OA. 1-2.90

App 109

XN THE SUPREME COURT OF FLORIDA
CASE NO. 74,574

IN RE.: ORDER ON PROSECUTION OF CRIMINAL APPEALS BY THE TENTH JUDICIAL CIRCUIT PUBLIC DEFENDER

/

PETITIONER PINELLAS COUNTY'S INITIAL BRIEF

ON APPEAL FROM THE
SECOND DISTRICT COURT OF APPEAL

SUSAN H. CHURUTI, County Attorney
John E. Schaefer
Assistant County Attorney
315 Court Street
Clearwater, FL 34.616
(813) 462-3354
Attorneys for Petitioner

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STATEMENT OF THE CASE AND FACTS

Petitioner, PINELLAS COUNTY, a political subdivision of the State of Florida (hereinafter PINELLAS COUNTY), appeals an Order on Prosecution of Criminal Appeals by the Tenth Judicial Circuit Public Defender of the Second District Court of Appeal. dated May 12, 1989. The Order relieves the Public Defender of the Tenth Judicial. Circuit from accepting any appellate assignments, other than from the Tenth Circuit, in appeals filed after May 22, 1989, The cited justification for the Second District Court of Appeal's Order is the large backlog of appeal cases assigned to the Tenth Judicial Circuit's Public Defender. Respondent, J. MARION MOORMAN is the Public Defender of the Tenth Judicial Circuit (hereinafter PUBLIC DEFENDER). The PUBLIC DEFENDER is charged by statute with representing indigent defendants on appeal. within the fourteen-county jurisdiction of the Second District Court of Appeal. Section 27.51, Florida Statutes (1987). The PUBLIC DEFENDER is exclusively funded by the state pursuant to Section 27.51(6), Florida Statutes (1987).

This controversy arises from unusual circumstances in that: the Second District Court of Appeal acted sua sponte as a court of original jurisdiction, making both factual findings and rulings of law. No motion was Filed by the PUBLIC DEFENDER. The PUBLIC DEFENDER did not even seek the relief entered. In fact, the PUBLIC DEFENDER is a reluctant Respondent in these proceedings and has serious reservations about the Order entered, See PUBLIC DEFENDER'S May 24, 1989 Motion for Reconsideration or Clarification filed with the Second District Court of Appeal and PUBLIC DEFENDER'S September 11, 1989 Brief of

Respondent on Jurisdiction filed with this Court. Moreover, Pinellas County was not accorded any due process. No hearings were held and no opportunity to respond was given. None of the counties affected could present, examine, or cross-examine evidence or witnesses, Accordingly, there is no record below for this Court to consider. Rather, the Second District Court of Appeal. acted as a nisi prius tribunal., making its own factual determinations alone.

The scope of the district court's Order is unprecedented. The PUBLIC DEFENDER is prohibited from handling **any** appeals arising from the Sixth, Twelfth, Thirteenth, and Twentieth Judicial Circuits. No time limit is put on the PUBLIC DEFENDER'S withdrawal from these statutory duties.

PINELLAS COUNTY is directly affected in that the district court. ordered the various circuits to appoint either the local public defender or county-paid private attorneys to be appellate counsel. Judges Schoonover and Parker recognized in their dissenting opinions that the financial burden of this Order will be directly on the pocketbooks of the counties. The Second District Court of Appeal has previously noted that the local public defenders do not. have the funding or staffing to pursue appeals. In re Order on Prosecution of Crirninal Appeals by the Tenth Circuit Public Defender, 523 So.2d 1149 (Fla. 2d DCA 1987). Furthermore, the Criminal Division Administrative Judge who makes attorney appointments in Pinellas County, has already indicated on the record and in his orders that the local public defender cannot handle appeals.

Some further background may be helpful as this controversy is not entirely new. In 1986 the PUBLIC DEFENDER filed motions to withdraw as counsel in 247 criminal appeals. At that time the Second District Court of Appeal sought the responses of all parties affected, including the counties, chief judges, public defenders, state attorneys, and attorney general's office. Subsequently, in Haggins v. State", 498 So.2d 953 (Fla. 2d DCA 1986), the district court denied the motions to withdraw ruling that withdrawal would be counter-productive. The court noted the unanimous opposition of all responses it received. Id. The court further ruled that the PUBLIC DEFENDER should file appropriate motions at the trial court level to seek to withdraw in the future. The court reasoned the trial courts were in the best position to hear the motions on a case-by-case basis. Id. at 954. In 1987, the court established a briefing schedule for the PUBLIC DEFENDER in In re Order on Prosecution of Criminal Appeals by the Tenth Circuit Public Defender, 504 So.2d 1349 (Fla. 2d DCA 1987). The appellate court also ordered all affected parties, including the counties, to show cause why the PUBLIC DEFENDER should not be discharged from the 150 oldest appeals. Id. at 1352-1353. Thereafter, in In re Order on Prosecution of Criminal Appeals by the Tenth Circuit Public Defender 523 So.2d 1149 (Fla. 2d DCA 1987), the court again denied withdrawal by the PUBLIC DEFENDER holding that withdrawal would result in further delay arid that the solution lay elsewhere. The court increased the briefing schedule of the PUBLIC DEFENDER. Id. at 1149-1150.

Two years then elapsed. On May 12, 1989, the Second District Court of Appeal entered the instant Order on Prosecution of Criminal Appeals by the Tenth Judicial Circuit Public Defender, As previously indicated, the Order was entered without a motion being filed, notice, hearing, or an opportunity to respond. On May 24, 1989, the PUBLIC DEFENDER filed his Motion for Reconsideration or Clarification. The PUBLIC DEFENDER pointed out that as a result of the Order his funding could actually be reduced by the Florida Legislature. The PUBLIC DEFENDER further set Forth in his motion that it would take approximately two years to dispose of his backlog of appeals. PINELLAS COUNTY filed its Motion for Rehearing on May 26, 1989. A number of other counties also moved for rehearing. The PUBLIC DEFENDER'S Motion for Rehearing or Clarification was denied on June 15, 1989, The counties' Motions for Rehearing were denied on July 20, 1989.

PINELLAS COUNTY filed its Notice to Invoke Discretionary Jurisdiction with this Court on August 14, 1989. PINELLAS COUNTY'S Brief on Jurisdiction was filed August 25, 1989. The PUBLIC DEFENDER'S Brief on Jurisdiction was filed September 11, 1989. Subsequently, on October 12, 1989, PINELLAS COUNTY filed its Motion to Review Appellate Court's Order Regarding Stay or Alternatively Motion for Stay Pending Review. Ihis Court granted PINELLAS COUNTY a stay pending review on October 26, 1989. This Court. stayed the Second District Court of Appeal's Order as to all circuits and counties in subsequent Orders dated November 22

and 29, 1989. This Court accepted jurisdiction on January 19, 1990. PINELLAS COUNTY is joined in this appeal by Manatee, Charlotte, Hillsborough, Lee, and Collier Counties. The Florida Association of Counties, Inc. has been granted permission by this Court to appear as amicus curiae on behalf of the counties. Oral argument has been set for Monday, April 2, 1990.

SUMMARY OF ARGUMENT

(1) 'There is no statutory authority for the Second District Court. of Appeal's Order of May 12, 1983. The statute previously relied on by this Court in Escambia County v. Behr· 384. So,2d 147 (Fla. 1980), Section 27.53(2), Florida Statutes (1977), was changed after that decision by the Florida Legislature in 1.981. County-paid appellate representation is only authorized :in capital cases nuolving conflict situations pursuant to Section 925.035(2), Florida Statutes (1987). The statutes do not contemplate long-term county funding of significant numbers of indigent criminal appeals. Such county expenditures are expressly prohibited.

(2) The Second District Court. of Appeal. exceeded its inherent judicial authority. First, the PUBLIC DEFENDER did not avail himself of the procedure previously established by the Second District Court of Appeal to seek relief" from excessive appellate case load. This demonstrates alternative methods of relief could have been utilized. Secondly, the Second District Court of Appeal acted hastily and without: demonstrating absolute necessity.

(3) The Order in question far exceeds any authority established pursuant to Escambia County v. Behr, 384 So.2d 147 (Fla. 1980). The en masse withdrawal of appellate representation is unprecedented and unauthorized by Escambia. In addition, this Court held in Escambia that the trial courts should initially make such determinations.

(4) PINELLAS COUNTY was denied any due process contrary to all established court procedures. That denial of due process was fundamentally unfair to PINELLAS COUNTY and all other counties affected.

ARGUMENT

I - THE ORDER OF THE SECOND DISTRICT COURT OF APPEAL IS WITHOUT STATUTORY AUTHORITY.

The Second District Court of Appeal argues they have the statutory authority to relieve the PUBLIC DEFENDER and appoint alternative appellate counsel. In fact, there is no such statutory authority.

The various public defenders have the obligation to represent indigent criminal defendants at the trial level pursuant to Section 27.51(1), Florida Statutes (1987). This PUBLIC DEFENDER has the further obligation to represent such defendants on appeal within the district comprising the Second District Court of Appeal. Section 27.51(4), Florida Statutes (1987). This trial and appellate representation is expressly funded by the state pursuant to Section 27.51(6), Florida Statutes (1987) which states, "A sum shall be appropriated to the public defender of each judicial circuit enumerated in subsection (4) for the employment of assistant public defendants and clerical employees and the payment of expenses incurred in cases on appeal" (emphasis added). See also Section 27.5301, Florida Statutes (1987).

The only exception to this rule is if the local public defender cannot provide adequate representation due to a conflict of interest between two or more defendants. Then county-paid substitute counsel can be appointed by the trial court pursuant to Section 27.53(3), Florida Statutes (1987). Those attorneys are selected from the list of available attorneys enumerated in

Section 27.53(2), Florida Statutes (1987). On appeal., county-paid private attorneys can only be appointed in capital cases in conflict situations as set. forth in Section 925.035(2), Florida Statutes (1987). 'There are no other statutory sections which provide for county-paid attorneys to handle appeals.

PINELLAS COUNTY acknowledges these arguments were previously presented to and rejected by this Court in Escambia County v. Behr, 384 So.2d 147 (Fla. 1980). This Court held that the trial courts have the option of appointing the public defender or private counsel. Id. at 150. However, the statutory section relied on by this Court in Escambia, Section 27.53(2), was changed by :he Florida Legislature :in 1981. The statute effective in Escambia read as follows:

> (2) In addition, any member of the bar in good standing may be appointed by the court to, or may register his or her availability to the public defender of each judicial circuit for acceptance of, special assignments wi.thout salary to represent insolvent defendants. Such persons shall be listed and referred to as special assistant public defenders and be paid a fee arid costs and expenses. Such fee ard costs and expenses shall. be fixed by the trial judge and shall be paid in the same manner as counsel fees are paid in capital cases or as otherwise provided by law. In addition, defense counsel may be assigned and paid pursuant to any existing or future local act or general act of local application.

Section 27.53(2), Florida Statutes (1977) (emphasis added). As amended, the statute now provides:

> (2) Any member of the Florida Bar, in good standing, may register his availability to the public defender of any

> judicial circuit for acceptance of special assignments without salary to represent indigent. defendants. Such persons shall be listed and referred to as special assistant public defenders and be paid a fee and costs and expenses as provided in s. 925.036.

Section 27.53(2), Florida Statutes (1987). Accordingly, the only statutory section that referred to non-capital cases was stricken. Certainly this legislative change was made in response to this Court's 1980 decision in Escambia and reflects the Florida Legislature's intention that. counties only pay for indigent representation in limited circumstances, conflict cases and capital conflict cases on appeal.

This meshes with what no one denies is a state-controlled and state-financed criminal justice system as set up by statute and Article V of the Florida Constitution. However, if the Order in question is allowed to stand, a significant financial burden will be shifted from the state to local counties. Judges Schoonover and Parker both recognized this in their dissents, Judge Parker stated:

> I believe the legislature never considered the situation now engendered by the majority where private counsel, funded by a county, will handle the appellate public defender's substantial incoming case load for an extended period of time. The financial impact which the majority's order will have upon the counties will be considerable, and the counties, at the very least, deserve an opportunity to be heard before such a mandate is issued.

The Order requires long-term funding by the counties of all indigent. criminal appeals arising out of' their respective counties. This is prohibited by law. Specifically, Section 27.54(2), Florida Statutes (1987), provides:

> (2) No county or municipality shall appropriate or contribute Funds to the operation of the offices of the various public defenders, except that a county or municipality may appropriate or contribute funds to pay the salary of one assistant public defender whose sole function shall be to defend indigents charged with violations of special laws or with violations of ordinances of the county or municipality.

Therefore, not only is the Order not authorized by statute, it is prohibited.

PINELLAS COUNTY finds itself in an intractable position, All the counties are caught between a legislature that will not fund a state obligation and the courts that seek to transfer that obligation onto the counties. PINELLAS COUNTY does not arrest criminals. Sheriffs, municipal police, and state police officers do. PINELLAS COUNTY does riot prosecute those defendants. The State does. PINELLAS COUNTY does not imprison defendants sentenced to prison. The State does, PINELLAS COUNTY does not seek to carry out: sentences of death. The State does. Nonetheless, within that system, PINELLAS COUNTY is being forced to fund the appeals of hundreds of indigent defendants each year for an indefinite and unknown period of time.

Finally, PINELLAS COUNTY would point out to the Court that the 1989 Florida Legislature passed newly-enacted Section 925.037, Florida Statutes (1989). This legislation seeks to appropriate some rnoney to reimburse counties for "conflict case appointments". The legislation is unclear, and its effect on this case uncertain, as it cannot be determined if counties can seek reimbursement for appeals' representation as ordered by the

Second District Court of Appeal, This will be discussed further in Petitioner's Reply Brief if necessary.

II. THE MAY 12, 1989 ORDER IS BEYOND THE INHERENT AUTHORITY OF THE SECOND DISTRICT COURT OF APPEAL.

Alternatively, the Second District Court of Appeal argues that even if the statutory provisions are inadequate, it has the inherent authority to protect the rights of indigent defendants and provide for alternative counsel, Again this is mistaken.

The doctrine of inherent judicial power is one that can be invoked only in situations of "clear necessity" and where "absolutely essential" to the performance of judicial functions. Makemson v. Martin County, 491 So.2d 1109, 1113 (Fla. 1986), cert. denied, 479 U.S. 1043 (1987); Rose v. Palm Beach County, 361 So.2d 135, 138 (Fla. 1978). It is a power to be used with extreme caution. Rose, supra at 138. Furthermore, the burden is on the issuing court to demonstrate the clear arid absolute necessity. Rose, supra at 139.

There has been no such showing of absolute necessity here First, it must be pointed out that the Second District: Court of Appeal in Haggins v. State, 498 So.2d 953 (Fla. 2d DCA 1986), gave the public defender a procedure to seek relief from excessive appellate case load. The court ruled the PUBLIC DEFENDER should file motions to withdraw in the various circuit courts from which the appeals were taken as those courts were better able to evaluate the situation on a case-by-case basis. Haggins, supra at 954. 'Those motions were not filed. One of the

unanswered questions in this appeal is why the PUBLIC DEFENDER, if there was an emergency backlog of cases, did not avail himself of this procedure. Also unanswered is why the Second District Court of Appeal acted without requiring the PUBLIC DEFENDER to follow the procedure it ordered. Both Judges Schoonover and Parker recognized this anomaly in their dissents. PINELLAS COUNTY has been denied the opportunity to ask those questions.

Secondly, the Second District Court of Appeal acted precipitously. No motion was filed by the PUBLIC DEFENDER. The PUBLIC DEFENDER did not seek the relief entered. No heaving was held and opportunity to respond was denied. Based on the PUBLIC DEFENDER'S general letter seeking legislative help, one apparently sent. to many governmental agencies, the Second District Court of Appeal sua sponte took this extraordinary action.

The district court also cites White v. Board of County Commissioners of Pinellas County, 537 So.2d 13'76 (Fla. 1389) and Makemson, supra, in support of its Order. Both cases however involve private counsel appointed at the trial level in capital cases because of' conflict., The counties did not contest their duty to pay the attorneys pursuant to statute. The only issue was how much they would be paid. Here, the Second District Court of Appeal has imposed a new obligation on county government. Shifting financial duties from one branch of government to another is not authorized by inherent judicial power. Gideon v. Wainwright, 372 U.S. 335 (1963), is also distinguishable. The

district court forgets that the United States Supreme Court held the states have an obligation to provide counsel for indigent defendants in certain cases.

This Court stated in Petition of Florida Bar, G1 So.2d 646 (Fla. 1952), that, "Creating officers or positions and allocating public funds to support them, are clearly legislative prerogatives that the judiciary has no right to interfere with, absent specific authority from the legislature." 61 So.2d at. 64'7. The Second District Court of Appeal seeks to go beyond that prohibition and reallocate funds from one governmental entity to another. 'This violates basic separation of powers of government.

Ihe Second District Court of Appeal acted hastily, did not proceed with extreme caution, and has not rnet the burden of demonstrating absolute necessity, The court's Order impinges on the doctrine of separation of powers. A new funding obligation cannot. be imposed on PINELLAS COUNTY under the guise of inherent judicial authority. The remedy is not to force PINELLAS COUNTY to fund criminal appeals. Rather, the proper remedy is to force the state to rneet its obligations imposed by statute.

III. THE MRY 12, 1989 ORDER FAR EXCEEDS ANY AUTHORITY VESTED BY THIS COUH'T IN ESCAMRIQ COUNTY V. BEHR, 384 So. 2d 147 (Fla. 1980).

Even if this Court holds the district court acted within statutory and inherent judicial authority, the scope of the May 12, 1989 Order far exceeds that envisioned by this Court in Escambia County v. Behr, 384 So.2d 147 (Fla. 1980). Escambia, decided 10 years ago, is the only time this Court has considered the :issues herein.

The facts in the two cases consolidated for appeal in Escambia were far narrower. In the case arising from the First District Court of Appeal, the issue was whether or not the local public defender could withdraw from six non-capital felony cases due to excessive case load. State ex rel Escambia County v. Behr, 354 So.2d 974 (Fla. 1st DCA 1978), aff'd sub nom., Escambia County v. Behr, 384 So.2d 147 (Fla. 1980). In the case arising from the Third District Court of Appeal, the issue was whether or not the local appellate public defender could withdraw from representation in one criminal indigent appeal. Dade County v. Baker, 362 So.2d 151 (Fla. 3d DCA 1978), rev'd sub nom. Escambia County v. Behr, 384 So.2d 147 (Fla. 1980). The Court ultimately held that the trial courts in those cases had the discretion to appoint private counsel. 384 So.2d at 150. As previously indicated, however, the decision was predicated on 1977 law. In addition, in so ruling this Court adopted the opinion and rationale of the dissenting opinion of Judge Hubbart in Dade County, supra. 384 So.2d at 150. Judge Hubbart, while recognizing the statutory duty of the public defenders to represent insolvent defendants on appeal, also argued that the counties are required to fund part of the delivery of legal services to the poor in criminal cases. Dade County, supra at 159-160. However, Judge Hubbart markedly qualified his opinion as follows:

> The order under review permits the public defender to withdraw as counsel, and appoints a special assistant public defender to represent a particular insolvent defendant on appeal in a single felony case. It does not allow the public defender

> to withdraw en masse from all his insolvent criminal appeals arising out of Dade County and appoint private counsel to take over such cases. Nor is there any showing on this record that this has been accomplished in whole or in part in prior cases. If it did, an entire different question would be presented. To cast this case in such dramatic terms is to ignore the plain language of the order under review.

Id, at 159 (emphasis added). In adopting the opinion of Judge Hubbart, this Court recognized ,this important distinction and qualification

An en masse withdrawal by the public defender, however, is precisely what the Second District Court of Appeal proposes to do in the instant case which contradicts the holding, rationale, and intent of this Court's decision in Escambia County. While it was reasonable to conclude under 1977 law that the counties could fund part of the appeals process in a few cases, Dade County, supra at 160, it is not reasonable now to conclude the counties must fund all appeals for an undetermined period of time.

Unquestionably the impact on PINELLAS COUNTY will be significant. The PUBLIC DEFENDER of the Sixth Judicial Circuit in and for Pinellas and Pasco Counties has estimated in other court documents that he generates 200-300 :indigent appeals per year from PINELLAS COUNTY alone. Pursuant to Section ***925.036***(2)*(e)*, Florida Statutes (1987), the financial impact on PINELLAS COUNTY would reasonably exceed $500,000,00 per year. Moreover, pursuant to the decisions in White and Makemson there really is no statutory cap and the potential liability is virtually unlimited. The unknown and undetermined length of time

for these expenditures is particularly troublesome. These constitute unfunded liabilities for which PINELLAS COUNTY cannot reasonably plan or budget. This at a time when PINELLAS COUNTY is under heavy financial pressure in areas of growth management, roads and transportation, and environmental concerns.

Cumulatively, the financial burden on Pasco, Pinellas, Manatee, Sarasota, DeSoto, Hillsborough, Charlotte, Collier, Glades, Hendry and Lee Counties will be enormous. It is undisputed these funds are not budgeted for by the counties. See In re Order on Prosecution of Criminal Appeals by the Tenth Circuit Public Defender, 523 So.2d 1149 (Fla. 2d DCA 1987).

Furthermore, this Court ruled in Escambia that the trial courts have the discretion to appoint private counsel. 384 So. 2d at 150. This also is in accordance with the concurring opinion of Justice England in Escambia to the effect that appellate representation should be resolved at the outset with trial judges holding appropriate hearings. 384 So.2d at 150. In fact, this view was adopted by the Second District Court of Appeal in Haggins, supra. Now the Second District Court of Appeal has ignored that mandate as well and acted directly as a nisi prius tribunal. This violates the Court's ruling in Escambia as well as general principles of law. Newberry v. State, 296 So.2d 586 (Fla. 1st DCA 1974).

IV. THE MAY 12, 1989 ORDER DENIED PINELLAS COUNTY DUE PROCESS AND IS FUNDAMENTALLY UNFAIR.

It is undisputed PINELLAS COUNTY was denied any due process in this matter. PINELLAS COUNTY was able to file a Motion for

Rehearing and now pursues this appeal, However, PINELLAS COUNTY was denied a hearing and the opportunity to respond or present or cross-examine any evidence. Surely due process is granted to all real parties in :interest in any court proceedings. Justice England stated in Escambia that, "Clearly, the counties are the only real parties :in interst in such a proceeding and they should be able to challenge the evidence offered to support a claim of excess caseload." 384 So.2d at 150. Ironically, the Second District. Court of Appeal endorsed Justice England's view in Haggins and stated:

> If the public defender deems it necessary to seek to be relieved from other appeals or from the appointment to new appeals, he should file appropriate motions to withdraw in the various circuit courts frorn which those appeals are taken. The circuit courts can better determine on a case-by-case basis the possible prejudice to the defendants resulting from any delays, and those courts have the facility to receive evidence concerning such matters as the ability of the public defender to handle his caseload and the means by which substitute counsel, if appointed, can be compensated. The following quotation from Justice England's concurring opinion in Escambia County v. Behr, 384 So.2d 147, 150 (Fla. 1980) seems equally applicable to both trial and appellate representation:
>
> > lhe problem of excessive caseload in the public defender's office should be resolved at. the outset of representation, rather than at. some later point in a trial proceeding. Public defenders at the tirne of their appointment to a new case, are .in the best position to know whether existing caseloads render unlikely their ability to continue to conc1usion a new representation. If that prospect exists, they should so advise the trial court before undertaking new

> commitments. Trial judges can then conduct a hearing, :in which the county should be entitled to appear, to evaluate the caseload claim and to determine whether private counsel should be assigned to serve as a special. assistant public defender.

Haggins, supra at 954. As :indicated, the district court noted the applicability of this view to trial and appellate representation. Id.

However, tlie majority opinion of this Court in Escambia stated, "The court does not have to make any prerequisite findings or allow the county an opportunity to be heard before appointing private counsel." 384 So.2d at 150. That statement was recently cited by the First District Court of Appeal as justification for denying counties tlie opportunity to be heard. Terry v. State, 54.7 So.2d 73.2, 713 (Fla. 1st DCA 1989). PINELLAS COUNTY respectfully requests this Court to reconsider that holding now. Given the magnitude of the current problem and amounts of money involved, tlie counties must be heard. Counties routinely appear in criminal trial courts and challenge matters such as costs that are taxed against them. If counties receive notice and appear at hearings for such mundane matters, surely these rights rnust be accorded here.

In addition, no motion was filed by the PUBLIC DEFENDER. On the basis of a letter and information known only to the Second District Court of Appeal, the court took this unprecedented action. The PUBLIC DEFENDER did not seek the relief entered. Even now the PUBLIC DEFENDER is a reluctant Respondent: in this action who argues independent counsel should be appointed to

represent: the Second District Court of Appeal. See Brief of Respondent on Jurisdiction dated September 11, 1.989.

Therein lies part of the problem with this appeal. The issues are not well-defined or ready For appellate resolution. This is precisely because there was no trial court proceeding where factual and legal determinations could be made. Issues on appeal. would then be raised as in any other case. The Second District Court of Appeal's hasty action and denial of PINELLAS COUNTY'S due process only aggravated this.

The order of the Second District Court of Appeal is fundamentally unfair to PINELLAS COUNTY and all counties similarly affected. How far can the courts go in transferring state obligations ta county government? For instance, given the state's current prison overcrowding crisis, can the counties be forced to build and house sentenced felony prisoners? Unfortunately, the counties have no control over this particular situation. The counties cannot. influence the briefing capabilities and case load of the PUBLIC DEFENDER. The counties do not know when the district court's Order. will be lifted, cannot influence the amount of attorney fees that: will be assessed against. them, and in many counties simply do not. have the money. The Second District Court of Appeal did not find an appropriate solution, This issue must. be addressed again.

CONCLUSION

PINELLAS COUNTY respectfully prays that this Court overturn the May 12, 1989 Order of the Second District. Court of' Appeal. This matter should be remanded to the trial courts for evidentiary hearings.

Respectfully submitted,

SUSAN H. CHURCH, County Attorney
John E. Schaefer
Assistant County Attorney
315 Court Street
Clearwater, FL 34616
(813) 462-3354
SPN 00250668
Fla. Bar. No. 352241
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the Foregoing has been furnished by U.S. Mail. to J. MARION MOORMAN, Public Defender, Tenth Judicial Circuit, Polk County Courthouse, P.O. Box 9000, Drawer PD, Bartow, FL 33830 this 6th day of February, 1990.

JOHN E. SCHAEFER
Assistant County Attorney

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