IN THE SUPREME COURT OF THE STATE OF FLORIDA

Charles Onwu,
Petitioner,

v.

State of Florida, and the **Honorable Alfred Horowitz**,[1] 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.
_____/

Case No. _____

L.T. Case No. 96-929MM10A
(Broward)

89,026

PETITION FOR WRIT OF PROHIBITION AND/OR
PETITION FOR REVIEW OF ADMINISTRATIVE ORDER

The Petitioner, Charles Onwu, by and through undersigned counsel, respectfully petitions this Honorable Court, pursuant to Article V, section 3 (b)(7) of the Florida Constitution and Wild v. Dozier, 672 So.2d 16 (Fla.1996), to issue an order to show cause, and after response from opposing counsel, issue a writ of prohibition prohibiting the Respondent, the Honorable Alfred Horowitz from proceeding in a hearing to determine whether the Petitioner Onwu meets the criteria for involuntary commitment pursuant to Florida Statute 916.13 and Rule 3.212, Fla.R.App.P. (1996), in Broward County Criminal Case No. 96-929MM10A.

Petitioner, Charles Onwu, is a defendant in the County Court, Criminal Division of the

[1] Judge Horowitz was recently assigned county court division "DV." His predecessor, Judge Ronald Rothschild presided over the Petitioner's Motion to Declare Unconstitutional Administrative Order II-96-C-6.

17th Judicial Circuit, case no. 96-929MM10A. The Respondent, the Honorable Alfred Horowitz, is the county court judge who presides over the Petitioner's criminal prosecution. The Honorable Dale Ross is the Chief Judge of the 17th Judicial Circuit who rendered Administrative Order I-96-C-6.

In this Petition, the Petitioner Charles Onwu will be referred to as such. The Respondent, the Honorable Alfred Horowitz, will be referred to as "trial court." The Respondent the Honorable Dale Ross will be referred to as "chief judge." The symbol "A" in this Petition refers to the Appendix attached hereto.

JURISDICTION

This Honorable Court has jurisdiction pursuant to Article V, Section 3(b)(7) of the Florida Constitution and Wild v. Dozier, 672 So. 2d 16 (Fla.1996), wherein this Court held that challenges to administrative orders on judicial assignments must first be made by motion in the trial court and reviewed by petitions to this Court.

RELIEF SOUGHT

The Defendant seeks the immediate issuance of a Rule to Show Cause directed to the trial court. The Defendant further requests, after appropriate response from opposing counsel, the issuance of a Writ of Prohibition, prohibiting the trial court from conducting a commitment hearing in State of Florida v. Charles Onwu, Case No. 96-929MM10A.

FACTS

The Petitioner is charged with violating a domestic violence injunction. (A 1) The Petitioner was arrested on January 12, 1996 and the Office of the Public Defender was appointed

to represent the Petitioner on March 21, 1996. (A 3) Defense counsel orally moved[2] for the appointment of experts pursuant to Florida Rule of Criminal Procedure 3.210. The trial court granted the motion and the Petitioner was evaluated. (A 4) The experts found the Petitioner incompetent to proceed and recommended that the Petitioner be committed to the Department of Health and Rehabilitative Services. (A 5[3])

The Petitioner filed a Motion to Declare Unconstitutional Administrative Order I-96-C-6.[4] (A 12) Administrative Order I-96-C-6 appoints as circuit court judges county judges presiding over misdemeanor cases for the limited purpose of determining issues of competency and forensic commitment. (A 20) The trial court denied the motion, finding that the administrative order is designed to maximize the efficient administration of justice and supplement, not replace, circuit court judges. (A 67)

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[2] The Petitioner repeatedly refused to meet with the assigned assistant public defender which delayed the filing of appropriate motions.

[3] Only one expert has submitted a written report as of the filing of this petition. However, both experts orally advised undersigned counsel that they felt the Petitioner met the criteria for forensic commitment.

[4] A brief procedural history of the forensic commitments of mentally incompetent persons accused of misdemeanors in Broward County may be helpful. In State of Florida v. David Mark Ward, Broward County Criminal Case No. 92-18743MM10A , the trial court found incompetent the defendant and entered an order of commitment. On habeas petition to the circuit court, Chief Judge Ross, sitting in his appellate capacity, granted habeas relief. David Mark Ward v. Cochran, et al., Broward Circuit Civil Case No. 94-2267 26. Judge Ross held that although the county court has the inherent authority to determine issues of competency, it does not have the authority to commit mentally incompetent persons to the Department of Health and Rehabilitative Services. (A 69) The State appealed to the Fourth District Court of Appeal and the district court affirmed without opinion following oral argument. State v. David Mark Ward, 653 So. 2d 1043 (Fla. 4th DCA 1995) Judge Ross then issued Administrative Order I-96-C-6.

ARGUMENT

THE ADMINISTRATIVE ORDER VIOLATES THE SEPARATION OF POWERS

The trial court's order is incorrect because Administrative Order I-96-C-6 does more than merely appoint county court judges as circuit court judges to aid and supplement the circuit court. The administrative order circumvents the clear intent of the legislature that mentally incompetent persons charged with misdemeanors be diverted to civil mental health institutions. The administrative order does not maximize the efficient administration of justice, it licenses injustice against the most vulnerable members of society, the non-violent mentally ill.

Administrative Order I-96-C-6 authorizes named[5] county court judges to act as circuit court judges for the purpose of determining competency and entering orders of commitment. The administrative order violates Article II, section 3 of the Florida Constitution because it provides for the forensic commitment of mentally incompetent people accused of misdemeanors, contrary to Chapter 916, Florida Statutes.[6] The legislature substantively limited the state's power of involuntary commitment to forensic institutions by restricting such commitments to felony prosecutions. Chapter 916, entitled "Mentally Deficient and Mentally Ill Defendants," authorizes the forensic commitment of mentally incompetent defendants. Florida Statute 916.106(2), defines "court" as the "circuit court." The Florida Legislature decided to treat differently mentally incompetent persons charged with minor crimes, and thus did not authorize county

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[5] All county court judges presently on the bench are individually named.

[6] The Petitioner does not contest the county court's inherent authority to determine issues of competency.

courts[7] to issue orders of commitment. The administrative order violates the separation of powers doctrine by expanding the state's power of forensic commitment to misdemeanors.

In Addington v. Texas, 441 U.S. 418, 99 S.Ct. 1804, 60 L.Ed.2d 323 (1979), the United States Supreme Court acknowledged that the involuntary commitment of an individual "constitutes a significant deprivation of liberty that requires due process protection." 99 S.Ct. at 1809.[8] The government's power to commit a person adjudged incompetent or insane is substantive. Jackson v. Indiana, 406 U.S. 715, 726, 92 S.Ct. 1845, 1852, 32 L.Ed.2d 435 (1972), citing Greenwood v. United States, 350 U.S. 366, 376, 76 S.Ct. 410, 415, 100 L.Ed.2d 412 (1956) Moreover, legislatures can place "substantive limitations" on the commitment of persons found to be mentally ill. Jackson v. Indiana, 406 U.S. at 736, 92 S.Ct at 1857, 31 L.Ed.2d 435 (1972). That is precisely what the Florida Legislature did when it enacted[9] chapter 916 and chapter 394. The legislature decided to limit the state's power of forensic commitment. The line was drawn between mentally incompetent persons charged with minor crimes and those charged with felonies.

Chapter 916 should be construed in conjunction with chapter 394, the "Baker Act." "It is

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[7] County courts are courts of limited jurisdiction. White v. Marine Transport, 372 So.2d 81 (Fla. 1979) Article V, section 6(b) of the Florida Constitution states, "(T)he county courts shall exercise the jurisdiction prescribed by general law. Such jurisdiction shall be uniform throughout the state." Thus, the jurisdiction of the county court is a substantive matter within the purview of the legislature.

[8] See also Justice McDonald's specially concurring opinion in Ojeda v. State, 427 So. 2d 185 (Fla. 1983) wherein he wrote that "one's freedom is a substantive matter."

[9] Chapter 916, Florida Statutes, was created in 1980 by chapter 80-75 *Laws of Florida.* Section 916.106(2) was created in 1985 by section 31 of Chapter 85-167, *Laws of Florida.*

an accepted maxim of statutory construction that a law should be construed together and in harmony with any other statute relating to the same purpose, even though the statutes were not enacted at the same time." Wakulla County v. Davis, 395 So. 2d 540, 542 (Fla. 1981). Both statutes reflect the legislature's intent to treat differently mentally ill persons charged with minor criminal offenses.

Florida Statute 394.461(4), entitled "(C)riminally charged or convicted mentally ill persons," provides as follows:

> (a) No receiving facility shall be required to accept for examination and treatment any person with pending felony charges involving a crime of violence against another person.
> (b) **When law enforcement custody for a mentally ill person is based on either noncriminal behavior or minor criminal behavior, the law enforcement authority shall transport the person to a receiving facility for evaluation.** When a law enforcement officer has arrested a person for a felony involving a crime of violence against another person, such person should be processed in the same manner as any other criminal suspect, notwithstanding the fact that the arresting officer has reasonable grounds for believing that the person's behavior meets statutory criteria for involuntary examination pursuant to s. 394.463. When a law enforcement officer has arrested a person for a felony involving a crime of violence against another person and it appears that the person meets the statutory guidelines for involuntary examination or involuntary placement, the law enforcement agency shall immediately notify the designated receiving facility, which facility shall be responsible for promptly arranging for evaluation and treatment of the patient.

(emphasis added.)

Section 394.455(8) defines receiving facility as a facility "designated by the department to receive patients under emergency conditions or for psychiatric evaluation and to provide short-term treatment, and also means a private facility when rendering services to a private patient pursuant to the provisions of this act. **However, the term 'receiving facility' does not include a county jail.**" (emphasis added) Furthermore, the Baker Act, like chapter 916, defines the term

"court" as the circuit court. Section 394.455(17), Fla.Stat. (1995).

The Baker Act requires that mentally incompetent persons charged with minor crimes be immediately diverted from forensic facilities, such as the county jail. Thus, the legislature effected its intent to treat differently mentally ill persons charged with minor crimes. In accordance with that intent, chapter 916 limits the state's power to forensically commit incompetent persons charged with a crime. The limitation on forensic commitment is further evidenced by the absence of any provision for separate housing for committed mentally incompetent persons charged with minor crimes. Certainly the legislature did not intend mentally incompetent persons charged with minor crimes be committed and housed in forensic institution[10], along with mentally ill persons who are charged with violent acts. The correctional system cannot house a misdemeanant with a serial murderer. See sections 951.123 (5)((a)(4), (5)(b)(3), Fla.Stat. (1995) Chapter 916 does not contain a similar prohibition. The legislature did not provide for separate housing because mentally incompetent person charged with minor crimes are not subject to forensic commitment. Accordingly, chapter 916 authorizes only the circuit court to commit persons found to be mentally incompetent.

This conclusion does not leaves the county court without recourse upon a finding of mental incompetence. The legislature intended that mentally incompetent persons accused of misdemeanors be diverted to the civil mental health system. Section 394.463 provides for the

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[10] Section 916.105(5) defines "forensic facility" as a "separate and secure facility established with the department for the treatment of forensic clients. Such separate and secure facilities shall be security-grade buildings located on grounds distinct in location from other treatment facilities for persons who are mentally ill."

involuntary examination of a person believed to be mentally ill upon the initiation[11] of a circuit court, law enforcement officer, or health care worker. The criteria[12] for such an examination are strikingly similar to the criteria for involuntary hospitalization[13] under chapter 916. Accordingly,

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[11] Section 394.463(2) states, in pertinent part:

> (a) Initiation of involuntary examination - An involuntary examination may be initiated by any one of the following means:
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> 1. A court may enter an ex parte order stating that a person appears to meet the criteria for involuntary examination, giving the findings on with that conclusion is based. . . .
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> 2. A law enforcement officer shall take a person who appears to meet the criteria for involuntary examination into custody and deliver him or have him delivered to the nearest receiving facility for examination.
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> . . .
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> 3. A physician, psychologist licensed pursuant to chapter 490, psychiatric nurse, or clinical social worker may execute a certificate stating that he has examined a person within the preceding 48 hours and finds that the person appears to meet the criteria for involuntary examination and stating the observations upon which that conclusion is based. . . .

[12] The criteria for involuntary examination under section 394.463(1) are as follows: there is reason to believe that a person is mentally ill, and because of that mental illness:

> "(a)(1) He has refused voluntary examination after conscientious explanation and disclosure of the purpose of the examination; and
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> 2. He is unable to determine for himself whether examinations necessary; and
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> (b)(1) Without care or treatment, he is likely to suffer from neglect or refuse to care for himself; such neglect or refusal poses a real and present threat of substantial harm to his well-being; and it is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services; or
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> (2) There is a substantial likelihood that without care or treatment he will cause serious bodily harm to himself or others in the near future, as evidenced by recent behavior."

[13] Similarly, section 916.13 provides for involuntary commitment, if proven by clear and convincing evidence that a defendant is mentally ill or mentally retarded and because of that condition:

> "(1) He is manifestly incapable of surviving alone or with the help of willing and

a mentally incompetent person charged with a minor crime may be referred for involuntary examination. There is nothing to prohibit the initiation of an involuntary examination by either the experts appointed to evaluate the defendant's competency or by a law enforcement officer upon the suggestion of the county court. If a person meets the criteria for commitment, he will also meet the criteria for involuntary examination under section 394.463. The legislature's plan to divert to the civil mental health system mentally incompetent persons accused of minor crimes is accomplished.

In addition, had the administrative order appointed county court judges as circuit court judges to determine involuntary hospitalization pursuant to chapter 394, there would be no controversy before this Court. Such an administrative order would fit squarely into recent opinions by this Court regarding judicial assignments. Dozier v. Wild, 672 So. 2d 16 (Fla. 1996); Holsman v. Cohen, 667 So. 2d 769 (Fla. 1996). Unlike chapter 916 commitments, any citizen is potentially subject to a civil hospitalization. Therefore the appointment of county courts as circuit court judges to determine whether an accused misdemeanant should be civilly committed does not subject the defendant to a commitment not otherwise available. However,

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responsible family or friends, including available alternate services, and, without treatment, he is likely to suffer from neglect or refuse to care for himself and such neglect or refusal poses a real and present threat of substantial harm to his well being; or

(2) There is a substantial likelihood that in the near future he will inflict serious bodily harm on himself or another person, as evidenced by recent behavior causing, attempting, or threatening such harm; and

(3) All available, less restrictive treatment alternatives, including treatment in community residential facilities or community inpatient or outpatient settings, which would offer an opportunity for improvement of his condition have been judged to be inappropriate."

Administrative Order I-96-C-6, although facially an order on judicial assignments, is legislative in nature. It subjects to forensic commitment persons not otherwise at risk for such commitment. This Court would not condone an administrative order allowing for the forensic commitment of persons not accused of any crime. Nor would this Court approve an administrative order assigning misdemeanors to the circuit court and concurrently increasing the penalty to five years imprisonment. The administrative order at bar is equally offensive. It subjects to forensic commitment persons the legislature decided should not be committed. The administrative order extends the state's power of commitment and is unconstitutional.

It is important to note that prior to the enactment of chapter 916, the Rules of Criminal Procedure prohibited the commitment of mentally incompetent persons accused of misdemeanors to the Department of Health and Rehabilitative Services:

> If the Court decides that a defendant charged with a misdemeanor is mentally incompetent to stand trial or be sentenced, the Court shall not proceed to trial or sentencing. No person charged with a misdemeanor shall be committed to the Department of Health and Rehabilitative Services solely by this rule, but shall be admitted for hospitalization and treatment in accordance with the provisions of Part 1 of Chapter 395, Florida Statutes (1975) of section 393.11, Florida Statutes (1975).

Rule 3.210(c)(1) Fla.R.Crim.P. (1977). The current rules are silent about the commitment of mentally incompetent persons accused of misdemeanors, but state that "[A] defendant may be committed for treatment to restore a defendant's competence to proceed if the court finds that the defendant meets the criteria for commitment as set forth by statute[.]" Rule 3.121(3) Fla.R.Crim.P. (1996). Mentally incompetent persons accused of misdemeanors do not meet the statutory criteria for forensic commitment. The statute does not authorize county courts to commit, thereby excluding from the criteria of commitment mentally incompetent

misdemeanants.

THE ADMINISTRATIVE ORDER EXTENDS THE JURISDICTION OF THE COUNTY COURTS

The administrative order is unlawful because it allows a circuit court to adjudicate a misdemeanor that do not arise from the same incident as a felony, contrary to section 26.012(2)(d) Fla.Stat. (1995). Circuit courts have original jurisdiction not vested in county courts. Article V, section 5(b) Fla.Const. County courts are courts of limited jurisdiction. White v. Marine Transport, 372 So.2d 81 (Fla. 1979). Article V, section 6(b) of the Florida Constitution states, "(T)he county courts shall exercise the jurisdiction prescribed by general law. Such jurisdiction shall be uniform throughout the state." Thus, the jurisdiction of the county court is a substantive matter within the purview of the legislature. "Absent a constitutional prohibition or restriction, the legislature is free to vest courts with exclusive, concurrent, original, appellate or final jurisdiction." Alexdex Corp. v. Nachon Enterprises, 641 So. 2d 858 (Fla. 1994).

Florida Statute 34.01[14] sets forth the legislative grant of jurisdiction to the county courts,

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[14] (1) County courts shall have original jurisdiction:
(a) In all misdemeanor cases not cognizable by the circuit courts;
(b) Of all violations of municipal and county ordinances; and
(c) As to causes of action accruing:
. . . (4) On or after July 1, 1992, of actions at law in which the matter in controversy does not exceed the sum of $10,000, exclusive of interest, costs, and attorney's fees, except those within the exclusive jurisdiction of the circuit courts.
(2) The county courts shall have jurisdiction previously exercised by county judges' courts other than that vested in the circuit court by s. 26.012, except that county court judges may hear matters involving dissolution of marriage under the simplified procedure pursuant to Rule 1.161(c), Florida Rules of Civil Procedure or may issue a final order for dissolution in cases where the matter is uncontested, and the jurisdiction previously exercised by county courts, the claims court, the small claims courts, small claims magistrates courts, magistrates courts, justice of the peace courts, municipal courts, and courts of chartered counties, including but

including original jurisdiction over misdemeanors. Circuit courts do not have jurisdiction to adjudicate misdemeanors, unless they arise from the same incident as a felony. Section 26.012(2)(d) Fla.Stat. (1995). Consequently, a circuit court can not enter orders in a misdemeanor case. The administrative order authorizes a circuit court to enter an order of commitment in a case it does not have the authority to adjudicate. This is patently unconstitutional.

In addition, county courts do not have jurisdiction over involuntary hospitalization.[15] Such authority is vested in the circuit court by chapter 26.012, Florida Statutes.[16] Thus, county courts can not commit accused misdemeanants to the Department of Health and Rehabilitative Services. Thus, neither a circuit court nor a county court can lawfully commit a mentally incompetent person accused of a misdemeanor to the Department of Health and Rehabilitative Services under chapter 916.

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not limited to the counties referred to in ss. 9, 10, 11, and 24 of Art. VIII of the State Constitution, 1885.
(3) Judges of county courts shall be committing magistrates. Judges of the county courts shall be coroners unless otherwise provided by law or by rule of the Supreme Court.
(4) Judges of the county courts may hear all matters in equity involved in any case within the jurisdictional amount of the county court, except as otherwise restricted by the State Constitution or the laws of Florida.

[15] See In Re Strauss, 547 So. 2d 1041(Fla. 1st DCA 1989), wherein the district court held that the county court lacked jurisdiction to involuntarily commit an individual for treatment for alcoholism.

[16] The circuit court has jurisdiction over "proceedings relating to the settlement of the estates of decedents and minors, the granting of letters of testamentary, guardianship, *involuntary hospitalization*, the determination of incompetency, and other jurisdiction usually pertaining to courts of probate." (emphasis added) Section 26.012(2)(b), Fla. Stat. (1995).

CONCLUSION

Administrative Order I-96-C-6 is unconstitutional because it constitutes judicial legislation extending the state's power of involuntary commitment. The order disregards the legislature's decision to treat differently mentally incompetent persons accused of misdemeanors. The legislature did not intend for mentally incompetent persons accused of minor crimes be subject to forensic commitment. The legislature directed that such people be diverted to the civil mental health system. The legislature did not empower the county courts to involuntarily hospitalize people. The administrative order circumvents the legislative scheme of diversion and licenses the commitment of society's most vulnerable citizens.

The administrative order is unlawful because it extends the jurisdiction of circuit courts beyond that provided by statute or the Florida Constitution.

Accordingly, the Petitioner respectfully requests this Honorable Court to issue a Rule to Show Cause directed to the Respondent and, after appropriate response, issue a Writ of Prohibition quashing the trial court's order denying the Petitioners 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 Petition for Writ of Prohibition was delivered by hand to James McLane, Esq., Assistant State Attorney, Office of the State Attorney, Broward County Courthouse, Room 675, 201 S.E. 6th Street, Ft. Lauderdale, Fl. 33301, to the Honorable Alfred Horowitz, Broward County Courthouse, and the Honorable Dale Ross, Chief Judge, Broward County Courthouse, by Overnight Mail to the Department of Legal Affairs, 1655 Palm Beach Lakes, Blvd., Suite 300, West Palm Beach, Florida, this 24th day of September, 1996.

Diane M. Cuddihy

cc:
Judge Ronald Rothschild