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SID J. WHITE

FEB 10 1997

CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

CHARLES ONWU,

Petitioner,

v.

CASE NO. 89,126

STATE OF FLORIDA, and the
HONORABLE ALFRED HOROWITZ,
County/Circuit Court Judge
of the 17th Judicial Circuit, in
and for Broward County, Florida,
and the HONORABLE DALE ROSS,
Chief Judge of the 17th
Judicial Circuit, in and for
Broward County, Florida,

Respondents.

_____ /

RESPONSE OF AMICUS CURIAE, FLORIDA
DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES

The Florida Department of Children and Families
(department) files this responsive pleading as Amicus Curiae
in this matter. For the reasons set forth below the
department urges this Court to grant the Petition and enter
a Writ of Prohibition prohibiting respondent from proceeding
in a hearing to determine whether the Petitioner, Onwu,
meets the criteria for involuntary commitment pursuant to

Florida Statute Section 916.13 and Rule 3.212, Florida Rules of Appellate Procedure (1986), in Broward County Criminal Case No. 96-929-MM-10A.

JURISDICTION

The department contends that this Court has jurisdiction pursuant to Article 5, Section 3(d)(7) of the Florida Constitution. See Wild v. Dozier, 672 So. 2d 16 (Fla. 1996).

FACTS

Amicus takes no position regarding the facts of this case.

ARGUMENT

I. WHETHER THE CHIEF JUDGE OF THE CIRCUIT COURT LACKS THE AUTHORITY TO EMPOWER COUNTY COURT JUDGES BY CREATION OF A LOCAL RULE OF COURT TO COMMIT PERSONS ACCUSED OF MISDEMEANOR OFFENSES TO FORENSIC MENTAL INSTITUTIONS.

The Florida Department of Children and Families is the Executive Branch agency¹ entrusted by Florida law² with the care and custody of individuals accused of felonies who are deemed incompetent to proceed to trial. Section 916.107(1)(a), Florida Statutes (Supp. 1996), requires the department to place accused felons in appropriate treatment settings within 15 days from the date of the circuit court order declaring the person incompetent to stand trial. The department, despite using best efforts to accomplish such placements, occasionally is compelled to appear in circuit court and show cause why it has failed to accept individuals based upon existing court orders. See e.g. Department of Health and Rehab. Serv. v. Maxwell, 667 So. 2d 980 (Fla. 4th DCA 1996); Department of Health and Rehab. Serv. v. Bills, 661 So. 2d 69 (Fla. 2d DCA 1995).

Such circumstances have arisen in the past because the department has a limited number of forensic beds to provide services to mentally incompetent defendants and criminal

¹ The Department is successor in this responsibility to the now defunct Department of Health and Rehabilitative Services. Ch. 96-403, Laws of Fla.

² Chapter 916, Florida Statutes (1995); Chapter 916, Florida Statutes (Supp. 1996); Chapter 394, Florida Statutes (Supp. 1996).

offenders. Within the total population of approximately 850-950 individuals committed under chapter 916, Florida Statutes, nearly ten percent are alleged misdemeanants, according to department records dating back to 1992. When the department has sought to avoid placing these petty criminals³ in forensic beds, hostile judges have threatened contempt against the department's beleaguered staff. Accordingly, the department routinely places misdemeanants in beds the Legislature intended for felons. This contributes to overwhelming the system, with the result that committed felons are not placed within the allotted 15 days from the commitment order, commencing a new round of "show cause" proceedings. See e.g., Department of Health and Rehab. Serv. v. Maxwell, 667 So. 2d 980 (Fla. 4th DCA 1996); Department of Health and Rehab. Serv. v. Bills, 661 So. 2d 69 (Fla. 2d DCA 1995).

For the sake of brevity the department adopts and incorporates into this reply the arguments presented to this Court by petitioner, Onwu, in his Petition for Writ of

³ On defendant, for example, was charged with stealing a bottle of beer.

Prohibition at pages 4 through 12. The argument advanced by petitioner concerning the intent of legislature to place "minor criminals" in civil facilities is not diminished by the extensive 1996 revisions to chapter 394. See Ch. 394, Fla. Stat. (Supp. 1996).⁴ It also still evident that involuntary commitment to either a civil or a forensic facility requires a court order, § 394.467, Fla. Stat. (Supp. 1996)⁵; § 916.13, Fla. Stat. (1995), where "court" is expressly defined a "circuit court." § 394.455(7), Fla. Stat. (Supp. 1996); § 916.106(2), Fla. Stat. (1995).

The administrative order at issue here is another injudicious step down the slippery separation of powers slope upon which the trial courts have been treading with respect to competency and commitment orders. The Chief Judge of the Seventeenth Judicial Circuit has unilaterally rewritten key jurisdictional provisions of chapter 394 and chapter 916, Florida Statutes, permanently denominating

⁴ Section 394.462(1)(f-g), Florida Statutes (Supp. 1996), provide that persons in the custody of law enforcement for either "noncriminal or minor criminal behavior" who meet involuntary examination criteria shall be transported to a receiving facility. Those accused of felonies shall be processed as any other criminal suspect, and a receiving facility must provide examination and/or treatment where the accused felon is held). Section 394.455(26), Florida Statutes (Supp. 1996) provides that "Receiving facility" does not include county jail.

⁵ Section 394.467(2), Fla. Stat. (Supp. 1996), does permit the administrator of a facility at which a patient has been examined to retain the patient pending the outcome of an involuntary placement hearing.

county court judges as circuit judges for purposes of determining competency and issuing commitment orders. There is not even the fiction of a temporary assignment present in Wild and similar cases. The instant order, like specific placement orders, deprives the Legislature its ability to legislate, at least with respect to jurisdiction over persons believed to be mentally ill or disabled.

The department does not file as amicus out of concern that county court judges will make uninformed or poor decisions regarding commitment of misdemeanants. Rather, the department continues to be troubled by the willingness of the trial courts to overstep the authority accorded them by statute in the competency and involuntary commitment arena, particularly with respect to forensic commitments. The courts' tendency to order specific forensic commitments for minor criminal defendants/offenders is a major factor in rendering the department unable to comply with commitment orders.

This Court, too, is well aware of the proverbial "rock and a hard place" that executive branch agencies often find

themselves between due to inadequate legislative financial resource allocations. See e.g., Coalition for Adequacy and Fairness in School Funding, Inc. v. Chiles, 21 Fla. L. Weekly S271 (Fla. June 27, 1996); In re Order on Prosecution of Criminal Appeals by the Tenth Judicial Circuit Public Defender, 561 So. 2d 1130 (Fla. 1990). Given current funding realities, there is little the department can do to increase the number of forensic residential mental health beds. It is essential that the state's trial courts follow the letter and spirit of chapters 394 and 916, Florida Statutes, and allow the department the flexibility to place incompetent misdemeanants and other incompetent criminal defendants in civil beds when appropriate. This Court should recognize the funding limitations placed on this department and quash the Broward County Circuit Court's well-intended but unconstitutional effort to create by administrative order jurisdiction expressly denied by statute.

CONCLUSION

Amicus prays that this Honorable Court issue a Writ of Prohibition quashing the trial court's order denying the Petitioner's motion to declare unconstitutional Administrative Order I-96-C-6 and further quashing Administrative Order I-96-C-6.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished by U.S. Mail this 7th day of ~~January~~ ^{February}, 1997 to Diane Cuddihy, Asst. Public Defender, 17th Judicial Circuit, Broward County Courthouse, 201 SE 6th

St., Ft. Lauderdale, FL 33301; and Don Rogers, Asst.

Attorney General, 1655 Palm Beach Lakes Blvd., Suite 300,

West Palm Beach, FL 33401-2299.

A handwritten signature in black ink, appearing to read 'R. E. Doran', written over a horizontal line.

RICHARD E. DORAN