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IN THE SUPREME COURT OF FLORIDA

CALVIN RHODES,  
Petitioner,  
v.  
STATE OF FLORIDA,  
Respondent.

CASE NO. 76,697

ON REVIEW FROM THE FIRST  
DISTRICT COURT OF APPEAL

BRIEF OF PETITIONER ON THE MERITS

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STATE OF FLORIDA, :  
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\_\_\_\_\_ :

BRIEF OF PETITIONER ON THE MERITS

I PRELIMINARY STATEMENT

Petitioner was the appellant in the lower tribunal and was the defendant at trial, and will be referred to as petitioner in this brief. A one volume record on appeal will be referred to as "R" followed by the appropriate page number in parentheses. Attached hereto as an appendix is the opinion of the lower tribunal, dated September 12, 1990.

## II STATEMENT OF THE CASE AND FACTS

By information filed April 10, 1989, petitioner was charged with escape from the Tallahassee Community Correctional Center (TCCC) (R 1). The cause proceeded to jury trial on June 1, 1989. At that time petitioner was adjudicated guilty and sentenced to six months in prison, consecutive to sentences he was then serving on other offenses (R 28-31, 191-192). The court imposed costs of \$225.00 (R 28, 192). On June 8, 1989, a timely notice of appeal was filed (R 38).

In that appeal to the lower tribunal, the petitioner argued that it was error for the trial court to impose court costs upon him, an indigent defendant, without first affording him the opportunity of adequate prior notice and an opportunity to object as required under Section 27.56, Florida Statutes.

The state argued in a blanket type argument that the petitioner got all the due process he was entitled to by virtue of being given an error free trial through the guilt phase. Because he was adjudicated guilty, the state argued that costs in this situation became mandatory under other costs related statutes, notwithstanding the statutory requirement cited above. The state also conceded that in the event there was error, the question should be certified to this court, which it has been since there was conflict recognized between Jenkins v. State, 444 So.2d 947 (Fla. 1984), and Bull v. State, 548 So.2d 1103 (Fla. 1989). This issue was certified even though the lower tribunal affirmed the imposition of costs upon the petitioner after he was adjudicated guilty of escape.

The lower tribunal phrased this certified question thus:

WHETHER BULL V. STATE, 548 SO.2D 1103 (FLA. 1989), STANDS FOR THE PROPOSITION THAT STATUTORILY MANDATED AND FIXED COSTS MAY BE IMPOSED ON CONVICTED INDIGENT CRIMINAL DEFENDANTS WITHOUT AFFORDING THEM SPECIAL NOTICE OR A HEARING SEPARATE FROM THE SENTENCING HEARING.

On October 2, 1990, a timely notice of discretionary review was filed.

### III SUMMARY OF THE ARGUMENT

Petitioner will argue in this brief that the imposition of costs upon him absent the statutorily required notice and opportunity to object as approved by the lower appellate court is illegal. The mandatory imposition of costs is merely authorized by the relevant statutes. The legislature intended to provide a further due process safeguard for convicted defendants when costs are imposed on them by requiring that prior notice and a chance to object to such costs be provided.

This court must uphold that statute while reaffirming its decision in Jenkins v. State, 444 So.2d 947, 950 (Fla. 1984), to quash the lower court's opinion.

#### IV ARGUMENT

##### ISSUE PRESENTED

THE TRIAL COURT ERRED IN IMPOSING COURT COSTS WITHOUT ADEQUATE PRIOR NOTICE TO THE INDIGENT PETITIONER.

The answer to the certified question must be an absolute no for the several reasons explained herein. The main reason being that the lower tribunal misinterpreted the statute and caselaw which require that notice and opportunity to object must be provided when court costs are being imposed upon an indigent defendant.

At sentencing the trial court imposed costs in the amount of \$225.00 (R 192). These costs were imposed without affording the petitioner adequate notice and a full opportunity to object. Appellant had previously been determined to be indigent for purposes of trial and appeal of this case (R 11, 43). It was error to impose the costs without notice and an opportunity to object. Jenkins v. State, 444 So.2d 947 (Fla. 1984); Hughes v. State, 497 So.2d 938 (Fla. 1st DCA 1986).

The relevant statutory provisions concerning such imposition of costs at sentencing provide in relevant part:

(1)(a) The court having jurisdiction over any defendant who has been determined to be guilty of a criminal act by a court or jury or through a plea of guilty or nolo contendere and who has received the assistance of the public defender's office . . . may assess attorney's fees and costs against the defendant....

\* \* \*

(c) . . . The court may order payment of the assessed attorney's fees as a condition of



probation. . . .

\* \* \*

(7) The court having jurisdiction of the defendant-recipient, may at such stage of the proceedings as the court may deem appropriate, determine the value of the services . . .and costs, at which time the defendant-recipient. . .after adequate notice thereof, shall have opportunity to be heard and offer objection to the determination . . .

Section 27.56, Florida Statutes.

This law requires that notice and an opportunity to object be provided when costs are being imposed upon an indigent defendant, unless he has either waived his right to notice by failing to object after such notice, or by signing an affidavit of indigency which contains an explanation of these provisions.

See, e.g., Bull v. State, 548 So.2d 1103 (Fla. 1989)

(a defendant has a statutory right to notice and opportunity to object before costs are assessed against him, which can be validly waived by failure to object or to request a hearing).

In Bull, it was decided that once costs are imposed by compliance with or through a waiver of the above statute, then the state need not provide further notice or procedural objection opportunities when a lien is being imposed for recovery of costs and/or fees. However, the state was mistaken in relying on that holding to argue that the mandatory imposition of costs as authorized by Sections 27.3455(1), 943.25(3), or 960.20 need not comply with notice and opportunity requirements of Section 27.56. The lower tribunal was equally mistaken in approving of that argument. The mere

fact that a criminal defendant is convicted in one stage of the criminal proceeding in no way relaxes statutorily prescribed procedural safeguards in subsequent stages of the proceeding. Bull does not authorize such a view nor does any statutory provision because it is contrary to accepted standards of due process protection in Florida and across the nation.

In fact, the lower tribunal has recently reversed the imposition of statutory court costs when a sentencing court failed to afford the defendant prior notice and opportunity to object as required in the statute cited above. Harris v. State, 561 So.2d 21 (Fla. 1st DCA 1990)(quoting Jenkins v. State, 444 So.2d 947 (Fla. 1984), when there is no prior notice that costs are to be assessed against a defendant, the costs are not proper).

Moreover, the Second District Court of Appeal has held that court costs and fees are improperly imposed as a condition of probation when the record does not contain evidence of prior notification that the court intended to impose fees and costs upon a defendant. Hart v. State, 516 So.2d 58 (Fla. 2d DCA 1987). Similarly, the court did not provide prior notice to the petitioner in this case that it intended to impose costs and fees on him. There is no evidence in the record of his waiving that right either. Under authority cited above then, the imposition of those costs and fees was improper.

Notwithstanding the state's harmless error and minimal due process protection argument, the mandatory imposition of costs authorized under Sections 27.3455(1), 943.25(3) or 960.20,

Florida Statutes, without the notice and opportunity requirements of Section 27.56, Florida Statutes, would circumvent the intent of the Florida legislature in adopting Section 27.56. The legislature obviously intended to extend due process protection in situations where costs are being imposed beyond the minimal floor of protection provided by federal due process standards as summarized in caselaw cited by the state. When the Florida legislature adopted Section 27.56, it provided a higher ceiling of protection for indigent defendants upon whom court costs were being imposed, which the state no less than the lower tribunal is without authority to usurp absent clearly delegated legislative authority to limit or curtail the statute's scope of protection.

Accordingly, this court should uphold the requirements of Section 27.56, Florida Statutes and reaffirm Jenkins, while properly limiting and explaining all the Bull language which implies that notice and opportunity requirements are no longer needed after a convicted defendant waives those rights, the costs are imposed and are being collected by a statutorily authorized lien.

V CONCLUSION

Based upon the foregoing argument, reasoning, and citation of authority, petitioner requests that this Court reverse the lower tribunal's decision, answer the certified question in the negative, and vacate the imposition of costs below.

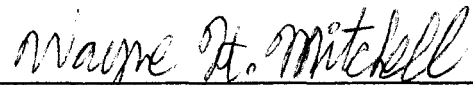
Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Petitioner's Brief on the Merits has been furnished by hand delivery to James W. Rogers, Assistant Attorney General, The Capitol, Tallahassee, Florida, and a copy has been mailed to appellant, CALVIN RHODES, 2000 Warwick Drive, Tallahassee, Florida, 32304, this 30<sup>31</sup> day of October, 1990.



P. DOUGLAS BRINKMEYER