

12
agost

FILED

IN THE SUPREME COURT OF FLORIDA

SID J. WHITE

CASE NO. 66,780

APR 22 1995

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

ROBERT G. UDELL, ET AL.,

Petitioners,

vs.

MARTIN COUNTY,

Respondent.

INITIAL BRIEF ON THE MERITS OF

PETITIONER, ROBERT G. UDELL

ROBERT G. UDELL, ESQUIRE
217 East Ocean Blvd.
Stuart, Florida 33494
(305) 283-9450

TABLE OF CONTENTS

	PAGE
Table of Contents	i.
Citations of Authority	ii.
Preliminary Statement	iii.
Statement of the Case and of the Facts	iv.
Questions Certified	v.
Summary of Argument	vi.
Argument:	1.
Question I	1.
Question II	1.
Question III	1.
Question IV	2.
Conclusion	4.
Certificate of Service	5.

CITATIONS OF AUTHORITY

Petitioner, ROBERT G. UDELL, hereby adopts the Citations
of Authority presented by Petitioner, ROBERT MAKEMSON, in his Initial Brief.

PRELIMINARY STATEMENT

Petitioner was the Petitioner at the trial court level and was the Respondent in the District Court of Appeal. Respondent was the Respondent at the trial court level and was the Petitioner in the District Court of Appeal.

In this Brief the parties will be referred to as they appear before this Honorable Court. The following symbol will designate the appropriate portion of the transcript of the hearing before the trial court - "T".

STATEMENT OF THE CASE AND OF THE FACTS

Petitioner, ROBERT G. UDELL, hereby adopts the Statement of the Case and of the Facts presented by Petitioner, ROBERT MAKEMSON, in his Initial Brief.

QUESTIONS CERTIFIED AS BEING
OF GREAT PUBLIC IMPORTANCE

I.

IS SECTION 925.036, FLORIDA STATUTES, (1981) UNCONSTITUTIONAL ON ITS FACE AS AN INTERFERENCE WITH THE INHERENT AUTHORITY OF THE COURT TO ENTER SUCH ORDERS AS ARE NECESSARY TO CARRY OUT ITS CONSTITUTIONAL AUTHORITY?

II.

IS SECTION 925.036, FLORIDA STATUTES (1981) UNCONSTITUTIONAL AS APPLIED TO EXCEPTIONAL CIRCUMSTANCES OR DOES THE TRIAL COURT HAVE THE INHERENT AUTHORITY, IN THE ALTERNATIVE, TO AWARD A GREATER FEE FOR TRIAL AND APPEAL THAN THE STATUTORY MAXIMUM IN THE EXTRAORDINARY CASE?

III.

SHOULD THE TRIAL COURT HAVE AWARDED AN ATTORNEY'S FEE ABOVE THE STATUTORY MAXIMUM FOR PROCEEDINGS AT THE TRIAL LEVEL, GIVEN THE FACTS PRESENTED TO IT BY TRIAL COUNSEL BY HIS PETITION AND TESTIMONY?

IV.

SHOULD THE TRIAL COURT HAVE AWARDED AN ATTORNEY'S FEE ABOVE THE STATUTORY MAXIMUM FOR PROCEEDINGS AT THE APPELLATE LEVEL BEFORE THE SERVICES WERE RENDERED AND WITH THE FACTS KNOWN TO IT AT THE TIME OF THE AWARD?

SUMMARY OF ARGUMENT

Florida Statute 925.036 (1981) is unconstitutional because it interferes with the authority of the courts in carrying out their obligation to provide fair trials to indigent criminal defendants. A previous decision of this Court declared that a statute with an absolute statutory maximum payment improperly infringed upon the authority of the courts.

The elimination of any consideration as to the reasonableness of court-appointed counsel fees along with the absolute maximum in Florida Statute 925.036 (1981) results in an unconstitutional application of the statute in exceptional cases. If the statute is not unconstitutional as applied to exceptional cases, the courts have the inherent authority to exceed the statutory maximum amounts when the statutory maximum amount interferes with the courts' obligations.

The evidence presented to the trial court at the hearing on the trial court's Motion at which this Petitioner was appointed to represent the Defendant as Appellate counsel, was uncontradicted. The trial judge was in the best position to decide whether or not this was an exceptional case requiring the court to award to Appellate counsel a sum for attorney's fees in excess of the statutory authority of Florida Statute 925.036 (1981)

ARGUMENT

I.

IS SECTION 925.036, FLORIDA STATUTES (1981) UNCONSTITUTIONAL ON ITS FACE AS AN INTERFERENCE WITH THE INHERENT AUTHORITY OF THE COURT TO ENTER SUCH ORDERS AS ARE NECESSARY TO CARRY OUT ITS CONSTITUTIONAL AUTHORITY?

Petitioner, ROBERT G. UDELL, hereby adopts each and every argument including the Points and Authorities submitted by Petitioner, ROBERT MAKEMSON.

II.

IS SECTION 925.036, FLORIDA STATUTES (1981) UNCONSTITUTIONAL AS APPLIED TO EXCEPTIONAL CIRCUMSTANCES OR DOES THE TRIAL COURT HAVE THE INHERENT AUTHORITY, IN THE ALTERNATIVE, TO AWARD A GREATER FEE FOR TRIAL AND APPEAL THAN THE STATUTORY MAXIMUM IN THE EXTRAORDINARY CASE?

Petitioner, ROBERT G. UDELL, hereby adopts each and every argument including the Points and Authorities submitted by Petitioner, ROBERT MAKEMSON.

III.

SHOULD THE TRIAL COURT HAVE AWARDED AN ATTORNEY'S FEE ABOVE THE STATUTORY MAXIMUM FOR PROCEEDINGS AT THE TRIAL LEVEL, GIVEN THE FACTS PRESENTED TO IT BY TRIAL COUNSEL BY HIS PETITION AND TESTIMONY?

Petitioner, ROBERT G. UDELL, hereby adopts each and every argument including the Points and Authorities submitted by Petitioner, ROBERT MAKEMSON.

IV.

SHOULD THE TRIAL COURT HAVE
AWARDED AN ATTORNEY'S FEE ABOVE
THE STATUTORY MAXIMUM FOR PROCEEDINGS
AT THE APPELLATE LEVEL BEFORE THE SERVICES
WERE RENDERED AND WITH THE FACTS KNOWN TO IT
AT THE TIME OF THE AWARD?

Although this Petitioner would admit that there is no statutory provision for an award of compensation prior to the conclusion of the representation by Appellate counsel, this Petitioner would suggest that the facts of the case before the court at the time of appointment of counsel required extraordinary action by the trial court. The court specifically found that it would be impossible to obtain effective Appellate counsel for the Defendant, having received only one bid in conformity with the requirements of its Invitation to Contract, unless the court took such extraordinary action as to award an Appellate attorney's fees in excess of the statutory cap. The court was, at that time, in a position of not appointing Appellate counsel to the Defendant, as required by law, or otherwise taking the extraordinary measures which it did in awarding such an Appellate fee in excess of the statutory cap.

Additionally, this Petitioner would submit that at the hearing at which he was appointed to represent the Defendant as Appellate counsel, that the Respondent effectively agreed with the court's position that the circumstances were "extraordinary" and required an award of Appellate attorney's fees in excess of the statutory cap. (T. 1). The Respondent objected to the court's Order only because it found the statute to be unconstitutional. The Respondent agreed that there was no competent counsel

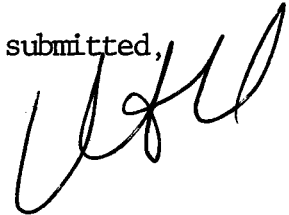
willing to undertake representation of the Defendant as Appellate counsel for an amount equal to the statutory cap. Respondent agreed that it was in the court's discretion, under the circumstances, to go beyond the statutory amount and appoint an attorney "prior to the beginning of the case". (T. 3).

CONCLUSION

The decision of the Fourth District Court of Appeal should be reversed because the facts of this case demonstrate that this was an exceptional case and the absolute statutory maximum in Florida Statute 925.036 (1981) rendered the statute unconstitutional on its face, or in the alternative, unconstitutional as applied to the facts of this particular case.

The decision of the Fourth District Court of Appeal should also be reversed for the reason that trial courts have inherent authority to exceed statutory maximum amounts when those maximum statutory amounts interfere with the courts' obligation to insure adequate Appellate representation to an indigent criminal defendant.

Respectfully submitted,



ROBERT G. UDELL
217 E. Ocean Boulevard
Stuart, Florida 33494
(305) 283-9450

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Brief has been furnished, by hand, to Michael H. Olenick, Esquire, 50 Kindred Street, Stuart, Florida 33494; and to Robert Makemson, Esquire, 200 Seminole Street, P.O. Box 538, Stuart, Florida 33495, this 18th day of April, 1985.



ROBERT G. UDELL, ESQUIRE
217 E. Ocean Blvd.
Stuart, Florida 33494
(305) 283-9450