

70,723

IN THE SUPREME COURT OF FLORIDA

RAYMOND BULL

Petitioner,

vs.

STATE OF FLORIDA

Respondent.

Case No.

FILED

SID J. WHITE

JUN 19 1987

CLERK, SUPREME COURT

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Deputy Clerk

DISCRETIONARY REVIEW OF DECISION OF THE
DISTRICT COURT OF APPEAL, SECOND DISTRICT OF FLORIDA

BRIEF OF PETITIONER ON JURISDICTION

JAMES MARION MOORMAN
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

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STATEMENT OF THE CASE AND FACTS

Petitioner, Raymond Bull, and his codefendant, Richard Ramsey, were charged and convicted of escape. To obtain the services of the public defender, Bull and Ramsey were required to sign an affidavit of insolvency (included in the appendix of this brief) which authorized the court to assess a public defender lien "without any notice of a hearing for such purpose." At trial, the court imposed a public defender lien without prior notice and a prior hearing.

On appeal, the district court ruled that this affidavit dispensed with the notice and hearing requirement of section 27.56(7) Florida Statutes (1983). Petitioner now appeals this ruling to the Supreme Court.

SUMMARY OF THE ARGUMENT

The district court ruled that petitioner waived his rights to notice and a hearing on the imposition of public defender fees, merely by signing an affidavit of insolvency which contained a waiver of these rights. This ruling is contrary to rulings in other districts, which hold that defendants cannot be required to give up these rights in order to obtain the services of the public defender. The instant opinion also conflicts with other case law, which require the government to show that a waiver is voluntary, intelligent, and knowing, and which forbid waivers based on boiler-plate language found on printed forms.

ARGUMENT

ISSUE

THE INSTANT DECISION CONFLICTS WITH OTHER FLORIDA DECISIONS WHICH HAVE RULED THAT (1) REQUIRING AN ACCUSED TO WAIVE DUE PROCESS RIGHTS OF NOTICE AND HEARING IN ORDER TO OBTAIN THE SERVICES OF THE PUBLIC DEFENDER INFRINGES ON THE RIGHT TO COUNSEL (2) WAIVERS CANNOT BE ACCOMPLISHED SOLELY BY BOILER-PLATE LANGUAGE FOUND ON A WRITTEN FORM, AND (3) WAIVER OF RIGHTS MUST BE SHOWN TO BE INTELLIGENT, KNOWING, AND VOLUNTARY.

The second district ruled in the instant case that the

affidavit of insolvency signed by appellant included authorization for the trial court to set a fee for the services of the public defender and to impose a lien against appellant for that amount without any notice of a hearing for such purpose. This waiver dispensed with the notice and hearing requirements of section 27.56(7) Florida Statutes (1985).

Bull v. State, No. 86-123, slip. op. at 3 (Fla. 2d DCA May 20, 1987). This ruling conflicts with other court decisions in three ways.

First, this ruling directly and expressly conflicts with McGeorge v. State, 386 So.2d 29 (Fla. 5th DCA 1980) and Gryca v. State, 315 So.2d 221 (Fla. 1st DCA 1975). As in the instant case, the defendant in Gryca signed an affidavit of indigency prepared on a printed form, which waived notice of a hearing to determine the value of the public defender lien. The Gryca court ruled that this waiver was "an unconstitutional restraint upon [the defendant's] right to seek counsel by court

appointment in that, to secure such constitutional right to counsel, the insolvent defendant is required to abandon a statutory right to notice and advocacy hearing on the question of lien and debt for Public Defender service." Id. at 223. McGeorge makes an identical ruling regarding a required waiver of notice and hearing, found in a probation order.

The instant decision means that indigent defendants in Polk County will never receive their due process rights to notice and a hearing on public defender liens. If they sign the affidavit of insolvency, then they waive these rights. If they do not sign, then they cannot get a public defender and will not need these rights. This result is irrational.

Second, the instant decision is contrary to Jordan v. State, 334 So.2d 589 (Fla. 1976), which states that "the mere signing of a boiler-plate statement to the effect that a defendant is knowingly waiving his rights will not discharge the government's burden." Id. at 592, quoting, United States v. Hayes, 385 F.2d 375,377 (4th Cir. 1967). Here, we have nothing more than the boiler-plate statement condemned in Jordan.

Third, the instant opinion conflicts with numerous cases [e.g., Fields v. State, 402 So.2d 46 (Fla. 1st DCA 1981)] which require a showing that a waiver is knowing, intelligent, and voluntary. Here, the opinion contains no indication of a judicial finding that the waiver was voluntary, intelligent, and knowing. A waiver containing a signature purporting to be the defendant's simply does not without more show voluntari-

ness or intelligent knowledge. Without this showing (which is the government's burden) the supposed waiver is invalid.

CONCLUSION

Based on the preceding arguments, Petitioner requests this court to accept jurisdiction in his case.

Respectfully submitted,

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