DA 7-1-87

IN THE SUPREME COURT OF FLORIDA

CASE NO. 69,508

DAVID TAL-MASON

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

****

ON PETITION FOR DISCRETIONARY REVIEW

****

ANSWER BRIEF OF RESPONDENT ON THE MERITS

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PRELIMINARY STATEMENT

The Petitioner was the Appellee in the Fourth District Court of Appeal and the defendant in the trial court. The Respondent was the Appellant and the prosecution, respectively, in the lower courts. In this Brief, the parties will be referred to as they appear before this Honorable Court.

Reference to the record will be made by the letter "R" followed by the appropriate page number.

STATEMENT OF THE CASE AND FACTS

Respondent accepts the Petitioner's statement of the case and facts, as they appear on pages one through three of his Brief, to the extent that it is an accurate, non-argumentative recitation of proceedings in the courts below.

SUMMARY OF ARGUMENT

The prosecution against Petitioner was suspended during the time he was committed to the State hospital for evaluation of his competency to stand trial under §916.13, Florida Statutes. Thus Petitioner was not incarcerated on pending criminal charges as required by §921.161, Florida Statutes, and therefore not entitled to credit for the five years and twenty-seven days spent in the State mental hospital against the life sentence imposed on him for the second degree murder conviction he plead guilty to.

ARGUMENT

SECTION 921.161(1), FLORIDA STATUTES, IS CONSTITUTIONAL AS APPLIED TO PETITIONER AND DOES NOT DENY HIM EQUAL PROTECTION OF THE LAW.

The question presented to this Court in the instant petition is whether the time spent in a state mental hospital by one declared to be incompetent to stand trial should be credited to him against his sentence under §921.161(1), Florida Statute, as time spent in county jail. The State sbmits the answer is "NO".

The Fourth District Court of Appeal upheld the constitutionality of §921.161(1), Fla.Stat., and reversed the trial court's judgment relying in this Court's decision in Pennington v. State, 398 So.2d 815 (Fla. 1981).[1] This Court in Pennington, at 817, clearly stated:

> Halfway houses, rehabilitative centers and state hospitals are not jails. Their purpose is structured rehabilitation and treatment not incarceration.

The Pennington Court then declined to extend the statute's plain language to require that credit be given as time served in circumstances other than "county jail."

Petitioner now argues that the effect of the confinement

[1] The opinion under review sub judice is cited as State v. Tal-Mason, 492 So.2d 1179 (Fla. 4th DCA 1986).

rather than the purpose should be the determinitive factor of whether to grant credit. This contention is necessary to support Petitioner's claim of denial of equal protection of the law when his position is compared to persons given credit for time spent in a State mental hospital under the Mentally Disordered Sex Offenders Act (MDSO), Chapter 917, Florida Statutes.

Petitioner argues that since pursuant to §917.014 mentally disordered sex offenders receive credit for time spent in a state mental hospital against any sentence imposed, that denial of credit in the instant case is denial of equal protection when contrasted with mentally disordered sex offenders, who are similarly situated for purpose of equal protection analysis. A review of Chapter 917 demonstrates a person committed to a State mental hospital under §917.012 has been convicted and 'sentenced for a violation of law involving a sex offense" and placed in the custody of the Department of Correction.

In the case of a person, such as Petitioner, who is committed under §916.13, Florida Statutes, because he has been found to be incompetent to stand trial, the prosecution against him is suspended during the time he is committed, Dalton v. State, 362 So.2d 457, 458 (Fla. 4th DCA 1978), and the charges will be dismissed if the defendant remains incompetent to stand trial, §916.145. Thus, there was no incarceration related to his guilt for which Petitioner need be given credit under §921.161.

As recognized by this Court in Pennington, supra at 816, there is no constitutional infirmity in reasonable classifications and in the treatment of different classifications differently. The state hospital was established for the confinement, treatment, and rehabilitation of the mentally ill. Petitioner had been charged with a capital crime and for his own protection was hospitalized so that a trial, if it occurred at all, would take place only when he was mentally competent to participate and protect his interests. He was not confined, for purposes of punishment, and it cannot be said that his stay at the hospital was a part of his punishment for the commission of a crime. Makal v. Arizona, 544 F.2d 1030 (9th Cir. 1976), cert. denied, 430 U.S. 936, 97 S.Ct. 1563, 51 L.Ed.2d 782 (1977).

Petitioner alleges that the restrictions placed on his liberty at the mental hospital are evidence he was incarcerated because, as if he were in jail, he is not free to leave the hospital. This argument was rejected by the United States Supreme Court last year in Allen v. Illinois, 478 U.S.____, 106 S.Ct. ____, 92 L.Ed.2d 296 (1986). In Allen, the Supreme Court was reviewing the validity of the Illinois Sexually Dangerous Persons Act, and found that under the Act, "the State has a statutory obligation to provide 'care and treatment for [persons adjudged sexually dangerous] designed to effect recovery,' ¶ 105-8, in a facility set aside to provide psychiatric care, ibid. And '[i]f the patient is found to be no longer dangerous, the court shall order that he be discharged.' " Id.

92 L.Ed.2d at 304. The Supreme Court went on to hold that the Act's purpose was that of treatment, not punishment, even though the mental hospital housed other prisoners who are also in need of psychiatric treatment, and notwithstanding the fact that the hospital is a maximum security facility. The Court found there was no evidence that "sexually dangerous persons" in Illinois were confined under conditions incompatible with the asserted interest of treatment. Thus, the conditions of the petitioner's confinement themselves did not amount to punishment. Id., 92 L.Ed.2d at 307. And in any event, the fact that the restrictions placed on Petitioner at the state hospital are comparable to restrictions on accused held in jail, is of no consequence, since the restraints placed on the insane are necessary, not as punishment, but in order to protect the committed person against himself as well as for the protection of the general public against his dangerousness. In the present case it is important to keep in mind that Petitioner was indicted for first degree muder, the most violent of crimes.

The State submits that the purpose for commitment of Petitioner under §916.13(1) was that of treatment, not punishment. As stated by the U.S. Supreme Court in Allen, supra, this is a valid state interet which supports different treatment of individuals adjudicated incompetent to stand trial from other prisoners. To accept Petitioners contentions would be to declare civilly committed individuals under §394.467, Florida Statutes, and involuntarily committed defendants adjudicated not guilty by

reason of insanity under §916.15, Florida Statutes, to have also been incarcerated and placed in jail for purpose of punishment and restraint of liberty, rather than treatment which is clearly the purpose of §§394.467 and 916.15. When the issue is viewed in these terms, it is obvious that the purpose of the committment is what is important, not the effect, because none of these three groups of people (involuntarily committed mentally ill patients, involuntarily committed persons adjudicated not guilty by reason of insanity, and involuntarily committed persons adjudicated incompetent to stand trial) are "incarcerated" pursuant to any criminal transaction. They are in fact committed for treatment of their mental illness.

Chapter 916, Florida Statutes provides for the procedures to be followed in determining competency and/or commitment of mentally deficient and metally ill defendants. The purpose of this Chapter is not to punish people like Appellee who raise a claim of insanity, but to prevent an insane person from being tried or imprisoned for a crime when insanity lies behind what otherwise would be criminality. It is precisely this purpose and protection of this type of defendants that sets Petitioner apart from all other criminal defendants kept in jail awaiting trial.

In an annotation dealing with the validity, construction and application of the federal statutes (very similar to Ch. 917 of the Florida Statutes) providing for pretrial determination of mental competency of persons accused of

federal crimes, it is stated that the purpose of this type of statute is to avoid the prosecution of an insane person, since other means than prosecution are provided by law for protecting the interest of the public and of the individual. See: Anno.: Mental Competency of Accused, 100 L.Ed. 420.

The United States Supreme Court in Greenwood v. United States, 350 U.S. 366, 76 S.Ct. 410, 100 L.Ed. 412 (1956) upheld and approved the commitment of Mr. Greenwood in order to evaluate his competency to stand trial stating:

> This commitment, and therefore the legislation authorizing commitment in the context of this case, involve an assertion of authority, duly guarded auxiliary to incontestable national power. As such it is plainly within congressional power under the Necessary and Proper Clause. Art 1, §8, cl. 18. Id. 350 U.S. at 375, 76 S.Ct. 410, 100 L.Ed. at 419.

The prosecution against Petitioner was suspended during the time he was committed. Dalton v. State, 362 So.2d 457, 458 (Fla. 4th DCA 1978). Petitioner was not being held in the state hospitals for punishment, but rather in order to treat his mental deficiency.

The record sub judice clearly show Petitioner was afforded notice and hearing before commitment as provided by Chapter 916 Florida Statutes, to comply with due process and fair treatment requirements. The cases cited by Petitioner are inapplicable to the circumstances of the case at bar since they deal with denial of due process to the defendants therein.

In Jones v. U.S., 463 U.S. 354, 103 S.Ct. 3043, 77

L.Ed.2d 694 (1983), the defendant was acquitted by reason of insanity. The Supreme Court held a verdict of not guilty by reason of insanity is sufficiently probative of mental illness and dangerousness to justify commitment of the acquitee for the purpose of treatment and the protection of society. The Supreme Court went on to find that because an insanity acquittee was not convicted, he may not be punished. That the purpose of his commitment is to treat the mental illness and protect him and society from his potential dangerousness. Appellee also cited Vitek v. Jones, 445 U.S. 480, 100 S.Ct. 1254, 63 L.Ed.2d 552 (1979); McNeil v. Director, Patuxent Institution, 407 U.S. 245, 92 S.Ct. 2083, 32 L.Ed.2d 719 (1972); and In Re Gault, 387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1966). These three cases dealt with convicted felons, and the Supreme Court affirmed lower court's declaration of the respective statutes unconstitutional as applied to the respective defendant, because the defendants were being held in mental hospitals without adequate notice and opportunity for a hearing. This is not the argument raised by Petitioner in the instant case. Petitioner's due process rights were thoroughly observed (R 21-22) See Jackson v. Indiana, 406 U.S. 715, 738, 92 S.Ct. 1845, 32 L.Ed.2d 435 (1972).

Section 921.161(1) Fla. Stat. (1983) provides:

> A sentence of imprisonment shall not begin to run before the date it is imposed, but the court imposing a sentence shall allow a defendant credit for all of the time he spent in the county jail before sentence. The credit must be for a specified period of time and shall be provided for in the sentence.

Respondent submits that the Legislature by the specific and clear language used in the statute intended to allow the trial court to allow a defendant credit for time spent in county jail only and not for any time spent in a state hospital prior to trial. In Kronz v. State, 462 So.2d 450 (Fla. 1985), this Court in interpreting §921.161 denied the defendant time spent in jail in another state because the term "county jail," in §921.161(1) is applicable only to Florida jails, and was not intended by the legislature to apply to various places of incarceration in other jurisdictions. Id. at 451.

In the instant case, Petitioner was adjudicated incompetent to stand trial and committed to the State hospital for treatment pursuant to §916.13(1), Fla. Stat. Since the prosecution against Petitioner was suspended during the time he was committed, Dalton v. State, supra at 458, and Petitioner was not incarcerated while in the hospital, thus he is not entitled to credit for time served in "county jail" under §921.161(1).

In his Brief, Petitioner sets out as a second issue: the disparate treatment of those committed to a mental hospital versus those treated for a physical illness in a state hospital as a violation of his due process rights. The State submits that the above reasons, make this second claim unconscionable as well. When a person suffers an injury or contracts an illness while in jail pending trial, he must be taken to the hospital for treatment. However, the charges against him are not suspended, nor are they affected in any way. Those persons, when taken to

the hospital, remain incarcerated on the criminal charges. This is not true in the cases of persons such as Petitioner. Therefore, it cannot be said that similarly situtated persons are being given disperate treatment in violation of due process of law.

CONCLUSION

The issue presented for review herein is whether commitment in a state hospital for purpose of evaluating competency to stand trial is equivalent to time spent incarcerated in "county jail" as contemplated by §921.161 Fla. Stat. Since the prosecution against Petitioner was suspended during his hospital stay, Petitioner was not incarcerated for purposes of §921.161. The trial court, therefore, erred in finding §921.161 to be unconstitutional and granting him credit for the five years and twenty-seven days spent in the State mental hospital. Respondent respectfully urges this Honorable Court to approve the Fourth District's opinion reversing the trial court and upholding the constitutionality of §921.161, Florida Statutes, as applied to Petitioner.

Respectfully submitted,

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