IN THE SUPREME COURT OF FLORIDA

JOSEPH PUMPHREY,

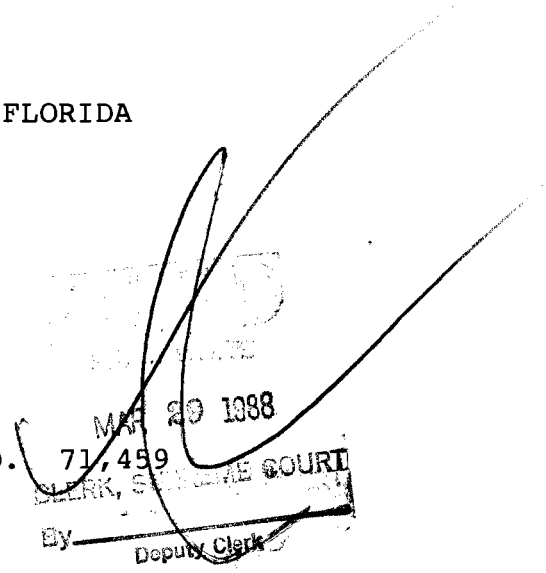
Petitioner,

v. CASE NO. 71,459

STATE OF FLORIDA,

Respondent.

_____/



RESPONDENT'S BRIEF ON THE MERITS

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

ROYALL P. TERRY, JR.
ASSISTANT ATTORNEY GENERAL
FLORIDA BAR NO. 080597

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

ATTORNEY FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF CITATIONS

IN THE SUPREME COURT OF FLORIDA

JOSEPH PUMPHREY,

Petitioner,

v. CASE NO. 71,459

STATE OF FLORIDA,

Respondent.

_____/

RESPONDENT'S BRIEF ON THE MERITS

PRELIMINARY STATEMENT

Petitioner, Joseph Pumphrey, was the defendant in the trial court and the appellant in the district court. He will be referred to herein either as "petitioner" or by his proper name. Respondent was the prosecuting authority in the trial court and the appellee in the district court and will be referred to herein either as "the state" or as "respondent". Reference to the record on appeal will be by the symbol "R" followed by the appropriate page number in parenthesis.

SUMMARY OF ARGUMENT

Petitioner concedes that a person placed under arrest by a police officer but not yet transported to the jail is a "prisoner" within the meaning of § 944.40 Fla.Stat. and that a sentenced person on prison furlough or work release or otherwise enjoying extended custody beyond the actual prison wall is also a "prisoner" within the meaning of the statute. Petitioner's argument that a jail inmate whose nolo or guilty pleas have already been formally accepted by the court is not a "prisoner" while on 24-hour furlough pending completion of a pre-sentence report is not a "prisoner" when he violates the court's order and overstays his leave, is unsupported in the law and defies logic. It was never the intention of either the legislature or the courts to create an exception or any kind of "twilight" category for jail inmates who have entered a plea and are not awaiting trial. Such person is a "prisoner" within the meaning of the statute and not a "pretrial detainee" as petitioner would have it. Petitioner's transgression, in the case sub judice, had nothing to do with failure to make a mandatory court appearance, contrary to what petitioner urges, and the "failure to appear" statute is inapplicable here.

ARGUMENT

ISSUE

THE EVIDENCE BELOW WAS LEGALLY SUFFICIENT TO SUSTAIN PETITIONER'S CONVICTION FOR ESCAPE. (Restated)

Petitioner and respondent are in agreement that the escape statute, §944.40 Fla.Stat., applies to a simple arrest situation where the arrestee flees the officer even before he has been transported to the jail and that the term "confinement" is not narrowly limited to actual physical presence in a jail. State v. Akers, 367 So.2d 700 (Fla. 2d DCA 1979; State v. Ramsey, 475 So.2d 671 (Fla. 1985); Green v. State, 470 So.2d 104 (Fla. 2d DCA 1985); State v. Iafornaro, 447 So.2d 961 (Fla. 5th DCA 1984). The escape statute also applied to an arrestee who became ill during the booking process and was then escorted by the police to the emergency room of a hospital for treatment. The prisoner escaped while at the hospital, Johnson v. State, 357 So.2d 203 (Fla. 1st DCA 1978). The parties apparently do not disagree that the term "confinement" is not narrowly limited to actual physical presence in the jail nor is the definition of "prisoner" limited to persons who have been sentenced.

Petitioner and respondent apparently do not disagree that convicted prisoners who overstay their leave while on furlough are proper subjects for trial and conviction of the crime of escape. Price v. State, 333 So.2d 84 (Fla. 1st DCA 1976); see also, Laird v. State, 394 So.2d 1121 (Fla. 5th DCA 1981).

Petitioner's reasoning sub judice is most peculiar. Respondent can discern logic in a thesis holding that a person,

who has merely been told that he is under arrest, who then flees is admittedly a proper subject for prosecution under the escape statute. Likewise, a sentenced person who overstays his leave while on furlough is also subject to prosecution under that statute. On the other hand, petitioner argues that someone who has been arrested, booked into the county jail, entered a plea of nolo contendere or guilty, had the plea formally accepted by the court but, who then overstays a short furlough granted by the court, was not intended by the legislature to be included in the escape statute for purposes of prosecution. This kind of analysis defies reason and it is respondent's position that the legislature of Florida intended no such exception. Furthermore, Williamson v. State, 388 So.2d 1345 (Fla. 3rd DCA 1980), relied upon by petitioner, has been overruled by this court in State v. Ramsey, supra.

To adopt petitioner's "reasoning" would create a "catch 22" situation for the state. To hold that a jail inmate who has already had his nolo or guilty plea formally accepted by the court is merely a pretrial detainee would make no sense. In reality, there is not going to be a trial so the term "pretrial detainee" immediately loses all meaning. When the court allowed petitioner a 24-hour "pass", on humanitarian grounds, to take care of some family business, while his pre-sentence investigation was in progress, petitioner stood before the court as a convicted felon, for all relevant purposes. He did not cease to be an inmate of the Leon County Jail merely because the court authorized his absence from the jail for 24 hours.

Writing for the majority, in Ramsey supra, Justice Adkins quoted from George v. State, 203 So.2d 173,175-76 (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 contradictory to ordinary rules of construction and the strict wording of the statute ... And the manifest intent of the legislature would 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

Why would the legislature intend that someone who becomes a "prisoner" the moment he is arrested and who remains a prisoner while an inmate in the county jail and who continues to be a prisoner after sentencing would for a brief and fleeting period of 24 hours between the time he has had his nolo or guilty plea formally accepted by the court and the time he is required to resume his status as a jail inmate, as was the case with the petitioner, would for such brief interval cease to be a "prisoner". Certainly he is a "prisoner" 24 hours later when he returns to the jail and remains there for many days prior to actual sentencing. A person who pleads nolo to felony offenses cannot be properly termed a "pretrial detainee". In Ramsey, supra, this court approved the rationale of State v. Akers, supra, which held that for conviction under the escape statute the state need show only (1) the right to legal custody and (2) a

conscious and intentional act of the defendant in leaving the established area of such custody. Quoted from Watford v. State, 353 So.2d 1263 (Fla. 1st DCA 1978) by the Akers court.

The "established area of such custody" is not limited to a jail or prison nor has petitioner demonstrated that the physical presence of a guard or other official is essential before an unauthorized absence becomes an escape within the meaning of the statue.

In the case sub judice, while petitioner overstayed the 24 hour furlough granted by the court by a number of days, he did turn himself into the Leon County Jail well in advance of his sentencing date. Respondent notes that petitioner does not suggest that he did not resume his status as a "prisoner" when he returned to the jail. Why would the legislature want to change his status as a prisoner for just 24 hours? Petitioner would have himself be considered, first a prisoner, then a jail inmate, then not a prisoner for 24 hours and then a prisoner again when he returns to the jail. Petitioner's analysis is hypertechnical but even giving due respect to such hair-splitting technicalities petitioner's argument is illogical on its face.

A person who has made bail and who is at liberty after having posted a bond is certainly not a "prisoner" within the meaning of the statute and the failure of such person to appear before the court at the appointed time would not trigger operation of the escape statute. When a bond is posted, certainly the court relinquishes control over the person admitted to bail and the legislature has prescribed a penalty applicable

to such persons when they fail to appear in court when scheduled. But petitioner was not such a person and the trial court never relinquished control over petitioner after it accepted his pleas. Therefore, when petitioner left the jurisdiction and failed to return to his cell at the end of 24 hours, more was involved then merely failing to appear. Actually, petitioner's sentencing date had nothing to do with either the temporal or geographical limits of his furlough. Judges are peace officers and for the 24 hours in question, petitioner was in the custody of the court but when he failed to return to his cell as ordered, his omission had absolutely nothing to do with court appearances, as his scheduled date for sentencing was still a number of days off. He simply disobeyed the orders of his custodian and "escaped" from the designated "area of confinement". It is respondent's position that even if appellant returned to his jail cell as scheduled but had "escaped" to some place other than that agreed to by his custodian (the court, by and through the court's executive officer, the sheriff of Leon County) he could still have been properly charged and convicted of the crime of escape. Again, petitioner's argument is spurious.

In response to petitioner's negative comment (petitioner's brief on the merits, p. 7, fn. 2) respondent cites Howell v. State, 12 F.L.W. 622 (Fla. 1st DCA, Feb. 24, 1987). Howell complained that the trial judge deviated from the standard jury instructions regarding escape. The First District held that the trial court sufficiently articulated the elements of escape as

set forth in § 944.40 Fla.Stat. (1983). The court cited Johnson v. State, 250 So.2d 361 (Fla. 1971) and Williams v. State, 243 So.2d 215 (Fla. 3rd DCA 1971) and quoted from State v. Bryan, 287 So.2d 73,75 (Fla. 1973):

> [w]hat is important is that sufficient instructions - not necessarily academically perfect ones - be given as adequate guidance to enable a jury to arrive at a verdict based upon the law as applied to the evidence before them.

CONCLUSION

The trial court and the First District Court of Appeal should be affirmed.

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 RESPONDENTS

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 32302 and Donald B. Mairs, Certified Legal Intern, Florida State University, College of Law, Tallahassee, Florida 32301 on this 29th day of March, 1988.

ROYALL P. TERRY, JR.
ASSISTANT ATTORNEY GENERAL