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FILED
SID J. WHITE
JAN 7 1994
CLERK, SUPREME COURT
By
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA
CASE NO. 82,782

IN RE: CERTIFICATION OF CONFLICT
IN MOTIONS TO WITHDRAW FILED BY
PUBLIC DEFENDER OF THE TENTH
JUDICIAL CIRCUIT
_____/

ANSWER BRIEF OF PINELLAS COUNTY AND THE FLORIDA ASSOCIATION OF COUNTY ATTORNEYS, INC. AS AMICI CURIAE

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TABLE OF CONTENTS

TABLE OF CITATIONS

TABLE OF CITATIONS (Continued)

STATEMENT OF THE CASE AND OF THE FACTS

Pursuant to Rule 9.210(c), Florida Rules of Appellate Procedure, Pinellas County and the Florida Association of County Attorneys, Inc., writing as Amici Curiae, (hereinafter "Amici") provide no additional statement of the case and of the facts, other than to clarify the counties' status as nonparties. Judge Driver's Order Setting Hearing on Motions to Withdraw Filed by the Tenth Circuit Public Defender, dated April 27, 1993, directed that the Public Defender of the Tenth Judicial Circuit, the Office of the Attorney General, and the various offices of the State Attorneys within the second district be and appear at a conference. The county attorneys of each county within the district were "invited to be present," which invitation was accepted by some counties.

Amici note, however, that they have been forced to prepare this Answer Brief without benefit of a review of the record. Accordingly, Amici have been unable to supplement its argument with references to the appropriate pages of the record or transcript pursuant to Rule 9.210(b)(3), Florida Rules of Appellate Procedure.

ISSUES

1.

PURSUANT TO THE EXISTING CASE AUTHORITY OF THIS COURT, THE SECOND DISTRICT'S REQUIREMENT OF AN EVIDENTIARY HEARING IN RESPONSE TO THE PUBLIC DEFENDER'S MOTIONS TO WITHDRAW WAS PROPER AND WITHIN ITS INHERENT POWER.

II.

THE PUBLIC DEFENDER'S STATUS AS A CONSTITUTIONAL OFFICER DOES NOT LIMIT THE COURT'S AUTHORITY NOR THE PROPRIETY OF THE COUNTIES' PARTICIPATION IN MAKING INQUIRY REGARDING THE BASIS OF THE MOTIONS TO WITHDRAW

SUMMARY OF ARGUMENT

The Second District exercised its inherent power to do all things that are reasonably necessary for the administration of justice when it inquired into the sufficiency of the Public Defender's Motions to Withdraw. Fundamental constitutional rights are at issue when criminal appellants' briefs are delayed, and this court should encourage serious inquiry by the district courts under such circumstances.

This court left the decision of whether to exclude the counties from being heard to the district courts, and the Second District appropriately invited the affected counties to be present. County budgets are directly impacted by the withdrawal of the public defenders, particularly because the budgets have already been adopted when the motions are filed. Counties cannot properly evaluate the propriety of expending or contributing county funds to the Public Defender in the absence of an opportunity to be present and heard on the Public Defenders' motions to withdraw.

ARGUMENT

I.

PURSUANT TO THE EXISTING CASE AUTHORITY OF THIS COURT, THE SECOND DISTRICT'S REQUIREMENT OF AN EVIDENTIARY HEARING IN RESPONSE TO THE PUBLIC DEFENDER'S MOTIONS TO WITHDRAW WAS PROPER AND WITHIN ITS INHERENT POWER.

The Public Defender for the Tenth Judicial Circuit asserts that the action of the Second District Court of Appeal requiring an evidentiary hearing in response to his Motion to Withdraw based on a conflict created by excessive caseload violates the law enunciated in In re Order on Prosecution of Criminal Appeals by the Tenth Judicial Circuit Public Defender, 561 So. 2d 1130 (Fla. 1990), and Skitka v. State, 579 So. 2d 102 (Fla. 1991). The assertion is untenable.

The Second District properly exercised its inherent authority to inquire into the sufficiency of the Public Defender's Motions to Withdraw. The basis for the court's authority is well-established and clearly enunciated in Rose v. Palm Beach County, 361 So. 2d 135, 137 (Fla. 1978):

> Every court has inherent power to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction, subject to valid existing laws and constitutional provisions.

The authority of the Second District in this matter is not limited by any provision of Art. V of the Florida Constitution or by any ruling of this Court.

This Court has specifically held that the courts below have the inherent authority to issue orders addressing the problems raised by the Offices of the Public Defenders. In re Order, 561 So. 2d at 1133. Just as it is the Public Defender's responsibility to move the court to withdraw when faced with an excessive backlog of cases, so too is it the court's responsibility to inquire into the basis of the backlog. Id. at 1138.

This is particularly so because fundamental constitutional rights are at issue. The Sixth Amendment right to counsel [Pennsylvania v. Finley, 481 U.S. 551 (1987)], due process concerns of the Fifth and Fourteenth Amendments, and access to the court under Article I, Section 16 of the Florida Constitution, merit the district court's scrutiny of delays in the criminal appeals process. This court should encourage district courts to seriously inquire into questions relating to the administration of justice.

The status of the Public Defender as a constitutional officer does not limit the authority of the court to ask those questions which it believes "are reasonably necessary for the administration of justice." Rose, 361 So. 2d at 137. Contrary to the Public Defender's assertion that his motion should be taken "at face value," this Court has specifically stated:

> We do not believe the courts are obligated to permit the withdrawal automatically upon the filing of a certificate by the public defender reflecting a backlog in the prosecution of appeals.

Skitka, 579 So. 2d at 104.

The burden is on the Public Defender to demonstrate his need to withdraw from appellate cases. Day v. State, 564 So. 2d 137 (Fla. 1st DCA 1990). In this instance, the questions raised by the Second District asked the Public Defender to demonstrate his need to withdraw from cases given his current resources. Orders on Motions to Withdraw Filed by Tenth Circuit Public Defender, 622 So. 2d 2, 4 (Fla. 2d DCA 1993) (en banc). These questions

included whether there were steps that the Public Defender, the Attorney General and the court could collectively take to assure timely appellate review of indigent appeals and whether the cases selected for the applicable motions had been chosen for any particular reason that should have been made known to the court. The inquiry by the Second District was proper and not contrary to law.

For all of the above reasons and based upon the above-cited authority, the assertion raised by the Public Defender that the action taken by the Second District Court of Appeal requiring an evidentiary hearing in response to his motions to withdraw is untenable.

II.

THE PUBLIC DEFENDER'S STATUS AS A CONSTITUTIONAL OFFICER DOES NOT LIMIT THE COURT'S AUTHORITY NOR THE PROPRIETY OF THE COUNTIES' PARTICIPATION IN MAKING INQUIRY REGARDING THE BASIS OF THE MOTIONS TO WITHDRAW.

The Public Defender asserts that the Second District erred because it allowed the counties to participate in the evidentiary hearing. The argument is without merit.

This Court, relying on Escambia County v. Behr, 384 So. 2d 147 (Fla. 1980), stated that the county "need not be given an opportunity to be heard." In re Order, 561 So. 2d at 1138 (emphasis added).

The language of this Court is clear. This Court did not direct the lower courts to exclude the counties from being heard.

Rather, this Court left that decision to the discretion of the lower courts. The Second District exercised its discretion and invited affected counties to be present. Thus, the Public Defender's assertion that the Second District erred is meritless.

Further, it is proper public policy to allow the counties' participation in hearings on public defenders' motions to withdraw because the current budget crisis places the public defender funding squarely on the shoulders of the counties.

Pursuant to section 27.51(6), Florida Statutes (1993), the state is expressly obligated to fund public defenders to handle appeals. The Commissioner, in his reported findings for the Second District, noted the problem of chronic underfunding by the state. The problem is one with which this Court is very familiar.

This Court stated in In re Order:

> The source of this problem is clearly the woefully inadequate funding of the public defenders' offices, despite repeated appeals to the legislature for assistance.

In re Order, 561 So. 2d at 1132.

The gravity of this funding crisis has increased since 1990 when this Court rendered its decision in In re Order. In 1990, deciding In re Order, this Court found, absent express statutory language, that the counties are responsible for compensating court-appointed attorneys when a public defender is allowed to withdraw from appellate cases. This Court based its conclusion in part on the language in section 925.037(1), Florida Statutes (1989), which required the state to reimburse the counties for

fees paid to court-appointed counsel. However, in fiscal years 1990/91, 1991/92 and 1992/93, Pinellas County, as an example, received no reimbursement from the state for court-appointed counsel (see Appendix 1, Statement of Conflict Counsel Expenses for Pinellas County).

The burden of financially compensating for the state's failure to properly fund the Public Defender has shifted wholly and solely to the counties. The counties must rely on general revenues derived from the levy of the general county millage defined in Section 200.001(1)(a), Florida Statutes (1993) to pay for the costs of court appointed indigent representation. Yet none of the publication or public hearing requirements of chapter 200 apply, and unlike county constitutional officers, the Public Defender submits no budget. See, e.g., section 129.03, Florida Statutes (1993).

When the public defender certifies to withdraw, the budgets of the counties have already been adopted. Thus, these expenses are "volatile costs," beyond the control of the county commissioners who must raise these taxes. In counties at their ten mill cap, the county commissioners may be forced to take money out of line items adopted at public hearing and cut programs and services to comply with appellate orders.

Although Mr. Moorman suggests at page 33 of his brief that "if there is an abuse, the remedy is with the people," only voters in Hardee, Highlands, and Polk Counties can vote for him. Thus,

political pressure encourages elected appellate public defenders to withdraw from appellate cases rather than trial cases when an officewide overload exits. The budget transfer authority of section 27.60, Florida Statutes (1993) encourages a similar shift of resources to trial matters rather than appellate matters. The county commissioners in the other eleven counties must scrutinize the expenditure of their county revenues for their respective silent electorates.

The fact that the counties are being forced to subsidize the state budget with local government general revenues appears to be a violation of the Florida Constitution, as noted in the introduction to A Report of the Judicial Council of Florida: A Review of Article V Costs and Revenues; and Proposals For Financing the State Courts System prepared in July, 1991:

> To say there is a funding crisis is an understatement. The state's shifting of state court costs has placed such additional burdens on counties that serious questions are now being raised over the constitutionality of the state coercing counties into using real estate ad valorem tax revenues to fund the state courts in possible violation of the constitutional provision prohibiting state ad valorem taxes on real estate.

(Appendix 2, p. 1).

The opposite may also be true. Counties may be violating Article VII, Section 9 of the Florida Constitution, which allows counties to levy taxes to the extent of ten mills, but limits the expenditure of those taxes for "county purposes".

The tension between expenditures for "county purposes" and the ballot question presented to Florida voters on March 14, 1972, which speaks of "a uniform court system" and "establishing a system of court administration" is obvious. Florida's goal of getting a uniform, state-funded system eliminating the conflicts of interest which resulted from funding of courts by cities and counties dependent on court-generated fines and forfeitures is becoming more remote. The decentralizing effect of certifying overload appeals back on fourteen counties is in direct contravention of the legislature's intention in passing section 27.51(4), Florida Statutes (1993) creating on appellate public defender for each district. The ABA Standards Relating to the Administration of Criminal Justice, Providing Defense Services, (3rd Edition 1990), referred to on page 19 of The Florida Public Defender Association, Inc. brief will become more difficult to apply as those services become less standardized between the circuits and among the counties. The specter appears of equally situated individuals being treated unequally, depending upon the county of their residence or venue.

Given that the fourteen counties within the Second District are obligated to use local ad valorem tax dollars to compensate private counsel appointed on appellate cases, the counties were properly given an opportunity by the Second District to participate in proceedings which have a direct impact on their budgets.

Local constitutional officers are subject to budgetary oversight by the counties which provide them with ad valorem tax dollar support. To except the Public Defender from that review would be inequitable and inconsistent. The requirement that the Public Defender establish a factual predicate for additional funds in no way differs from the showing which other constitutional officers must make in order to receive additional county monies; nor does such a showing compromise any ethical obligation arising from the Public Defender's representation of indigent defendants. In fact, absent the Public Defender's presentation of a reasonable basis for his motion to withdraw, the ethical obligation of the Public Defender would not appear to be met under the rules governing the Florida Bar.

It is important to note that since 1990 when this Court rendered its decision in In re Order, the Legislature has enacted section 27.54(2)(b), Florida Statutes (1993), which states that a county may now contribute funds to:

> employ legal and support staff to be supervised by the public defender upon certification by the public defender that inadequate resources will result in withdrawal from current cases or inability to accept additional appointments.

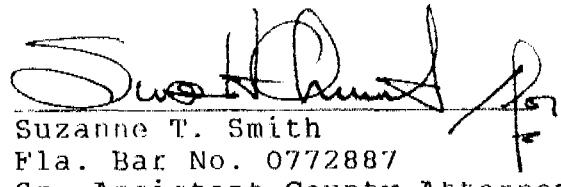
The certification by the Public Defender is currently presented to the Second District via motions to withdraw. However, the counties cannot properly evaluate the propriety of contributing county funds to the Public Defender in the absence of an opportunity to be present and heard on the Public Defender's

motions to withdraw. Thus, it is clear that the Second District properly exercised its discretion to allow counties to participate in the evidentiary hearing.

CONCLUSION

Pinellas County and the Florida Association of County Attorneys, Inc. recognize this Court's concern for the constitutional rights of criminal appellants whose appeals are being delayed by the inability of the Tenth Judicial Circuit Public Defender to act expeditiously. Amici also understands the courts' concerns for delays in the criminal appeals process. However, it is clear that the Second District acted properly by inquiring into the basis of the Public Defender's motion and allowing all affected entities an opportunity to be heard.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Answer Brief of Pinellas County and the Florida Association of County Attorneys, Inc., as Amici Curiae was delivered by mail this 6th day of January, 1994, to the following:

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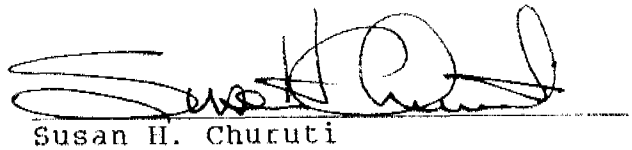

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