

IN THE SUPREME COURT OF FLORIDA

MELISSA HENRIQUEZ,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

Case No. 71,414

**FILED**

SID J. WHITE

JAN 27 1988

CLERK, SUPREME COURT

By \_\_\_\_\_

Deputy Clerk

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

BRIEF OF PETITIONER ON MERITS

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PUBLIC DEFENDER  
TENTH JUDICIAL CIRCUIT

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STATEMENT OF THE CASE

MELISSA HENRIQUEZ was charged with three counts of robbery with a firearm, by an information filed in Highlands County Circuit Court on May 24, 1985. (R158) Following jury trial on October 14-15, 1985, Petitioner was found guilty of three counts of petit theft. (R146, 147)

At sentencing, on November 27, 1985, Petitioner was ordered to serve a sentence in county jail, and ordered to pay a fine and assessments. (R151)

Appeal to the Second District Court of Appeal commenced on December 4, 1985. The District Court issued their decision on September 11, 1987. A motion for rehearing was filed on September 17, 1987, and denied on October 23, 1987.

Review in this court commenced on November 2, 1987.

STATEMENT OF THE FACTS

Prosecution witness, Henry Stewart, testified that there was a robbery at Highlands Jewelers on July 6, 1984. (R4, 5, 13) Money and jewelry were taken in the offense. (R13, 14, 17)

State witness Mabel Rhoades testified that she was working at Highlands Jewelry store on July 6, 1984. (R18) Two men entered the store. They had guns and said. "This is a goddamned holdup." One of the men hit her on the head. (R19) She was placed in the store's restroom. (R19) She said she had never seen the woman seated at trial counsel's table prior to the trial. (R24)

Erica Dunn testified as a state witness. She said she was working at the Highlands Jewelry on July 6, 1984. (R25) An armed robbery occurred on that day. (R25) She was told to go into a back room by one of the robbers. (R26) The robbers were caucasian. (R26-27) The robbers put the jewelry in a garbage can. (R30) The witness's wallet was taken, and never recovered. (R31) Dunn testified that both robbers were men. (R33)

State witness Sarah Gilbreath stated that she was at the Highlands Jewelry on July 6, 1984. (R34) She testified that she saw two guys running out of the store as she approached. (R35) They were carrying a garbage can and bag. She felt something unusual was happening. (R35)

Hugh Hines was a State witness. He was a Deputy Sheriff on July 6, 1984 and responded to a call at the Highlands Jewelry store. (R42) He secured the crime scene, preserving it for investigation. (R42)

Betty Worthington, as a witness for the prosecution, testified that she is an investigator and a crime scene investigator for Highlands County. (R43) She checked the store's door for fingerprints, finding no identifiable latents. (R43) No prints belonging to Henriquez were found. (R44)

Judy Rhodes testified as a State witness on July 6, 1984, she was employed at the jewelry store. Two men entered the store. They had guns and pushed her into the restroom. (R47) Some of her property, including a wallet and pay check were taken. (R47) She said no woman was involved in the robbery. (R49)

Catherine Rodriquez testified on behalf of the State. She said that Joe Rodriquez had been her husband in July, 1984. (R50) She said that she had been a participant in robberies, and had been arrested. (R51) She testified that she had knowledge as to what participants were in the robbery of the Highlands Jewelry store. (R52) She became aware of the robbery when Henriquez, Jack and Joe came back to her house, entered a bedroom and sorted jewelry. (R53) She testified that she saw jewelry, cases, and a garbage can. (R54) Petitioner Henriquez said that she should have something for help. (R54)

Kenneth Kruelen was a State witness. As crime scene technician and investigator for the Sheriff's Department, he assisted in processing the crime scene at Highlands Jewelry. He found no prints belonging to Petitioner. (R70-71)

State witness Joe Rodriquez admitted participation in the robbery of the Highlands Jewelry on July 6, 1984. He said Melissa Rodriquez's role in the robbery was that of driver. (R73)

William Matthew testified on behalf of the State. As an agent for the F.D.L.E., he was familiar with a multi-page document between the State and Joe Rodriguez. (R107) He stated that the primary consideration was testimony in regard to a murder in Hillsborough County. (R109) Mr. Rodriguez was able to give information that led to the solution of that case. (R111)

The State rested, and James Gilliard testified as a defense witness. He said he was with Sarah Gilbreath and her two daughters on July 6, 1984. (R113) They went to Highlands Jewelers, and saw two people come out of the jewelry store, carrying a garbage can and trash bags. (R113-114) They got into a Transam, and it left. He testified that the person sitting at the table was not the person he saw with long blonde hair in the vehicle. (R121)

Helen Waite testified. She is a cashier at the Southgate Theatre. On July 6, 1984, she saw two men around it, carrying a bag and a waste basket. (R123) The men got into a car and left. She said she only saw those two men in the car.

At sentencing, the trial judge imposed a county jail of 60 days per count on Petitioner, and ordered payment of : a fine, costs of \$76.00, and a lien of \$1,200.00. (R152)

No notice, nor waiver of right to object to costs was on Petitioner's Affidavit of Indigency. (R164)

SUMMARY OF THE ARGUMENT

The trial court's imposition of a requirement that Petitioner pay assessments without notice and opportunity to question those assessments was improper. The decision of the intermediate appellate court, which would have required a convicted criminal defendant to arouse the ire of the trial judge at sentencing, by objecting, was incorrect.



ARGUMENT

THE ORDERING OF PAYMENT OF COSTS  
BY THE TRIAL COURT WAS IMPROPER.

At Petitioner's sentencing hearing, Petitioner was ordered to pay various costs and assessments. (R152) The validity of those costs was an issue raised on appeal, and the district court ruled that:

[T]he trial judge clearly stated at the sentencing hearing his intention to impose fines, costs, and a lien for services of the public defender. The amount of that lien was suggested by the public defender himself.

We hold that the failure to object when the trial judge orally stated his intention to impose these assessments constituted a waiver of the right to assert objections to the assessments on appeal, including the objection that the procedural requirements of Jenkins v. State were not followed.

slip op. at 3

The District Court of Appeals' ruling in this case could seem to conflict with: Graham v. Murrell, 462 So.2d 34 (Fla. 1st DCA 1984) as to public defender liens submitted pursuant to section 27.56(1), Florida Statute, as well as the ruling of the Fifth District Court of Appeals' ruling in Outar v. State, 508 So.2d 1311 (Fla. 5th DCA 1987). The ruling in Outar, supra, basically was that a defendant's fundamental right to a hearing cannot be waived by a simple failure to object.

Review of the transcript of Petitioner's November 27, 1985 sentencing shows absolutely no opportunity for Petitioner to question, or object to imposition of costs. Robert Gray, Petitioner's lawyer,

did offer his opinion regarding the value of his services. (R152) Petitioner was silent during her sentencing hearing, neither agreeing nor disagreeing with imposition of assessments. (R149-152)

Because Petitioner's trial counsel was present and spoke on her behalf throughout the sentencing process, it would be unreasonable to require her to raise objection herself regarding a defendant's participation as an advocate in trial. See State v. Tait, 387 So.2d 338 (Fla. 1980); Goode v. State, 365 So.2d 381 (Fla. 1978). Assessments in this case, as is frequently done, were imposed during the sentencing process, and at that juncture of the criminal proceedings in our system, defendant s appear before the judge no longer as accused defendants, but as convicted criminals. They are therefore almost entirely at his mercy relative to imposition of a sentence, with only the guidelines as possible restriction. Recall, too, that in this case, Petitioner had apparently suffered a traumatic experience while attempting to get to court. (R149) She wished a favor from the judge. (R152) Under those circumstances, it would seem contrary to basic human nature to require her to object to imposition of costs.

The remarks of Petitioner's trial counsel relative to the value of his services most surely do not constitute a waiver of objection, nor agreement of existence of financial ability to pay them. See Dooley v. State, 490 So.2d 241 (Fla. 2d DCA 1986). The appellate record reveals no inquiry of defendant regarding her opinion of the suggested amount, and actually shows she had no

opportunity whatsoever to say anything before the judge declared that amount reasonable. (R152)

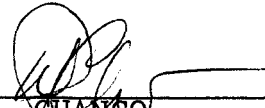
Petitioner's position on this review is that the trial court's actions regarding the assessments were legally improper. Petitioner was deprived of notice, and opportunity to object to those assessments. That situation constituted a deprivation of basic fairness, and due process, and is error. See Jenkins v. State, 444 So.2d 947 (Fla. 1984). Such error must be addressed.

CONCLUSION

Based upon the aforementioned reasons and authorities, Petitioner prays that this Honorable Court reverse decision ordering imposition of assessments imposed by the trial court, and remand this case to the lower court with appropriate directions.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy has been furnished to the Attorney General's Office, Park Trammell Building, Eighth Floor, 1313 Tampa Street, Tampa, FL 33602, by mail on this 21<sup>st</sup> day of January, 1987.

  
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D. P. CHANCO