IN THE SUPREME COURT OF FLORIDA

71,459

JOSEPH PUMPHREY,

Petitioner,

vs. CASE NO. BM-118

STATE OF FLORIDA,

Respondent.

_____/

RESPONDENT'S BRIEF ON JURISDICTION

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

ROYALL P. TERRY, JR.
ASSISTANT ATTORNEY GENERAL

DEPARTMENT OF LEGAL AFFAIRS
THE CAPITOL
TALLAHASSEE, FL 32399-1050
(904) 488-0600

COUNSEL FOR RESPONDENT

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PRELIMINARY STATEMENT

Respondent adopts petitioner's preliminary statement.

SUMMARY OF ARGUMENT

Petitioner was a "prisoner" within the meaning of the applicable statute. Petitioner was being held at the Leon County jail at the time he tendered his plea of nolo contendere to pending felony charges. The court accepted the plea and permitted petitioner to take a one day furlough to attend to family business. Sentencing was set for several weeks hence, pending receipt of a presentence investigation report. Petitioner over-stayed his furlough by many days, but turned himself him in to the Leon County jail prior to sentencing date.

At all times material hereto the sheriff of Leon County retained and maintained a right to legal custody, but, petitioner committed a conscious and intentional act of escape in leaving the established area of such custody (his grandmother's house), absenting himself from both the state and the country and failing to return to his jail cell at the time he agreed to do so and in violation of the court's order. The case authority relied upon by petitioner is not only inapposite, but has been since overruled by a much more recent decision of this court. There is no conflict meriting the discretionary jurisdiction of this court.

ARGUMENT

ISSUE

THE DISTRICT COURT'S DECISION IS NOT IN CONFLICT WITH ANY DECISION OF ANY OTHER DISTRICT COURT OF APPEAL NOR OF ANY DECISION OF THE FLORIDA SUPREME COURT. (Restated).

This was not a case of pre-trial detention as petitioner would have this court believe. At the time petitioner was granted a one day furlough, he had been arrested, booked into the Leon County jail, entered into a plea bargain arrangement, tendered his plea of nolo contendere to pending felony charges, and had the plea formally accepted by the court. The court withheld adjudication pending receipt of a presentence investigation and set a date for sentencing. At this point, the court granted petitioner's request for a 24 hour furlough from jail to attend to a family matter at his grandmother's house. Petitioner urges that because the trial judge generously permitted him to absent himself from his jail cell for 24 hours, on humanitarian grounds, that he ceased to be a "prisoner" within the meaning of the applicable statute. Petitioner appears to be arguing that his only offense is "failure to appear" under §843.15, Fla. Stat. It should be pointed out that petitioner was not released on bond and, upon return from the 24-hour furlough allowed by the court, it was his obligation to return to the custody of the sheriff and his jail cell to resume his status as a prisoner of the sheriff until he was obligated to return to

court for sentencing, some days later. Actually, petitioner did return to his jail cell and to the custody of the sheriff a number of days prior to his obligatory court appearance. There is nothing in the record indicating that petitioner did fail to appear in court on schedule. Thus, as far as court appearances were concerned, petitioner was never derelict. Appellant's crime was leaving the jurisdiction and not being in his jail cell when he was required to be pursuant to the court's directions. Petitioner was a prisoner and was not at liberty on supersedeas bond. If he had been, the crime would have been "failure to appear", but those were not the facts here.

Petitioner's reliance upon Williamson v. State, 388 So.2d 1345 (Fla. 3d DCA 1980) to show conflict is misplaced, for several reasons. First, the issue in Williamson was not whether Williamson retained his status as a prisoner while he was on furlough to complete a job, after being sentenced to a year in the county jail, but whether the court had the authority to revoke a term of probation which had not yet begun. (fn 2. p. 1347) Petitioner cites merely dicta, as Williamson had not been charged with escape. Second, even if Williamson, a 1980 case before the Third District, were supportive of petitioner's argument, it is respondent's position that it has been overruled by this court in State v. Ramsey, 475 So.2d 671 (Fla. 1985).

Ramsey had been stopped for traffic infractions by a deputy sheriff. The officer informed Ramsey that he was under arrest, but before he could be restrained, he said to the officer "no way" and then fled. Ramsey was charged with escape in violation of §944.40, Fla. Stat. The escape statute is unchanged.

This court, in Ramsey, adopted the view of the First District as expressed in Johnson v. State, 357 So.2d 203 (Fla. 1st DCA, cert. denied, 362 So.2d 1054 (Fla. 1978)) in holding that the term "confinement" is not narrowly limited to actual physical presence in a jail. As in the case of petitioner, Johnson had been committed to the jail even though he did not escape from the confines of the jail itself. In Ramsey, this court approved the holding in State v. Akers, 367 So.2d 700 (Fla. 2d DCA 1979) that, for conviction under the escape statute the state need only show **(1)** the right to legal custody and **(2)** a conscious and intentional act of the defendant in leaving the established area of such custody. In the case sub judice, both of these requirements have been met.

This court quoted from George v. State, 203 So.2d 173, 175-176 (Fla. 2d DCA 1967):

> "A statute should be construed and applied so as to fairly and liberally accomplish the official purpose for which it was adopted even if the results seem constradictory to ordinary rules of constrution and the strict wording of the statute. . . And the manifest intent of the legislature will

> prevail over any literal import of words used by it; and no literal interpretation leading to an unreasonable conclusion or a purpose not intended by the law should be given"

State v. Ramsey, supra at 673.

It is respondent's position that this court does not have jurisdicition over the matter sub judice under Fla.R.App.P. 9.030(a)(2)(A)(iv), there being no conflict between the decision of the First District Court of Appeal, sub judice, and any decision of another district court of appeal or of this court.

CONCLUSION

This court should exercise its discretionary authority and decline to accept jurisdiction of the cause sub judice.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

ROYALL P. TERRY, JR.
ASSISTANT ATTORNEY GENERAL

DEPARTMENT OF LEGAL AFFAIRS
THE CAPITOL
TALLAHASSEE, FL 32399-1050
(904) 488-0600

COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been forwarded by U.S. Mail to Kathleen Stover, Assistant Public Defender, Post Office Box 671, Tallahassee, Florida 323902 on this 4th day of December, 1987.

ROYALL P. TERRY, JR.
ASSISTANT ATTORNEY GENERAL

COUNSEL FOR RESPONDENT