

Supreme Court of Florida

FILED

SID J. WHITE

MAY 16 1996

JUSTIN SUMMERS,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

* * * * *

CLERK, SUPREME COURT

By [Signature]
Chief Deputy Clerk

CASE NO. 87,817

District Court of Appeal,
3rd District - No. 95-2165

APPEAL FROM THE THIRD DISTRICT COURT OF APPEAL

MIAMI, DADE COUNTY, FLORIDA

PETITIONER'S BRIEF ON THE MERITS

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CASES

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4. State v. G.D.M., 394 So. 2d 1017 (Fla. 1981)
5. Woodard v. Wainwright, 556 F 2d 781 (5th Cir.), reh'g den., 560 F 2d 1023 (5th Cir. 1977)

LAWS

1. Article 1, Section 15, Of The Florida Constitution
2. Fla. Stat.:
 - 39.022(5)(c)1.
 - 39.052(a)(1)4.a.
 - 39.052(a)(1)4.b.
 - 39.052(a)(1)4.c.

PREFACE

The parties will be referred to as 'Petitioner' and 'State' in this brief. Other symbols used are defined below:

(R) -Record on appeal.

(T) - Transcript

(A) - Appendix

Point On Appeal

I.

The petitioner, a juvenile, was denied his constitutional right to a Grand Jury indictment and due process when the State Direct Filed him into adult court by an information charging offenses punishable by death or life imprisonment. (Article 1,Section 15, of The Florida Constitution; F.S.Ch 39.022

(5)(c)1, and 39.052(a)(1)4.a.).

II.

A CERTIFIED QUESTION:

"Is the failure of the trial court to enter the written findings required by Section 39.059(7)(c), Florida Statutes (1991) and Troutman v. State, 630 So. 2D 528 (Fla.1993) Cognizable Collaterally?"

Statement Of Case

On April 29, 1994, the State Of Florida transferred the petitioner, a juvenile, to adult court charged by an information in case 94-14276. The charges alleged kidnapping with a firearm, attempted first degree murder, armed robbery, attempted armed robbery, and burglary with an assault or battery while armed. All charges are from one episode which he is not guilty of. His documented physical limitations are testimony to this fact. (A-H,8) In the same transfer was case 94-14178 which had been nollo prossed in 1993 by juvenile court for lack of evidence. The petitioner was only 15 years old when charged in this case. A waiver hearing was required for the transfer.(F.S. Ch 39.052(2)(a). Also transfered was case 94-14035 which was before juvenile and he entered a plea of not guilty relying on his medical records as true testimony that he was physically unable to drive at that time. No hearing was resorted to. The petitioner was 16 years old with no prior record, no drug nor gang involvement. He has never been under the supervision of H R S/ Juvenile Justice Department. He was rideing with others because Hurricane Andrew left his family carless and homeless during that period of time.

The charges in the information, case 94-14276, are for violations of the law punishable by death or life imprisonment. They are indictable offenses. The failue to comply with the statutory requirement for indictment is harmful. This essential requirement is well articulated by Legislature in F.S. Ch 39.022(5)(c)1,(1993);- 39.052(a)(1)4.a. and Article 1 Section 15,Florida State Constitution. For these charges, indictment is a constitutional right and a provision by state statute.

Statement Of Facts

The State held proceedings against the Petitioner in the Eleventh Judicial Circuit on December 12, 1994. Judge Arthur Snyder presided and entered the judgment of conviction and sentenced in all three cases. There was no trial. Counsel failed to defend against illegal transfer, conviction and sentence. No appeal was taken. Within ten days of the conviction, trial court was given opportunity to correct the errors made by a Rule 3.580, 3.600 and 3.610 Motion filed with a different attorney representing. On January 11, 1995, in a hearing with Judge A. Snyder presiding the following contents of the motion was read:

a) Lack of jurisdiction and denial of effective assistance of counsel:

- 1) There was no waiver hearing in case # 94-14178 mandated by F.S. 39.052(2)(a) 1994.
- 2) There was no grand jury indictment in case 94-14276 although it alleged charges including three life felonies, as mandated by the provisions of F.S. 39.022(5)(c)1, 1994 and 39.0587(d)1, 1995, as well as Article 1, § 15, of the Florida constitution and 39.052(a)(1)4.a.
- 3) Rule 3.710 of Fla. R. Crim. P. mandates a presentence report by the Department of Corrections before a sentence is imposed on a defendant found guilty of the first felony offense or is under the age of 18 years. This report can not be waived.
- 4) There was no development of a predispositional report as mandated by F.S. 39.059(7)(a), 1994.
- 5) Court failed to comply with statutory criteria in sentencing. F.S. 39.059(7)(d), 1994.
- 6) Case 94-14035 did not meet transfer nor sentence criteria of F.S.Ch 39.

Pursuant to the January 11, 1995 hearing, the court ruled the Petitioner's motion was not sufficient and that he would consider the granting of the relief if the Rule 3.850 was filed. Case 94-14178 which had been nollo prossed in 1993, Juvenile court was nollo prossed again. The Petitioner willingly submitted to a polygraph test ordered by the State. The diagnostic results showed that he, (1) did not have a gun nor use a gun.(2) he was not wearing a mask.(3) he was not a co-offender. The examiner gave an opinion that he could not be cleared on the basis that the Petitioner knew a robbery was in progress when he ran into the building from gun shots in the parking lot. On this opinion, Judge Snyder denied relief without an evidentiary hearing on July 14, 1995. On July 29, 1995, Notice of Appeal was filed in the Third District Court of Appeal. On March 27, 1996, the district court affirmed with a Certified Question in the claim of omitted statutory criteria in sentencing. On April 2, 1996, a motion for rehearing was filed on the two overlooked claims of denial of due process and the court lacked jurisdiction to impose conviction and sentence. The District Court affirmed the transfer by F.S.Ch 39.047(5)(e)4. The State relied on the judgment of State v. Cain, 381 So. 2d 1361(Fla.1980), as giving them absolute authority in the matter.

SUMMARY ARGUMENT

The Legislative intent of F.S. Ch 39.047(5)(e)4, was to give the discretionary power to the State in cases that meet the specific criteria enumerated by statute and the State Constitution. The judgment found in State v, Cain nor the power given by F.S.Ch 39.047(5)(e)4, invalidates the Constitutional rights nor the statutory provisions of the laws. None of the judgments cited raise the issue of this case.

ARGUMENT

The record shows the trial Court has made clear errors of the law in this case. The Petitioner has been deprived of his right to a lawful transfer, a fair trial, treatment under F.S.Ch 39 and F.S.958; Laws specifically for and relating to the needs of youthful offenders. The noncompliance with the essential requirement for indictment has caused great harm. The petitioner is not guilty of these offences. He was the only one injured during this awful event. If there was justification and the State resolved to file an information against him, it should have been on lesser included offences. In light of the fact there was no indictment, the State could have proceeded lawfully by referring the case to the Juvenile Justice Department:

(1) It was not within the State's discretion to direct file an information on the charges in this case. (F.S.Ch 39.022(5)(c)1, 1993). (2) The trial court was without jurisdiction to convict and sentence. (3) The Third District Court overlooked the demand by the constitution to indict juveniles charged with offences punishable by death or life imprisonment, (if the State has resolved to prosecute them as adults on those charges) (Article 1, Section 15, Florida Constitution). The intent of Legislature as enumerated in F.S.Ch 39.022(5)(c)1, is a fixed principle of Florida law and cannot be construed as directory. It has not been amended nor repealed. The application of F.S.Ch 39.047(5)(e)4, is unconstitutional on these charges. No crisis in crime nor the judgment of any case relieves the State of the responsibility to be fair. Fairness is the candid assurance of the F.S. Ch 39 and the Constitution. Any disregard of rights, rules and laws that result in cruel and unusual punishment for children is harmful. It is harmful in this case. The Petitioner's claims are valid. He is denied due process. His conviction and sentence is unlawful. The Constitution of Florida and F.S.Ch 39 are evidence of this fact.

MEMORANDUM OF LAW

Transfer Of Jurisdiction For Trial As Adult

A child may be transferred for trial as an adult by request, waiver, direct file, or grand jury indictment. Whether a child is treated as an adult or a juvenile for a particular crime is initially at the discretion of the legislature. *State v. G.D.M.*, 394 So.2d 1017 (Fla. 1981). There is no absolute constitutional right to be treated as a child for all crimes. The right to be treated as a juvenile may be restricted by the legislature "as long as no arbitrary or discriminatory classification is involved." *Woodard v. Wainwright*, 556 F.2d 781, 785 (5th Cir. 1977), *reh. den.* 560 F.2d 1023, *cert. den.* 434 U.S. 1088.

Article I, §15, of the Florida Constitution requires a grand jury presentment or indictment before trial for a capital offense. Until an indictment, a child charged with a violation of law punishable by death or life imprisonment is subject to the provisions of F.S. Chapter 39. If an indictment is returned, all felonies and misdemeanors related to the charge will be tried together as if the child were an adult. F.S. 39.022(5)(c)1.

The circuit court has limited juvenile jurisdiction pending the outcome of the grand jury. An adjudicatory hearing may not begin for 21 days from the date that the child is taken into custody, unless the state attorney advises the court in writing that the case will not be presented to the grand jury or the grand jury has not returned an indictment. F.S. 39.022(5)(c)2. If the grand jury indictment is returned after this period, the child may be tried as an adult unless there already has been a juvenile adjudicatory hearing. *State v. Meagher*, 323 So.2d 26 (Fla. 4th DCA 1975).

A child of any age may be subject to trial as an adult in circuit court for a violation of any Florida law punishable by death or by life imprisonment.¹⁰ The juvenile court retains jurisdiction over the child until an indictment is returned by the grand jury. No adjudicatory hearing may be held for the child during the first twenty-one days after the child is taken into custody for a capital or life offense unless the state attorney advises the court in writing that he does not intend to present the case to the grand jury or that the grand jury has returned an indictment.¹¹ The failure of the statute to provide for a hearing before transfer by indictment does not result in a denial of due process or equal protection.¹² If the child is found to have committed an offense punishable by death or life imprisonment and all other felonies or misdemeanors charged in the indictment which are based on the same act or transaction, he shall be sentenced as an adult.¹³ If the indicted child is found guilty of a lesser included offense or any other offense charged as part of the criminal episode, he may be sentenced as a juvenile, a youthful offender or an adult.¹⁴

10. FLA. STAT. § 39.052(a)(1)(A).a.; *McCloud v. State*, 335 So. 2d 257 (Fla. 1976); *Lowe v. State*, 644 So. 2d 510 (Fla. 2d DCA 1994).

11. FLA. STAT. § 39.052(a)(1)(A).b.

12. *Petithomme v. State*, 610 So. 2d 14 (Fla. 3d DCA 1992); *Woodard v. Wainwright*, 556 F.2d 781 (5th Cir. 1977); *Duke v. State*, 529 So. 2d 341 (Fla. 1st DCA 1988).

13. FLA. STAT. § 39.052(a)(1)(A).a.

14. FLA. STAT. § 39.052(a)(1)(A).c.

CONCLUSION

The conviction, sentence and judgment in this case should be reversed.

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Certificate Of Service

I certify that a copy of the foregoing has been furnished, by mail, this
17 day of May, 1996, to Robert A. Butterworth, Attorney General, The Capitol,
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Justin Summers
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JUSTIN SUMMERS,

PETITIONER

vs.

INDEX TO APPENDIX

THE STATE OF FLORIDA,

RESPONDENT

| Exhibit | Description |
|---------|---|
| A | Third District Court Opinion Filed March 27, 1996. |
| B | Rehearing Denial filed April 17, 1996. |
| C | Appellee's Response Filed January 4, 1996 (page '1'.) |
| D | Announcement of Direct File and Motion to Transfer the Defendant to Jail. Filed April 29, 1994 |
| E | Transcript of Proceedings on December 12, 1994 |
| F | Judgment filed December 18, 1994 |
| G | Transcript of Proceedings on January 11, 1995 |
| H | Motion for Post Conviction Relief filed June 8, 1995 |
| I | Order Denying Defendant's Motion Without an Evidentiary Hearing Dated June 14, 1995 |
| J | Motion For Rehearing Filed April 2, 1996. |