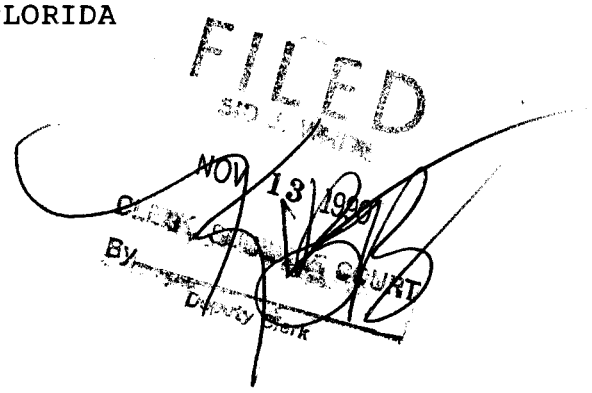
IN THE SUPREME COURT OF FLORIDA
Case No. 76,417



JERRY W. GOSBY,

Petitioner,

vs.

THE THIRD JUDICIAL CIRCUIT OF FLORIDA, and JUDGE ROYCE AGNER, et al.,

Respondents.
_____/

RESPONDENTS' ANSWER BRIEF ON THE MERITS

DISCRETIONARY REVIEW OF A DECISION OF THE DISTRICT COURT OF APPEAL, STATE OF FLORIDA

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TABLE OF CONTENTS

TABLE OF CITATIONS

JURISDICTIONAL STATEMENT

This honorable court has required the respondent to file a brief on the merits in this cause based upon the certification of a conflict by the District Court of Appeal, First District, State of Florida, in the case of Gosby v. The Third Judicial Circuit and Judge Royce Agner, et al., DCA Case No. 90-1141 [1990]. The First District avers that a conflict exists between the Gosby case, supra, and the decision of the District Court of Appeal, Fifth District, State of Florida, in Lane v. Kaney, 557 So.2d 210 [Fla. 5th DCA 1990]. The purpose of this brief is to state the respondents' reasons for not acting on the Mr. Cosby's petition for name change.

STATEMENT OF THE CASE AND OF THE FACTS

Respondent, Hon. Royce Agner, Circuit Judge of the Third Judicial Circuit of Florida, accepts the petitioner's statement of the case and of the facts as set forth in his initial brief on the merits filed in this cause except to

the extent that said statement contains legal and/or factual argument.

SUMMARY OF THE ARGUMENTS

An incarcerated inmate has no absolute, constitutional right to a name change. Ison v. Circuit Court, 437 So.2d 732 [Fla. 2d DCA 1983] Nor does the inmate have a constitutional or statutory right to force a circuit judge, considering a name change petition, to order the inmate transported to court for a hearing on the petition.

The circuit court, on the other hand, has the authority to require [a] a hearing on a petition for name change and [b] the presence of the petitioner at that hearing. Sec. 68.07[1] and [3], Fla. Stat. [1975]. It follows, therefore, that a circuit judge has the authority not to entertain an incarcerated inmate's name change petition since the inmate cannot appear in court for a hearing on the petition due to his incarceration.

ARGUMENT

Point I. The Privilege Of A Name Change Is Created By Statute And May Be Denied By the Circuit Court Upon Proper Grounds.

Jurisdiction to change a person's name is vested in the broad, plenary, discretionary authority of the "chancery courts" of Florida. Sec. 68.07[1], Fla. Stat. [1975].

Sec. 68.07, Fla. Stat. [1975] affords a person residing in Florida the privilege of seeking a name change in circuit court in the county wherein he/she resides. The

petition must be verified and set forth certain information in detail. Sec. 68.07[2], Fla. Stat. [1975]. A name change is a very serious matter and can be denied if "...fraudulent or wrongful purposes are involved." Ison v. Circuit Court for the Third Judicial Circuit of Florida, 437 So.2d 732 [Fla. 2d DCA 1983]; Sec. 68.07[2][j], Fla. Stat. [1975]. In Ison, supra, the court recognized that "problems for the Department of Corrections and law enforcement..." created by the name change request can, if substantiated, be a basis for denial of the petition. Ison, supra, 437 So.2d at 733. [In Ison, sufficient problems created by the name change request were not established.] In the case at bar, the Florida Department of Corrections has gone on record as affirming the very real chaos, confusion and danger to public safety and the orderly administration of justice which would be created by allowing inmate name changes merely upon request. Thus, Tricia Redd, Assistant Admission And Release Administrator, Department of Corrections, states by sworn affidavit in this cause in part:

> Historically, inmates who are received by the Department of Corrections retain the name that they were arrested under and subsequently prosecuted under. This allows an orderly tracking of the offender throughout his criminal justice stay and allows a reference point on administrative and judicial matters to accurately identify the offender and his past history. In 1988, the Department received approximately 7,000 corrected and amended orders which had a direct bearing on the incarceration of the offender. Correspondence and

> telephone calls are received daily from victims and families of victims and, by law, the Department is required to notify victims when inmates are released, which is currently averaging over 3,000 per month. The impact of changing the name and requiring the Department to use it in the daily performance of its duties, when other agencies and individuals are not required to do so, becomes painfully obvious in attempting to identify the offender. Additionally, in the last year alone the Department received over 4,000 requests to file detainers on offenders who probably were identified by name through arrest reports or automated criminal histories. If only the Department of Corrections changes committed names and records, it would create very real problems in accurately identifying how many murderers, rapists or violent individuals would be released into society simply because a name change prevented successful identification of an offender and a detainer was not filed.
>
> From a security stand point the Department of Corrections has an extremely large number of inmates that are identified "Special Review" and are potentially dangerous to other inmates as well as private citizens, and who have in the past demonstrated through acts of threats the desire and ability to bring harm to a person. The Department has a moral and legal obligation to protect these individuals and that obligation would be severely hampered if the changing of names is mandated after incarceration begins.

[See Exhibit A attached to Petitioner's Exhibit A7 attached to his Petition for Writ of Mandamus.]

But a more fundamental reason exists to deny the petition for writ of mandamus in this case.

Point II. A Circuit Judge Is Not Required To Order That An Inmate Be Transported To Court For A Hearing On The Petition For Name Change

Section 68.07[2][3], Fla. Stat. [1975] provides that "...the hearing on the petition may be immediately after it is filed." Thus, the circuit court is authorized if not required to hold a hearing on a name change petition. And since the court must determine "[t]hat the petition is filed for no ulterior or illegal purpose...", the court certainly has the authority to require the petitioner's physical presence at the hearing. Sec. 68.07[2][j], Fla. Stat. [1975] But an inmate has no right to force a circuit judge by petition for writ of mandamus to order him transported to the hearing. Realizing this, on August 8, 1989, Judge Agner wrote the petitioner advising that:

> "... your matter is a civil proceeding.
> It is not a Court action between you and
> the State of Florida or the Department
> of Corrections or any State agency.
> Second, name change petitions are
> not granted without a hearing.
> A hearing will be difficult if not
> impossible for you to obtain due to
> the fact that you are confined under
> a sentence for a crime.
> **********
> Repeating, unless you can arrange to
> appear for a hearing, there is no procedure
> known to me whereby the Court can correctly
> take any further action with regard to
> your case.

[See Appendix to Petition for Writ of Mandamus marked "A6."]

A decision not directly on point but instructive is Dade County v. Womack, 285 So.2d 441 [Fla. 3rd DCA 1973] where an indigent parent sought a writ to force Dade County to pay the cost of publication of the filing of his/her petition to change the name of minor children when the

petitioner could not serve the other parent personally. The court of appeal said that the county could not be required "...to pay the cost of publication for indigent parents who wished to change the names of their children, when they could not obtain personal service of process upon the missing parent." Womack, supra, 285 So.2d at 441. See also Bower v. Connecticut General Life Insurance Company, 347 So.2d 439 [Fla. 3rd DCA 1977].

By the same token, Judge Agner should not and cannot be required to force the taxpayers of Dixie County, Florida, to pay the petitioner's transportation expenses to come to court. Nor should he be mandated to require the Department of Corrections or the Sheriff of Dixie County to transport him to the courthouse at their expense.

The name change petition has nothing to do with the judgment and sentence for which the petitioner is incarcerated. It is not related to his incarceration by the Florida Department of Corrections. It does not concern a fundamental constitutional right to access to the courts as contemplated by Art. I, Declaration of Rights, Sec. 21, Fla. Const. [1968]. See Bounds v. Smith, 430 U.S. 817 [1977] and the limitations of that decision as set forth in Hooks v. Wainwright, 775 F.2d 1433,1436 [11th Cir. 1985]. It [obtaining a hearing on a name change petition and appearing personally at the hearing] is a privilege that those who violate the law forego temporarily during the time they are paying society for their crimes.

The petitioner may claim that he is in a "Catch 22" situation in this instance since he would be able to attend a hearing but for his incarceration. He may be right. But it is a dilemma of his own making. An indigent, law abiding citizen cannot force a county to provide him/her with free transportation to a name change hearing, according to the reasoning of the Womack decision, supra. Certainly a convicted felon should not enjoy a more favored person status in the premises.

The respondent acknowledges that Sec. 944.17[8], Fla. Stat. [1974] provides:

> If a state prisoner's presence is required in court for any reason after the sheriff has relinquished custody to the department [of corrections], the court shall issue an order for the sheriff to assume temporary custody and transport the prisoner to the county jail pending the court appearance...

But this statute does not lend itself to the present case. Instead it is meant to cover those situations where an inmate's presence is necessary to adjudicate matters related to either his/her pending charges, judgment and sentence or relationship to the Department of Corrections. See State ex. rel. Wainwright v. Booth, 291 So.2d 74 [Fla. 2DCA 1974]. If any more liberal interpretation of this statute were afforded inmates such as the petitioner, they [incarcerated state prisoners] could, under the guise of "access to the courts" reduce the sheriff's offices of Florida to their own taxpayer subsidized taxi service

nothwithstanding the nature of the purely civil claims they themselves initiate.

CONCLUSION

For the reasons set forth above, the court is requested to [a] deny the petition for writ of mandamus and [b] grant respondent such other and further relief as is deemed appropriate in the premises.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing answer brief of respondent on the merits has been furnished petitioner, Mr. Jerry W. Gosby, Inmate No. 038533, Cross City Correctional Institution., Post Office Box 1500, Mail Box #280, Cross City, Florida 32628-1500, and Assistant Attorney General Jason Vail, the Office of the Attorney General of Florida, the Capital Building, Tallahassee, Florida 32399-1050, by United States mail delivery, this 13th day of November, 1990.

Respectfully Submitted,

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