IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. 85,050

THE HONORABLE JOE A. WILD,
County Court Judge,

Petitioner,

vs.

ROBERT LEE DOZIER,

Respondent.

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ON PETITION FOR CERTIORARI REVIEW

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PETITIONER'S BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

Respondent, Robert Lee Dozier, was the Defendant and Petitioner, the Honorable Joe A. Wild, was the judge assigned to preside over the trial on criminal charges filed by the State against Robert Lee Dozier, Respondent, in the Criminal Division of the Circuit Court of the Nineteenth Judicial Circuit, in and for Indian River County, Florida. Respondent, Dozier, was the Petitioner and Petitioner, Judge Wild, was the Respondent in the Petition for Writ of Prohibition filed with District Court of Appeal, Fourth District. In this brief, the parties shall be referred to as they appear before this Honorable Court, except that Petitioner may also be referred to herein as Judge Wild.

In this brief, the symbol "A" will be used to denote the appendix attached hereto.

All emphasis in this brief is supplied by Petitioner unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

Criminal charges were filed against Respondent under Indian River County Case No. 93-1305CF. Judge Wild pursuant to Administrative Order was the assigned judge to try Respondent's case. (Appendix, page 1). Respondent moved to disqualify Judge Wild from presiding over his trial alleging Judge Wild was without jurisdiction over his case because he had become "a *de facto* circuit judge." Judge Wild denied Respondent's motion to disqualify.

The case was scheduled for jury trial to commence April 27, 1994. On or about April 25, 1994, Respondent filed a Petition for Writ of Prohibition in the District Court of Appeal, Fourth District, alleging that due to the continuous appointments of Judge Wild to handle 1/2 of the Indian River County felony case load, Judge Wild had become a *de facto* circuit judge. That as a *de facto* circuit judge in violation of the Florida Constitution, Judge Wild was without "authority" to conduct felony trials in Indian River County; and as such, Judge Wild should be prevented from presiding over Respondent's trial to prevent a miscarriage of justice.

In response to the District Court's order to show cause issued April 25, 1994, Judge Wild filed a response to the petition for writ of prohibition.

In its *en banc* opinion filed on rehearing January 18, 1995,[1] (Appendix, pages 2-3), the Fourth District Court of Appeal granted

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[1]Reported as Dozier v. Wild, 20 Fla. L. Weekly D199 (Fla. 4th DCA Jan. 18, 1995).

the writ, quashed the order denying the trial judge's disqualification, and further quashed "the current administrative order appointing Judge Wild through 1994," and remanded the cause for further proceedings. The District Court also stated that because the issue involves a question of great public importance to the administration of justice throughout the state, it was certifying the following question to this Court:

> MAY A COUNTY COURT JUDGE BE ASSIGNED SUCCESSIVELY AND REPEATEDLY IN SIX MONTH ASSIGNMENTS OVER SEVERAL YEARS TO PRESIDE IN THE CIRCUIT COURT OVER HALF OF ALL FELONY CASES IN A COUNTY?

(Appendix, page 3).

Based on the certified question, the State invoke the discretionary review jurisdiction of this Court, and by order issued January 24, 1995, this Court postponed decision on jurisdiction, but set a briefing schedule.

Petitioner's Brief on the Merits follows.

SUMMARY OF THE ARGUMENT

POINT I - Under Fla. R. Jud. Admin. 2.050 a challenge to the propriety of an administrative order must be addressed directly to the Chief Justice of the Florida Supreme Court by the Court Administrator. As such, Respondent had no standing, and the Fourth District Court had no authority to quash the administrative order. Therefore, the decision of the District Court quashing the order must be reversed.

POINT II - The question certified by the District Court to be one of great public importance must be answered in the affirmative. Because Judge Wild was assigned to act as circuit judge for only half of felony cases in Indian River as needed to assist the circuit judges, not to replace them, and he continued to perform all his county court judge duties, the appointment was **temporary**, and as such the administrative order was properly entered. The decision of the District Court quashing the order must be reversed.

POINT I

WHETHER THE DISTRICT COURT OF APPEAL, FOURTH DISTRICT, ERRED IN QUASHING ADMINISTRATIVE ORDER OF SEPTEMBER 28, 1993, WHICH WAS ISSUED BY THE CHIEF JUDGE PURSUANT TO SECTION 2(b)(d), ARTICLE V OF THE FLORIDA CONSTITUTION AND RULE 2.050 (b)(3)(4), RULES OF JUDICIAL ADMINISTRATION?

While presented with a writ of prohibition by Respondent, Robert Lee Dozier, to prevent Petitioner from presiding over his criminal trial in circuit court case No. 93-1305 CF, after a motion to recuse the judge had been denied, the District Court **granted** the writ **and** proceeded to **quash** the administrative order of September 28, 1993, assigning Petitioner, a sitting county judge, to temporary duty as circuit judge. Petitioner submits that the District Court was without authority to quash the administrative order.

Article V, Section 2(a) of the Florida Constitution provides: "[t]he supreme court shall adopt rules for ... the administrative supervision of all courts, ..."

Article V, subsection 2(b) provides that the chief judge of the supreme court "shall be the chief administrative officer of the judicial system." The chief judge of the supreme court is then given "the power to assign justices or judges, including consenting retired justices or judges, to temporary duty in any court for which the judge is qualified and **to delegate to a chief judge of a judicial circuit the power to assign judges for duty in his respective circuit.**"

Florida Rule of Judicial Administration 2.050 addresses the

duties of the chief judges of the several judicial circuits, and subsection (4) addresses the authority to order temporary judicial assignments within the circuit. In making the assignments, the circuit chief judges are explicitly held "responsible to the Chief Justice of the Supreme Court." Fla. R. Jud. Admin. 2.050(2).

Thus, the Chief Justice is solely vested with the administrative power to assign judges and to delegate such power to chief judges of the judicial circuits. Although district courts of appeal are empowered to hear appeals of orders of trial courts entered "on review of administrative action," and have "the power of direct review of administrative action, as prescribed by general law [,]" Article V, Section 4(b)(1) and (2), Florida Constitution, such powers are not in issue here.

In short, not the Florida Constitution, not any statute, and not any rule vests the district court of appeal with power over judicial assignments. Such power is expressly and exclusively vested in the Chief Justice which, in part, the Chief Justice has delegated to the chief judge of the Nineteenth Judicial Circuit, in the case at bar, as authorized under the Florida Constitution. Thus, while the District Court had the authority to review the denial of the motion to recuse Judge Wild, the District Court had no authority to proceed and quash the administrative order assigning Judge Wild for temporary circuit court duty.

While Respondent had standing to appeal the denial of his motion to recuse, Dozier had no standing to challenge internal court policy, which is a matter of judicial administration and the

proper concern of the judges of the court and of the administrative supervision of the judicial system. See Kruckenberg v. Power, 422 So. 2d 994, 996 (Fla. 5th DCA 1982). Respondent's challenge to Petitioner presiding over his criminal trial was that Judge Wild by virtue of the continuous administrative orders had become "a *de facto* judge." A *de facto* trial judge is a "judge who functions under color of authority but whose authority is defective in some procedural form." Card v. State, 497 So. 2d 1169, 1173 (Fla. 1987). Consistently, this Court has stated that a *de facto* judge's acts are valid, see Stein v. Foster, 557 So. 2d 861, 862 (Fla. 1990); Card, 497 So. 2d at 1169. And, many courts have determined that a *de facto* trial court has jurisdiction over the matters which it handled. See Card, 497 So. 2d at 1173-1174; State v. King, 426 So. 2d 12, 14 (Fla. 1982); Willie v. State, 600 So. 2d 479, 481 (Fla. 1st DCA 1992); Kruckenberg v. Powell, 422 So. 2d at 996; Grossman v. Selewacs, 417 So. 2d 728, 730 (Fla. 1982); In re Peterson, 364 So. 2d 98, 99 (Fla. 4th DCA 1978); In re Bentley, 342 So. 2d 1045, 1046 (Fla. 4th DCA 1977). See also Banker's Life and Casualty Co. v. Gaines Const. Co., 191 So. 2d 478, 479 (Fla. 3d DCA 1966). Thus, because Judge Wild was qualified and properly assigned to preside over Respondent's trial, Respondent had no standing to challenge being tried by Judge Wild alleging lack of jurisdiction.

Rather, Fla. R. Jud. Admin. 2.050 provides for the review of an administrative order. Rule 2.050(b)(3) states that questions concerning the administration or management of a circuit court

"shall" be directed to the chief justice of the Supreme Court through the state courts administrator. As an example of proper procedure under the rules, Petitioner points to Administrative Order, Fourth Judicial Circuit (Division of Courts), 378 So. 2d 286 (Fla. 1979), wherein this Court considered a petition of the county judges of the Fourth Circuit to review the administrative order entered by the chief judge.

The assignment of specific court cases between or among the judges of a multi-judge court is a matter within the internal government of the court, and is directed by policy adopted by and through the chief judge. Gallagher v. State, 476 So. 2d 754, 756 (Fla. 5th DCA 1985); Condominium Owners v. Century Village East, 428 So. 2d 384, 386 (Fla. 4th DCA 1983); Kruckenberg, 422 So. 2d at 995-996; In re Guardianship of Bentley, 342 So. 2d 1045, 1047 (Fla. 4th DCA 1977); Bankers Life and Casualty Co. v. Gaines Construction, 191 So. 2d 478, 479 (Fla. 3d DCA 1966); Peters v. Meeks, 171 So. 2d 562, 563 (Fla. 2d DCA 1965).

Rule 2.050(3), Florida Rules of Judicial Administration, gives the chief judge of a circuit the authority to "develop an administrative plan for the efficient and proper administration of all courts within that circuit." Among other things the plan shall include the prompt disposition of cases, the assignment of judges, the control of dockets, and the regulation and use of courtrooms. The assignment of cases in a busy multi-judge court presents an ongoing administrative burden due to the need to conserve judicial labor. Hence, a court should be accorded "maximum discretion" in

assigning cases. Condominium Owners, 428 So. 2d at 386. Further, "[f]lexibility must be given the chief judges to effectively utilize judicial manpower in the mutual assistance of each trial court." Crusoe v. Rowls, 472 So. 2d 1163, 1165 (Fla. 1985).

In the case at bar, without taking into consideration the historical need of the chief judge to assign Petitioner to preside over half of all felony cases in Indian River County, the District Court blindly **quashed** the administrative order, when the issue was not before it, as the issue would have been properly brought directly to this Court under the mandates of Fla. R. Jud. Admin. 2.050(b)(3), and not in litigation by a defendant in a criminal case to the district court.

The need to present the issue through the appropriate channels is apparent when the instant situation is considered. By quashing the administrative order, without taking into consideration the entire circumstances of the Judicial System in the Nineteenth Judicial Circuit, the Fourth District quashed the order, and thereby placed the Nineteenth Judicial Circuit into an emergency state, without a viable immediate solution. Had the proper action been taken to present the issue to this Court, the necessary evidence and arguments would have been presented, whereby the Chief Judge of the Nineteenth Judicial Circuit would have been given an opportunity to present its case, and possibly receive relief from this Court through special assignment of judges from other circuits throughout the state, if such resources were available. As it is, the District Court below had no authority to call into judgment the

assignments made by the Chief Judge as authorized by Article V of the Florida Constitution and Florida Rule of Judicial Administration 2.050, and thereby the quashing of the order must be reversed.

The impropriety of the quashing of the administrative order is more apparent when the facts that led to the challenged order are considered. The Nineteenth Judicial Circuit is comprised of Indian River, Martin, St. Lucie and Okeechobee Counties. These counties have undergone tremendous population growth in recent years, but no comparable increase in the number of judicial appointments have taken place. Further, the recently mandated creation of the Family Court Division has added to the shortage of circuit judges in the Nineteenth Judicial Circuit. Faced with these constraints the Chief Judge of the Nineteenth Judicial Circuit exercised his authority under Rule 2.050, and made the temporary assignments of a county court judge to act as circuit judge called into question now.

The orders, beginning with those entered in 1990, are included in the appendix (Appendix, pages 4-42). Said orders reflect that neither Judge Wild nor Judge Balsiger ever ceased functioning as county judges. Said orders further reflect that, beginning in January of 1994, in addition to the regular county court duties in Indian River County, Judge Wild and Judge Balsiger were also called upon to each handle one-half of the felony case load for Indian River County. This was the first time that both were called upon to temporarily handle the entire felony case load for Indian River

County. Until 1994, only one of the county judges had been assigned to temporarily handle a portion of the Indian River County felony case load in addition to his county cases. From these assignments, it is clear that they were intended "to supplement and aid the circuit judges rather than to replace them." Crusoe v. Rowls, 472 So. 2d at 1165.

These facts clearly show that the exercise of the Chief Judge's duties in making the necessary assignments under Florida Rule of Judicial Administration 2.050(4) should not have been **summarily** quashed by the District Court without the appropriate hearings. Therefore, the decision of the district court that quashes the administrative order must be reversed. Any changes or review of the administrative order must be left up to this Court after the appropriate cause of action has been taken to review such administrative order.

POINT II

MAY A COUNTY COURT JUDGE BE ASSIGNED SUCCESSIVELY AND REPEATEDLY IN SIX MONTH ASSIGNMENTS OVER SEVERAL YEARS TO PRESIDE IN THE CIRCUIT COURT OVER HALF OF ALL FELONY CASES IN A COUNTY?

Petitioner maintains that under the facts and circumstances of this particular case, the certified question as above set out must be answered in the **affirmative.**

In State ex rel. Treadwell v. Hall, 274 So. 2d 537, 539 (Fla. 1973), this Court stated:

> It is our overall view, ... that county judges who have been members of the Florida Bar for five years preceding their assignment to judicial service under Section 2(b) of Article V, and who have served in such office upon or after the effective date of the revision, are qualified to be assigned as temporary circuit judges for the performance of any judicial service a circuit judge can perform.

Thus, Petitioner contends that under Article V, Sections 2(b) and (d), Florida Constitution, and Florida Rule of Judicial Administration 2.050(b)(3) and (4), Judge Wild is "qualified to be assigned as temporary circuit judge for the performance of any judicial service a circuit judge can perform."

In Crusoe v. Rowls, 472 So. 2d 1163, 1165 (Fla. 1985) this Court explained that "'Temporary' is an antonym for 'permanent.' It is a comparative term. It can be said that if a duty is not permanent it is temporary." The Court stated that if a county judge is assigned to perform solely circuit court work, the assignment must be for a relatively short time for it to be

temporary. The Court suggested "no more than sixty days." Id., n. 2. If a county judge is assigned to spend a portion of his time performing circuit work, the assignment can be longer. The Court suggested "no more than six months." Id., n. 3. The Court went on to point out that "Flexibility must be given the chief judges to utilize effectively judicial manpower in the mutual assistance of each trial court." Id.

The Administrative Order of September 28, 1993, assigned Judge Wild "to hear, conduct, try and determine 1/2 of all filings in the Circuit Criminal division" beginning **"January 1, 1994** through **June 30, 1994."** The orders, beginning with those entered in 1990, (Appendix, pages 4-42), reflect that neither Judge Wild nor Judge Balsiger ever ceased functioning as county judges. Said orders further reflect that, beginning in January of 1994, in addition to the regular county court duties in Indian River County, Judge Wild and Judge Balsiger were also called upon to each handle one-half of the felony case load for Indian River County. This was the first time that both were called upon to temporarily handle the entire felony case load for Indian River County. Until 1994, only one of the county judges had been assigned to temporarily handle a portion of the Indian River County felony case load in addition to his county cases. From these assignments, it is clear that they were intended "to supplement and aid the circuit judges rather than to replace them." Crusoe v. Rowls, 472 So. 2d at 1165.

These facts support the contention that the order was a temporary assignment that complied with the mandate set out in

Crusoe. It is clear therefore that Judge Wild continued to fulfill his duties as a county judge. In addition, he has been assigned to share some circuit court duties involving felony cases. The situation here contrasts drastically with the situation disapproved by the Court in Payret v. Adams, 500 So. 2d 136 (Fla. 1986), wherein a county judge was assigned to fulfill permanently the duties of a circuit judge. In Payret, Judge Adams was recognized as the "circuit judge" for the Belle Glade District, and so identified himself, Id., at 137 and 138. The situation herein is more akin to the recent case from the Second District, J.G., et al. v. Holtzendorf, 20 Fla. L. Weekly D39 (Fla. 2d DCA Dec. 21, 1994), where it was held:

> We conclude that respondent's service as a circuit judge under the current administrative order, which results in the chief judge assigning the respondent to share a circuit caseload in two specific areas, does not violate the holdings in *Payret* or *Crusoe*. The respondent is not assigned indefinitely to circuit court duties. Instead, the respondent is repeatedly given six-month assignments in circuit court which, **in addition to permitting him to fulfill his county judge duties,** permits him to aid in handling the circuit court caseload.
> (Emphasis added.)

Further, in the case at bar, the information was filed against Respondent on January 19, 1994; as such under the administrative order Judge Wild had jurisdiction to hear and dispose of the criminal charges pending against him then. See Hollingsworth v. Hollingsworth, 540 So. 2d 904, 905 (Fla. 2d DCA 1989) (During the trial and at the time of the entry of the final judgment of dissolution, Judge Holtzendorf was acting pursuant to an order of

appointment from January 5, 1987 until July 31, 1987. At the time of the entry of the supplemental final judgment Judge Holtzendorf was acting pursuant to an order of appointment from August 24, 1987 until October 31, 1987. We hold that these orders are in fact temporary appointments as defined by *Payret*, and that the judgment is not voidable on such grounds.)

As stated earlier, the situation at bar is distinguishable from the situations in Payret v. Adams, 500 So. 2d 136 (Fla. 1986). In Payret, the annual reassignment of a county judge to the circuit court was considered invalid but only because Judge Adams was in fact serving as the full time circuit judge for the Belle Glade District in Palm Beach County. See, Judges of Polk County Court v. Ernst, 615 So. 2d 276, 277 (Fla. 2d DCA 1993). Respondent maintains that the situation at bar is proper and in accordance with Crusoe. In Crusoe, this Court approved the use of county judges to sit in circuit court so that child support disputes could be promptly heard. The Crusoe Court held that successive assignment orders totalling two and one-half years were temporary assignments. Thus, the mere fact that the administrative orders sub judice were issued on a repetitive basis does not make the assignment permanent.

Rule 2.050(b)(4) gives the chief judge the authority to "assign any judge to temporary service for which the judge is qualified in any court in the same circuit" for the speedy, efficient, and proper administration of justice. As the Supreme Court stated "[f]lexibility must be given the chief judges to

utilize effectively judicial manpower in the mutual assistance of each trial court." Crusoe, 472 So. 2d at 1165. Moreover, Rule 2.050(b)(7) permits the chief judge to take whatever action is necessary to keep court dockets current. See also Crusoe, 472 So. 2d at 1165 n. 4 (when judicial time is available, judges are to make themselves available to alleviate crowded dockets in all levels of the court system).

Petitioner would point out that the Chief Judge of the 19th Judicial Circuit has determined that the assignment of his county judges to do some of the criminal cases, along with other county court duties, was necessary for the speedy, efficient, and proper administration of justice in Indian River County. The assignments are reasonable and within his discretion. This District Court should not have disturbed that determination in the absence of some showing of an abusive effect. The Administrative Orders here under review are valid under Rule 2.050. Judge Wild is entitled to "aid and assist" as needed in the Circuit Court in and for Indian River County in order to "alleviate crowded dockets" due to the creation of the Family Division mandated by the Florida Supreme Court, In re Report of the Commission on Family Courts, 588 So. 2d 586 (Fla. 1991), and other situations where the circuit court judges have been unavailable due to illnesses, being called to Active Duty (as in the Gulf War), or the dockets are too crowded. It, therefore, is clear that the orders are "a proper use of the chief judge's jurisdiction to maximize an efficient administration of justice in the [19th] Judicial Circuit." Crusoe, 472 So. 2d at 1165.

Because of the population explosion in the four counties that comprise the Nineteenth Judicial Circuit, and the limited number of available circuit court judges, the Chief Judge of the Nineteenth Judicial Circuit was exercising his authority under Article V, Section 2 of the Florida Constitution and Florida Rule of Judicial Administration 2.050, for proper administration of the court. The Petitioner maintained his county judge duties, and exercise his assignment as temporary circuit judge to assist the circuit judges in his circuit. These assignments were proper, see Crusoe; Judges of Polk County; and J.G., et al.; as such the certified question should be answered in the **affirmative**, and the opinion of the district court granting the writ, and quashing the administrative order must be **quashed**.

CONCLUSION

WHEREFORE, based on the above and foregoing arguments and authorities cited therein, the State of Florida respectfully submits that the decision of the district court should be **QUASHED** and the cause remanded for further proceedings.

Respectfully submitted,

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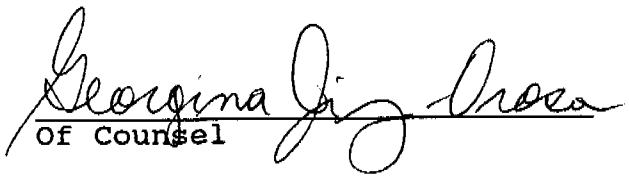
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing "Brief of Petitioner on the Merits" has been furnished by Facsimile at (407) 489-0610 and U. S. Mail to: JEFFREY H. GARLAND, ESQUIRE, Counsel for Respondent, 102 North Second Street, Fort Pierce, Florida 34950, this 3rd day of February, 1995.



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