OIA 6-7-91

IN THE SUPREME COURT OF FLORIDA

JERRY WESLEY GOSBY,

Petitioner,

vs. Case No. 76,417

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

Respondents.
_____/

RESPONDENTS' SUPPLEMENTAL BRIEF

ON DISCRETIONARY REVIEW FROM THE FIRST DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA WHICH DENIED PETITION FOR WRIT OF MANDAMUS

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ISSUE
(as presented by petitioner)

May a circuit judge, before it will rule on a prison inmate's petition for name change, require the prisoner's presence at a hearing without providing the prisoner the means to appear,thereby effectively abating the inmate's petition until he is no longer incarcerated?

(as presented by respondents)

Was Judge Agner justified in declining to act on the name change petition in this instance given Mr. Gosby's status as an incarcerated felon, the virtual frivolous nature of his petition, the inconvenience that would be caused to law enforcement, the conflict between the relief sought and DOC regulations and the petitioner's failure to exhaust available administrative remedies?

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STATEMENT OF THE CASE AND OF THE FACTS

a) Nature of the Case:

The respondents agree with the petitioner's version of the nature of the case including the statement of jurisdiction as set forth on page 1 of his supplemental brief under the title "preliminary statement and jurisdiction." In addition, we note that it does not appear that the petitioner attempted to exhaust the administrative remedies available to him prior to filing his pleadings in the circuit court, the district court of appeal and this honorable court.

b) Course of the Proceedings Below:

The respondents agree with the petitioner's rendition of the course of the proceedings below as set forth on pages 1-3 of his supplemental brief.

c) Disposition in the Lower Tribunal:

The respondents agree with the petitioner's rendition of the disposition in the First District Court of Appeal and the Circuit Court as set forth on pages 1-3 of his supplemental brief.

d) Statement of the Facts:

The respondents agree with the petitioner's statement of the facts as set forth on pages 1-3 of his supplemental brief, except that additional facts, which will be related below, are relevant as well.

SUMMARY OF THE ARGUMENT

Inmate Gosby's argument -- that Article I, Declaration of Rights, §21, Florida Constitution, and §944.17(8), Fla. Stat. (1989), compelled the trial judge to order his attendance at taxpayers' expense at a hearing on his petition for a name change -- is as wrong and self-serving as the son who kills his parents then seeks compassion because he's an orphan.

The right of an inmate to be present physically in court is not absolute in Florida. On the contrary, it is limited for a duly incarcerated inmate who by virtue of his own criminal conduct suffers the temporary loss of his liberty.

A petition for name change is a very serious matter which easily can be the subject of fraud and misuse. The authority to grant name changes is vested in the sound discretion of the circuit court and must be exercised with great care in order to protect the public pursuant to the standards established by the Florida Legislature in §68.07, Fla. Stat. (1989). The trial court's decision in this regard should be reversed only in instances where a clear abuse of discretion is demonstrated.

Circuit Judge Royce Agner, in the exercise of his constitutional authority, requires that a person seeking a name change be present and placed under oath in court so that he can determine, in an evidentiary hearing (see §68.07[3], Fla. Stat. [1989]) whether the request is made according to law and for no ulterior or illegal purpose. That is a perfectly lawful requirement. The judge was not required in this case, however, to order the sheriffs of Dixie and/or Taylor Counties to transport Mr. Gosby to court at taxpayers' expense where the record indicated that the purpose for the name change (in order for Mr. Gosby to be able to modify his prison garb and correspondence to reflect his newly adopted name) was (a) frivolous, (b) in contravention of legitimate Department of Corrections (DOC) policy, (c) expensive and inconvenient to law enforcement and (d) a matter which could have been sought administratively at the prison but apparently was not.

Respectfully, the Supreme Court should cautiously consider rendering, and should weigh the security risks to and financial strain upon those who will have to implement a decision giving to Florida's 40,000 felons that which the average law abiding, tax paying citizen lacks -- unfettered access to the courts of this state.

Finally, the Supreme Court should refuse to review Mr. Gosby claims because he did not exhaust his administrative remedies before filing suit in circuit court.

ARGUMENT

Introduction

> "The primary purpose of sentencing is to punish the offender. Rehabilitation and other traditional considerations...must assume a subordinate role."

(Fla. R. Crim. P. 3.701[b][2] as adopted by the Supreme Court of Florida.)

> "The Legislature has 'withdrawn' from its constitutional obligation to pay for the court system. That...leaves the burden on the counties which sometimes have to raise property taxes for the courts."
>
> Hon. Phil Lewis, Member,
> Florida Supreme Court Judicial
> Counsel

(The Florida Bar News , Vol. 18, No.7, April 1, 1991, page 6)

Former State Senator Phil Lewis is correct. The Florida Legislature has failed in its constitutional obligation to properly fund the judicial system. That system and the non-judicial agencies (such as the clerks of court and the sheriffs) which support it are straining under the load. Matters will be made much worse and the Supreme Court's stated purpose of Mr. Gosby's period of incarceration will be contradicted if the judges of the Third Judicial Circuit of Florida are forced to order the sheriffs of the seven counties which comprise the Circuit to transport Mr. Gosby and literally thousands of his fellow inmates to and from the courthouses every time they insist upon a name change or similar privilege.

Point I.

(This argument is in response to petitioner's point I on appeal.)

> Inmate Gosby is entitled, per §68.07, Fla. Stat. (1989), to seek a name change by filing a verified petition in circuit court. However, the circuit court has the authority to expect a name change applicant to be present in court regarding his/her petition before it is ruled upon.

Respondents agree that a Florida inmate has the right, per Article I, Declaration of Rights, §21, Florida Constitution, to seek a name change by filing an appropriate petition in the circuit court where the inmate is incarcerated. Isom v. Circuit Court of the Tenth Judicial Circuit, 437 So. 2d 732 (Fla. 2d DCA 1983). However, a circuit judge considering that petition must do so with great care and with the public interest, as well as the rights of the applicant, in mind. Isom, supra.

Jurisdiction "...to change the name of any person..." is vested in "...the chancery courts..." of Florida. §68.07(1), Fla. Stat. (1989); See also Art. V, §5(b), Fla. Const. Common sense dictates that the process is ripe for abuse. Thus, the Legislature has

established a detailed procedure which must be followed carefully by the trial court before a name change may be granted.

Initially, the applicant must file a verified (sworn) petition setting forth detailed information about his/her personal background including marital status, offspring, occupations and places of employment over a five year period, prior criminal record, participation in prior bankruptcy proceedings, the existence of money judgments, the use of other names, previous name change applications, etc. §68.07(2)(a)-(i), Fla. Stat. (1989).

Thereafter, a hearing on the petition appears to be mandatory according to the plain wording of the statute. §68.07(3), Fla. Stat. (1989) provides that "(t)he hearing on the petition may be immediately after it is filed."

The hearing requirement necessarily compels a conscientious trial judge to:

(a) look beyond the petition itself;

(b) question the petitioner directly if in the the exercise of the circuit court's discretion that is appropriate; and,

(c) consider any other relevant evidence to independently determine if the petition:

> ...is filed for no ulterior or illegal purpose and granting it will not in any manner invade the property rights of others, whether partnership, patent, good will, privacy, trademark, or otherwise.

§68.07(2)(j), Fla. Stat. (1989). Whether to grant or deny the petition is clearly within the sound "...discretion..." of the trial court.. Lazow v. Lazow, 147 So. 2d 12, 14 (Fla. 3rd DCA 1962).

Disagreeing with this interpretation of the statute, Mr. Gosby cites In Re. Keppro, 573 So.2d 140 (Fla. 1st DCA 1991) and other cases for the proposition that a verified name change petition submitted by an inmate sufficient on its face is not a serious matter and "... should generally be granted unless the change was sought for wrongful or fraudulent purposes." In Re Keppro, supra, 573 So.2d at 142 interpreting Isom v. Circuit Court of the Tenth Judicial Circuit, 437 So.2d 732 (Fla. 2d DCA 1983).

This court is requested not to adopt Mr. Gosby's interpretation of Keppro and Isom. It is inconsistent to say the least for the Legislature to require the circuit judges of this State to assume the awful responsibility of preventing injury to the public by those who would misuse the name change process only to have Mr. Gosby ask this court to trivialize that process by removing it from the careful scrutiny of the circuit court. If the trial court is restricted to an analysis of the verified petition only, how can it be expected to fulfill its statutory obligation to determine whether the petition was "...filed for no ulterior or illegal purpose and granting it will not in any manner invade the property rights of others..?"[1]

For the reasons set out above, respondents contend that Judge Agner was justified, in the course of his discretionary authority, in expecting the presence of the petitioner in court before ruling on the name change petition.

Point II.

Mr. Gosby had no absolute right to be transported to court regarding his petition for a name change notwithstanding the provisions of §944.17(8), Fla. Stat. (1989).

(This argument is in response to petitioner's Point II on appeal.)

Mr. Gosby concedes, on page 8 of his supplemental brief that "(a)lthough a litigant cannot be denied access to the courts simply because he or she is an inmate, the right of access does not necessarily give an inmate the right to be physically present at judicial proceedings." Thus, in Stone v. Morris, 546 F.2d 730 (7th Cir. 1976), the court held that an inmate had no absolute right to appear at trial in a civil proceeding even though he was a party thereto. In Moeck v. Zajackowski, 541 F.2d 177 (7th Cir. 1954) the court held that a prisoner lawfully committed has no constitutional right to be produced as a witness in his own civil rights action. See also Brown v. Sheriff of Broward County, 502

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1 Mr. Gosby cites In Re. Hooper, 436 So. 2d 401 (Fla. 2d DCA 1983) for the proposition that "(i)f the allegations (of the petition) are true, the court must grant the petition." This was not a prisoner name change case, but one wherein a divorced mother wished to reinstate her birth-given name. The trial court apparently denied the request because the mother would then have a name different from her children. The appellate court determined that this would not be a valid basis for denial. In the case a bar, Judge Agner was not confronted with a law abiding mother who wished to assert her right to her birth name -- but a convicted felon whose motives reasonable men/women should suspect. Under the circumstances, we trust this court will recognize the difference and respect the trial court's exercise of more than usual caution in the premises.

So.2d 88 (Fla. 4th DCA 1987). Mr. Gosby admits further that "(w)hether to permit a prisoner/litigant to be physically present in court is within the trial court's sound discretion." (See petitioner's supplemental brief at 8 citing Price v. Johnston, 334 U. S. 266, 284, 285 [1948].) Finally, Mr. Gosby notes correctly that a "balancing test" is used "...in deciding whether the right to access in a particular case requires an inmate litigant's personal appearance in court." (See petitioner's supplemental brief at 8.) In balancing the equities, the court should look to:

> (c) costs and inconvenience of transporting a prisoner from his place of incarceration to the courtroom, any potential danger or security risk which the presence of a particular inmate would pose to the court, the substantiality of the matter at issue, the need for an early determination of the matter, the possibility of delaying trial until the prisoner is released, the probability of success on the merits, the integrity of the correctional system, and the interests of the inmate in presenting his testimony in person rather than by deposition.
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> **********
> (t)he risk and danger of escape; the need for expedited disposition of the case; costs to the state and the defense; inconvenience to the state, defense and the court; the availability of transportation without court order; the nature of the hearing, the recommendations, policies, and standard procedures of the Department of Corrections; whether oral argument is generally accorded others without motion; the impact of court-ordered transportation and lodging on the state and the sheriff; and any other relevant factors. (e.s.)

Brown v. Sheriff of Broward County, supra, 502 So.2d at 89. (e.s.)

While Judge Agner did not set forth a host of reasons why he declined to order Mr. Gosby to court, the record he had before him reveals the following factors which mitigated against commanding Mr. Gosby's presence for a hearing on his name change petition in the context of the guidelines (especially those underlined above) set forth in Brown v. Sheriff of Broward County , supra -- section 944.17(8), Florida Statutes (1989) notwithstanding.

a. The "substantiality" of the matter at issue:

Mr. Gosby did not assert or establish a constitutional right (in this case, a First Amendment right) to change his name from "Jerry Wesley Gosby" to "Abdul Ghaffaar-Abdullah Muhammad." Nor did he allege that his committed name in any way impairs his ability to practice his adopted religion. Mr. Gosby sought "...only that the new religious

name be placed on his prison garb and that he be permitted to send out and receive mail with his new name so long as his prison number also appears on the address." (A12; Petitioner's supplemental brief, page 2). Obviously, the issue he raised is not substantial and, as we shall demonstrate below, was one that he could have raised with the DOC and resolved informally and administratively.

b. The lack of need for an expedited disposition of the matter and the reasonableness of delaying the matter until Mr. Gosby's release:

Mr. Gosby is not harmed by the court's decision declining to grant the name change petition. The petitioner is free to call himself (and to have his friends, loved ones, family, etc., refer to him) by any name he chooses. He doesn't even expect the Florida Department of Corrections to be required to modify its records to reflect his newly chosen name. (See petitioner's supplemental brief at 2; A.13.) He won't be in prison forever and, upon his release, he can come to court and (if his petition is well taken) seek to formalize the name change then.

c. The harm and inconvenience to the DOC:

The name change request is likely to cause (if not harm, at least) confusion in DOC record-keeping as noted in the affidavit filed in the trial court by Ms. Tricia Redd, DOC Assistant Admissions and Release Administrator. Among other things, Ms. Redd stated:

> 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 the 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 standpoint 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 or threats the desire and ability to bring harm to a person. The department has a moral and legal obligation to protect theses individuals and that obligation would be severely hampered if the changing of names is mandated after incarceration begins.[2]

(A9,10)

d. The contravention of established DOC policy:

This relief requested is contrary to Florida Administrative Code, Rule 33-3.004(9), which provides in part that:

i. "(t)he address of all incoming mail must contain the inmate's committed name."

ii. "(t)he return address of all outgoing mail must contain only the inmate's committed name, identification number and institutional name and address." (e.s.)

The appropriateness of the above rule was affirmed in Turner v. Safley, 482 U.S. ___, 107 S. Ct. 2254, 96 L. Ed. 2d 64 (1987). This is not to say that Mr. Gosby could not seek an exception to the rule via the Department's grievance procedure which will be referenced below.

e. The inconvenience to the State including the trial court and the sheriff:

Judge Agner, based in Perry (see Florida Bar Journal, Vol. LXIII, No. 8, September 1989, page 462) will have to travel 45 miles one way to the Dixie County Courthouse in Cross City, or the Dixie County sheriff's offices will have to transport Mr. Gosby from Cross City Correctional Institution (CCCI) to the courthouse in Perry -- in order for Mr. Gosby to attempt in a court of law what he probably would be able to do

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2 In Isom v. Circuit Court of the Tenth Judicial Circuit, 437 So. 2d 732 (Fla. 2d DCA 1983), based upon very similar facts, the trial court denied the name change because it believed that to do so would "create problems for the (DOC) and conceal from law enforcement officers his (the petitioner's) past record." *Isom*, Supra, 437 So. 2d at 733. The appellate court reversed because the trial court's concern was "not supported by the record." Here is a record precisely to that effect.

administratively at CCCI. Relatively speaking, this is quite an inconvenience to the court and law enforcement considering what Mr. Gosby is asking for in his name change petition.

f. The integrity of the correctional system:

Mr. Gosby forfeited his right to the every day amenities enjoyed by law abiding citizens when he took it upon himself to violate the laws of this State, become a convicted felon and incur the restrictions of incarceration. He cannot leave the prison when he wants. He cannot assert the Fourth Amendment privileges afforded the average citizen regarding searches of his person, abode and effects while a prisoner. And he should not be allowed to appear in court anytime he decides to file a pleading in circuit court. The very nature of incarceration limits his mobility. He is in prison to be punished -- ("The primary purpose of sentencing is to punish the offender. Rehabilitation and other traditional considerations...must assume a subordinate role." Fla. R. Crim. P. 3.701[b][2].) -- not to be afforded unlimited access to the judicial system at his convenience.

He cannot have the keys to his prison cell. He should not be given the keys to the courthouse and a chauffeur to take him there subsidized on the backs of law abiding citizens.

g. The availability of an alternative, administrative method of resolution of the request for name change:

Mr. Gosby could have filed a grievance regarding his name change with the DOC per Florida Administrative Code, Rule 33-3.007, and sought to obtain the requested relief administratively. Subsection (3) of that rule provided in part that (i)nmates can grieve.the substance, interpretation, and application of policies, rules, and procedures of the facility and Department that affect them personally." Thus, if Mr. Gosby wanted to attempt to obtain a change of name for the limited purposes noted above, he should have done so at Cross City Correctional Institution. We note in this regard that the aforementioned rule which was in place when Mr. Gosby filed his name change petition has since been repealed. However Florida Administrative Code, Rule 33-29, affording the same

administrative relief, has replaced it. Both rules are quite liberal and would have provided Mr. Gosby with a remedy assuming that he could establish a valid basis for his name change request.

As mentioned above, it would appear that he did not exhaust his administrative remedies before filing his name change petition in circuit court and his mandamus petition in the First District Court of Appeal. For this reason alone, his appeal should be dismissed. See Hall v. Wainwright, 498 So.2d 670 (Fla. 1st DCA 1986).

In conclusion on this point, we respond to the petitioner's expression of frustration regarding what he sees as an unjust paradox in Judge Agner's actions in this case. Mr. Gosby states, at page 10 of his supplemental brief:

> The language of section 944.17(8) is plain. This section directs the court to order a prisoner transported to he court if the prisoner is required in court for any reason. Surely, the court's own requirement that a prisoner appear at a hearing satisfies this provision. Thus, the court has no discretion to compel a prisoner's attendance at a hearing but refuse to order the inmate transported to the courthouse.

a. First of all, the language of section 944.17(8) is not that plain. Thus, Judge Wentworth, while concurring in the majority decision (that it was error to summarily deny an inmate's name change petition) in the case of In Re. Keppro, 573 So.2d 140, 142 (Fla. 1st DCA 1991), states:

> However, I express no opinion as to whether the state may be required to provide appellant with transportation at the government's expense, as I do not view the resolution of this issue to be compelled by the present posture of the case.

b. Secondly, if there is paradox in the matter, it is of Mr. Gosby's doing, and he should not be allowed to profit from it. Mr. Gosby took it upon himself to become an incarcerated criminal. He caused himself to suffer the restrictions upon his liberty which society has every right to impose. He cannot blame that on Judge Agner.

The real paradox is not that Judge Agner (a) requires name change petitioners to appear before him in court yet (b) determined that, in this case, he would not require the sheriff to transport inmate Gosby from his prison cell to the courthouse for that purpose.

The paradox is that inmate Gosby would expect special treatment not available to tax paying, law abiding citizens.

If a totally disabled, indigent, Persian Gulf War veteran returned to Perry and filed a name change application, would he/she be entitled to an order from the trial court requiring transportation to the courthouse at taxpayers' expense -- even though the veteran was physically and financially unable to transport him/herself? The applicant would not.[3] Yet Mr. Gosby claims that he is entitled to an order to that effect. Therein lies the paradox.

c. Thirdly, although we cannot predict the intent of the Florida legislature when it enacted section 944.17(8), we doubt that it was for the purpose asserted by Mr. Gosby. Rather, the statute contemplates instances where inmate transportation is "required" in the course of criminal proceedings and the like.[4] Thus, in State ex. rel. Wainwright v. Booth, 291 So.2d 74 (Fla. 2d DCA 1974) the court "... held it was the duty of the county sheriff to house, transport, and provide security arrangements for the trial of five defendants accused of committing murder in a state prison." (Quoting from In Re. Keppro, 573 So.2d 140, 141 [Fla. 1st DCA 1991].) See also Dade County v. Womack, 285 So.2d 441 (Fla. 3rd DCA 1973) where the court held that the county was not required to pay the cost of publication for indigent parents who wished to change the names of minor children and could not obtain personal service of process on the missing parent.

Point III.

(This argument is in response to petitioner's point III.)

Mandamus is not an appropriate remedy in this case because there was a lawful basis for Judge Agner's actions. Furthermore, the appeal should be dismissed because Mr. Gosby did not exhaust his available administrative remedies.

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3 Section 57.081(1), Fla. Stat. (1981) relied upon by petitioner and providing for the "...services of the courts, sheriffs and clerks..." for indigent litigants appears to be related to the waiver of filing fees, service of process fees, summons and other court costs -- not transportation expenses.

4 We acknowledge that this statute is probably not meant to be limited strictly to criminal proceedings. But no one, including the State, is seeking a judgment against Mr. Gosby. He is not being sued for damages, divorce or loss of property interests. He is not attempting to protect a vested interest. He wants only to change his name tag and stationary letterhead -- something that he could have done before he got to prison, he could attempt to do administratively while in prison and/or can wait to do until after he is released.

Judge Agner was justified in the manner in which he considered Mr. Gosby's name change petition for the reasons set out above. Therefore, a writ of mandamus commanding him to do anything different would be inappropriate.

The arguments made by petitioner in section III of his brief have been answered above with the exception of the following:

a. In footnote n. 5, petitioner claims that "(m)ost courts have rejected confusion in record-keeping as a sufficient reason to summarily deny a prison inmate the right to a name change." That would not appear to be the case in Florida, however, based upon:

i. the affidavit of Tricia Redd quoted above (noting the record-keeping problems which would be incurred for the DOC if inmates were permitted to change their committed names),

ii. the decision of the Fourth District Court of Appeal in Brown v. Sheriff of Broward County, 502 So.2d 88 (Fla. 4th DCA 1987), holding that, among other things, the inconvenience and record-keeping problems caused to administrative agencies are factors to be taken into consideration in a name change petition, and, perhaps most significantly,

iii. Florida's commitment to victims rights, including the right of Mr. Gosby's victim(s) to be advised of his activities, whereabouts, release date, etc., as provided for, inter alia, in Article I. §16(b), Fla. Constitution, and §§944.605, 947.06, and 947.1405, Florida Statutes.

b. Judge Agner's decision not to entertain Mr. Gosby's name change petition at this time would not result in a categorical prohibition against name changes (and perhaps other civil action as well) by prison inmates in the Third Judicial Circuit, with no right of appeal. Judge Agner's actions in the case at bar relate only to Mr. Gosby, not to any other litigant.

Finally, a mandamus writ would be inappropriate because nowhere in Mr. Gosby's pleadings does he allege or confirm that he exhausted his administrative remedies prior to filing his petition for a name change in circuit court, his petition for writ of mandamus in the First District Court of Appeal and his notice of appeal in this honorable court. Florida Administrative Code, Rule 33-3.007, as replaced by Florida Administrative Code, Rule 33-29, afforded him the opportunity to gain the same relief administratively (within the DOC) he now seeks in a judicial forum. The law in this regard is clear and required Mr. Gosby to avail himself of his administrative remedies before he sought relief per Article V of the Florida Constitution. Failure to have done so warrants dismissal of his appeal. In this regard, we cite Hall v. Wainwright, 498 So.2d 670, 671 (Fla. 1st DCA 1986) which appears to be squarely on point. There, inmate Hall filed a mandamus action seeking to dispute the amount of gain-time provided him by the DOC.[5] The court affirmed the trial court's decision to dismiss the mandamus petition because "...(Hall) alleged different facts in his petition for writ of mandamus than he did in his grievance petition filed with the Department of Corrections." The court added:

> "(s)ince the above facts numbered (1), (3) and (4) were not alleged in the grievance petition, appellant has not exhausted his administrative remedies pursuant to the provisions of rule 33-3.07 (sic), Florida Administrative Code. Curry v. Wainwright, 422 So.2d 1029 (Fla. 1st DCA 1982)."

(Hall, supra, 498 So.2d at 671.)

In the case at bar, Mr. Gosby made no effort whatsoever to even attempt to exhaust his administrative remedies. Thus, his circuit court petition, his district court mandamus petition and this appeal should be dismissed.

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[5] Please note that the inmate grievance procedure was (and is) wide open as far as subject matter is concerned and tailor-made for the relief Mr. Gosby seeks. Mr. Gosby wants only to change the name on his correspondence and his uniform. He does not seek the name change on DOC records. Most likely, some accommodation on this could have been reached at Cross City Correctional Institution since "(t)he purpose of this (grievance) procedure is to provide an inmate with a channel for the administrative settlement of legitimate grievances. A grievance is defined as a formal complaint by an inmate concerning an incident, policy, or condition within an institution or the Department what affects that inmate personally." Fla. Admin. Code, Rule 33-3.007(1).

CONCLUSION

The ruling of the chancery court should not be disturbed absent a clear showing of abuse of discretion. First National Bank and Trust Co. v. Boyd, 124 So.2d 27. (Fla. 2d DCA 1960). In this case, the "substantiality" of Mr. Gosby's name change request pales in comparison to the problems which would be caused by granting it. This is especially true given the undisputed fact that Mr. Gosby chose not to exhaust his administrative remedies prior to instituting his actions in court.

For these reasons, and the reasons set out above, the Supreme Court is requested to (a) deny the relief sought by petitioner, (b) affirm the decision of the First District Court of Appeal[6] (c) dismiss the appeal for failure to exhaust available administrative remedies and (d) grant unto respondents such other relief is deemed appropriate in the premises.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing respondents' supplemental brief on the merits has been furnished counsel referenced below at the indicated addresses this 7th day of May, 1991, by United States mail delivery:

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Respectfully Submitted,

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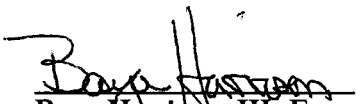
6 Even if this court were to determine that the initial reason the trial court gave for not ordering Mr. Gosby's transported to court was not sufficient and that the First District Court of Appeal was mistaken in terms of Mr. Gosby's attempts to schedule his petition for hearing, the record in this case establishes abundant reasons why the relief Mr. Gosby sought should have been denied. "A judgment must be affirmed...if it is legally justified for any reason, even one not adopted below." Henriquez v. Publix Super Markets, Inc., 434 So.2d 53 (Fla. 3rd DCA 1983). This is even more true in the case at bar where, unlike Hall v. Wainwright, 498 So.2d 670 (Fla. 1st DCA 1986), the DOC and the attorney general chose to stay on the sidelines.



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