants no longer have a standing in court.

United States v. Hammond, 99 F.2d 557, 558 (5th Cir. 1938). Accord Hartmann v. Sloan, 99 F.2d 942 (3d Cir. 1938); Texas Farm Bureau Cotton Ass'n v. Lennox, 296 S.W. 325 (Tex.Civ.App. 1927); Wells' Estate, 187 or. 462, 212 P.2d 729 (1949); State v. Vachon, 140 Conn. 478, 101 A.2d 509 (1953) (appeal from administrative agency action).

Id., at 665

The question certified, here and in Rothermel, supra, surfaced before the Fourth District Court of Appeal in a case which involved consolidation of four appeals, Martines v. FPPC, 448 So.2d 637 (Fla. 4th D.C.A. 1984).[3] The Fourth District dismissed all four appeals citing to Rothermel and specifically approved the reasoning of the First District. Further, the Fourth District joined the First in certifying the question for review by this Court; however, none of the appellants appear to have been disposed to pursue the issue.

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[3] The four appeals were styled as follows: Martines v. FPPC, Case No. 82-327; Holton v. FPPC, Case No. 82-328; Rodriguez v. FPPC, Case No. 82-470, and; Martinez v. FPPC, Case No. 82-947.

In 1959, this Court was asked to decide a case which presented an issue similar to the one sub judice, State ex rel. Arnold v. Revels, 109 So.2d 1 (Fla. 1959). In that case the relator sought to prohibit a circuit judge from assuming jurisdiction over disbarment proceedings. The relator urged, inter alia, that the judicial circuit where the disbarment proceedings were filed had been divested of jurisdiction by a Supreme Court order entered at a point in time subsequent to the institution of the disbarment proceeding. That order, styled In re Integration Rule of the Florida Bar, 102 So.2d 618 (Fla. 1958), amended Paragraph 6 of Article XI of the Integration Rule providing that disbarment proceedings should be held in the circuit in which the attorney has his office. The relator contended that the effect of that order divested the respondent of jurisdiction as the relator's office was located in another circuit. Recognizing that the case was one of first impression, the Revels Court stated:

> While no decision on the point has been made by this court, it appears to be universally held in the courts of other states and federal courts that when jurisdiction of a court depends upon a statute which is repealed or otherwise nullified, the jurisdiction falls even over pending causes, unless the repealing statute contains a saving clause. See, Bruner v. United States, 1951, 343 U.S. 112, 72 S.Ct. 581, 96 L.Ed. 786; Hallowell v. Commons, 239

> U.S. 506, 36 S.Ct. 202, 60 L.Ed. 409; De LaRama S.S. Co. v. United States, 1952, 344 U.S. 386, 73 S.Ct. 381, 97 L.Ed. 422; Board of Education of Williamsville Community United School District No. 15 v. Brittin, 1957, 11 I11. 2d 411, 143 N.E. 2d 555; City of Wildwood v. Neiman, 1957, 44 N.J. Super. 209, 129 A.2d 906; 50 Am. Jur., Statutes p. 536; 82 C.J.S. Statutes § 439, p. 1012.
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> Revels, supra at 3.

The Court then went on to pronounce its adoption of the rule as to the effect of the repeal of a jurisdictional statute, quoting from De LaRama S.S. Co., supra:

> When the very purpose of Congress is to take away jurisdiction, of course it does not survive, even as to pending suits, unless expressly reserved... If the aim is to destroy a tribunal or to take away cases from it, there is no basis for finding saving expections unless they are made explicit.
>
> Revels, supra at 3.

In the instant case, the Legislature amended § 120.52 (10)(d), Fla. Stat., which defined the term "party" for purposes of proceedings under the APA. That amendment specifically delineates the circumstances under which prisoners and parolees may be parties for proceedings under the Act and, further, provides that prisoners and parolees may not seek judicial review of agency action other than of that taken under the auspices of §§ 120.54(3)-(5),(9) and 120.56, Fla. Stat.

Read in pari materia with Art. V, § 4(b)(2), Florida Constitution, § 120.68, Fla. Stat., confers jurisdiction upon the district courts of appeal to directly review final agency action where the party seeking such review has been adversely affected. By amending § 120.52(10)(d) and specifically limiting the types of agency or administrative action appealable by prisoners and parolees pursuant to § 120.68, Fla. Stat., the Legislature clearly intended to limit, by general law and in accordance with constitutional provisions, the types of administrative appeal over which the district courts of appeal could assume jurisdiction. This being so, Revels, supra teaches us that all appeals must be dismissed if they were not concluded as of the enactment of the amendatory legislation. This is conclusion derives from the fact that the Legislature made no provision by way of a saving clause.

That the subject amendment directly alters § 120.52 (10)(d), Fla. Stat., rather than § 120.68, Fla. Stat., does not diminish the applicability of Revels, here. The jurisdiction of the district courts is dependent in part, upon the definitions of the statutory terms which define who may seek judicial review and what type of final agency action may be reviewed by the district courts. Logic dictates the obvious conclusion that the jurisdiction of the

district courts of appeal has been diminished insofar as their ability to entertain administrative appeals brought by prisoners and parolees.

Revels, supra, has been followed in two other cases. In Gewant v. Florida Real Estate Commission, 166 So.2d 230 (Fla. 3rd D.C.A. 1976), the court applied Revels holding that the Florida Real Estate Commission had lost its authority to punish a broker for violation of a statute relating to failure to file promotional material where the statute had been repealed during the pendency of the proceeding against the broker.[4]

In a similar case more closely on point, William v. Gund, 334 So.2d 314 (Fla. 2nd D.C.A. 1976), the Second District Court of Appeal ruled that the circuit court did not have jurisdiction to entertain an action for damages. Plaintiffs/Appellees had filed a complaint in the circuit court wherein they asserted they had been wrongfully deprived of possession of certain property. At the time the

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[4] In Gewant, supra, the Commission had suspended the petitioner's registration for violating § 475.51, Fla. Stat. (1961) which required filing full and complete copies or descriptions of real estate offered for sale prior to publishing information offering such real estate up for sale. That provision was repealed by Ch. 63-129, Laws of Florida (1963) (the Florida Installment Land Sales Act) later designated as Chapter 478, Fla. Stat. (1963).

action was filed, the circuit court had jurisdiction pursuant to § 26.012(2)(g) Fla. Stat. (1973).[5] While the action was pending, however, §§ 26.012 and 34.011(2)[6] were amended by Chapter 74-209, Laws of Florida (1974) to transfer jurisdiction over actions involving the right of possession of real property to the county court. Finding that the circuit court did not have jurisdiction unless the claim involved damages of over $2,500.00, the court ruled that the complaint did not set forth an allegation of the amount in controversy. Citing to Revels, supra, and De LaRama S.S. Co., supra, the Court wrote:

> We agree with appellant that Ch. 74-209 applied to this case, even though the complaint had been previously filed... ...Ch. 74-209 contains no such saving clause. Furthermore, under the amended statute, the circuit court lacked jurisdiction, even though the damages ultimately awarded were in excess of $2,500.00. The complaint must contain a statement of the grounds upon which the court's jurisdiction depends, RCP 1.110(b), in this case, the amount in controversy.
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> Williams, supra at 315.

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[5] Former § 26.012(2)(g) provided that circuit courts would have exclusive original jurisdiction in all actions involving the title, boundaries, or right of possession of real property.

[6] Former 34.011, Fla. Stat. (1973) related to the jurisdiction of county courts.

Applying the ratio decidendi of the preceding cases to the one at bar, Respondent submits the district court properly held that it has no jurisdiction to entertain Petitioner's appeal. Jurisdiction was divested with the enactment of Chapter 83-78, which was properly applied to all pending actions because § 120.52(10) (d) read in pari materia with § 120.68 was remedial or procedural in nature. Since the amendment contained no saving clause, the cause of action ceased to exist.

CONCLUSION

Given the foregoing constitutional, statutory and decisional law, Respondent contends the certified question must be answered in the negative. Accordingly, the action of the district court dismissing Petitioner's appeal should be upheld. Under current decisional law, Petitioner is compelled to seek relief, if indeed he is entitled to any, by way of extraordinary writ.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to Robert Augustus Harper, Jr., Counsel for Petitioner Griffith, 317 East Park Avenue, P.O. Box 10132, Tallahassee, Florida 32302 by U.S. Mail this 30th day of April, 1985.

Doris E. Jenkins

DORIS E. JENKINS
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answer
Br of Rsp