

IN THE SUPREME COURT OF FLORIDA

FILED

SID J. WHITE

JUL 2 1987

CLERK, SUPREME COURT

Case No. 70,723

Deputy Clerk *jd*

RAYMOND BULL,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

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

BRIEF OF RESPONDENT ON JURISDICTION

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

ERICA M. RAFFEL
Assistant Attorney General
1313 Tampa Street, Suite 804
Park Trammell Building
Tampa, Florida 33602
(813) 272-2670

COUNSEL FOR RESPONDENT

/sas

TABLE OF CONTENTS

	<u>PAGE NO.</u>
PRELIMINARY STATEMENT.....	1
STATEMENT OF THE CASE AND FACTS	2
SUMMARY OF THE ARGUMENT.....	4
ARGUMENT	5
ISSUE:	5
WHETHER 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.	
CONCLUSION..	8
CERTIFICATE OF SERVICE.....	8

TABLE OF CITATIONS

	<u>PAGE NO.</u>
Bull v. State, No. 86-123, slip opinion at 3 (Fla. 2d DCA May 20, 1987).....	5
Gryca v. State, 315 So.2d 221 (Fla. 1st DCA 1975).....	5
McGeorge v. State, 386 So.2d 29 (Fla. 5th DCA 1980).....	5
Meadows v. State, 498 So.2d 1018 (Fla. 2d DCA 1986).....	6
Pollock v. Bryson, 450 So.2d 1183 (Fla. 2d DCA 1984).....	3
S.M.W. v. State, 497 So.2d 1337 (Fla. 2d DCA 1986).....	6

OTHER AUTHORITIES:

§27.56(7), Florida Statutes (1985).....	3
---	---

PRELIMINARY STATEMENT

RAYMOND BULL will be referred to as the "Petitioner" in this brief and the STATE OF FLORIDA will be referred to as the "Respondent". The Record on Appeal will be referenced by the symbol "R" followed by the appropriate page number.

STATEMENT OF THE CASE AND FACTS

Petitioner, Raymond Bull, and his co-defendant Richard Ramsey, were charged and convicted of escape in violation of Section 944.40, Florida Statutes. Both Bull and Ramsey signed affidavits of insolvency for purposes of appointment of the public defender. This affidavit of insolvency authorized the court to assess a public defender lien without any notice of a hearing. After jury trial, both Bull and Ramsey were found guilty and adjudicated as charged. At sentencing the assistant public defender submitted to the court, an affidavit for public defender services. Because the trial court did not know if the petitioner had the opportunity to discuss with his public defender whether or not he felt that amount was fair or not, the court granted the petitioner 30 days to consider whether the amount of the public defender lien was fair. The record fails to reveal that petitioner disputed this amount within the 30 day period granted.

Petitioner filed a timely notice of appeal, and the issue of the assessment of the public defender's lien was addressed and briefed by the petitioner on direct appeal. Respondent, Appellee below, responded in part to the petitioner's argument ". . . that it is somewhat scandalous to allow a public defender in representing an individual stand before a trial court and submit an affidavit for a public defender lien without requesting that the court inquire of his client as to whether or not the client feels it is a fair amount assessed, and thereafter have another

public defender allege on appeal that the amount of the lien was arbitrary. This of course requires transporting the appellant from the state prison where he is presently incarcerated back to the trial court for the purpose of determining whether or not the amount of the public defender's lien, submitted by the public defender, and thereafter contested by the public defender, is fair."

A reply brief was submitted by the public defender wherein he stated "upon reflection, and after carefully reading Pollock (Pollock v. Bryson, 450 So.2d 1183 (Fla. 2d DCA 1984) This counsel agrees with the State that his attack on the imposition of public defender liens was scandalous."

Thereafter the Second District Court of Appeal issued its opinion without addressing the particular facts of this case, or alluding in any manner whatsoever to the admitted scandalous action. Instead, the district court ruled that the affidavit of insolvency which authorized the court to assess a public defender lien without any notice of a hearing, dispensed with the notice and hearing requirement of Section **27.56(7)**, Florida Statutes.

Petitioner now appeals this ruling of the Second District Court of Appeal alleging direct conflict of decisions with other district courts of appeal.

SUMMARY OF THE ARGUMENT

The opinion, and the result, of the Second District Court of Appeal, on the facts of this particular case, does not conflict with the decisions of other district courts of appeal.

ARGUMENT

ISSUE

WHETHER 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.

In the instant case the Second District Court of Appeal ruled 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."

Bull v. State, No. 86-123, slip opinion at 3 (Fla. 2d DCA May 20, 1987). Petitioner urges that 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); and asserts that 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." (See, Brief of Petitioner on Jurisdiction p.4).

Respondent would assert that indigent defendants in Polk

County have not been nor will they in the future be denied their due process rights to notice and a hearing on public defender liens. In S.M.W. v. State, 497 So.2d 1337 (Fla. 2d DCA 1986) the Second District Court of Appeal stated

"After adjudging the appellant insolvent the trial court granted the State Attorney's motion to assess a \$250 public defender's lien against the appellant. Since the appellant was adjudged insolvent and was not given adequate notice or opportunity to be heard on the assessment, we hereby strike the assessment."

Id. at 1338.

In Meadows v. State, 498 So.2d 1018 (Fla. 2d DCA 1986) the same Second District Court of Appeal stated

"Appellant argues that he was not given notice and an opportunity to be heard before the imposition of a public defender's lien at the close of trial. The record indicates that immediately after the imposition of sentences, the trial court asked the public defender if he had a lien. The public defender did not have one with him but told the court the amount he anticipated asking for. The public defender then asked appellant if he felt the fee was reasonable in light of his services, and appellant merely nodded his head. This dialogue does not comport with the mandate of Section 27.56(7), Florida Statutes (1985), . . . The record does not indicate whether appellant had notice that a lien would be requested. Indeed, the public defender himself was unprepared for a hearing on a lien. Accordingly, we vacate the public defender's lien."

Id. at 1020.

Respondent would urge it is therefore apparent that the Second District Court of Appeal is not in any manner denying due

process rights to notice and a hearing on public defender liens as the petitioner herein alleges.

Irrespective of other decisions in possible conflict with the instant opinion, the result herein based on the facts of this case, is so clearly correct that this court need not accept jurisdiction.

CONCLUSION

Based on the foregoing reasons, arguments and citations of authority, Respondent requests this court to deny discretionary jurisdiction in this case.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

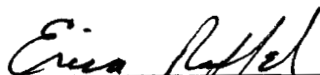


ERICA M. RAFFEL
Assistant Attorney General
1313 Tampa Street, Suite 804
Park Trammell Building
Tampa, Florida 33602
(813) 272-2670

COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Stephen Krosschell, Assistant Public Defender, Hall of Justice Building, Post Office Box 1640, Bartow, Florida 33830, this 30th day of June, 1987.



OF COUNSEL FOR RESPONDENT