IN THE SUPREME COURT OF THE STATE OF FLORIDA

Charles Onwu,
Petitioner,

v.

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.
_____/

Case No. 89,026

PETITIONER'S REPLY

The Petitioner, Charles Onwu, by and through undersigned counsel, respectfully replies to the Respondents' response as follows:

1. Respondents argue that this Court is without jurisdiction to decide the issues presented in the petition. However, Respondents cite several cases wherein this Court *has* exercised its jurisdiction to determine the legality of administrative orders assigning county court judges to sit on the circuit bench. In Wild v. Dozier, 672 So. 2d 16, (Fla. 1996), this Court held that it had exclusive authority to review judicial assignments. The Respondent argues that because Petitioner's raises substantive challenges to Administrative Order I-96-C-6, Petitioner is attempting to "bootstrap" and expand this Court's jurisdiction. This argument is illogical. The fact that Petitioner's challenge to the judicial assignment entails substantive arguments does not divest this Court of jurisdiction. *Every* case challenging judicial assignments involves substantive arguments.

2. Footnote 1 of the response argues that the petition is not ripe for review because the Petitioner has not yet been committed. However, the Petitioner is seeking prohibition. Prohibition is a preventive, not corrective, remedy which lies to prevent a court from exceeding its jurisdiction. English v. McCrary, 348 So. 2d 293,296 (Fla. 1977) ("Prohibition may only be granted when it is shown that a lower court is without jurisdiction or attempting to act in excess of their authority. It is preventive and not corrective in that it commands the one to whom it is directed not to do the thing which the supervisory court is informed the lower tribunal is about to do. Its purpose is to prevent the doing of something, not to compel the undoing of something already done.") Prohibition is the appropriate remedy to prevent the lower court from committing the Petitioner.

3. Respondent argues that this Court can only exercise its prohibition jurisdiction is cases that would otherwise be reviewable by the Court. (Response at paragraph 5) However, as stated above, this Court has exclusive authority to review judicial assignments. It follows that such review can be through prohibition.

4. Finally, Respondent argues that persons accused of misdemeanors are subject to forensic commitment pursuant to Chapter 916. The Respondents rely on a committee note to the 1985 amendment to the Florida Rules of Criminal Procedure. That committee note references the 1985 amendments to chapter 394 and 916[1]. The committee note states that the "effect of the

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[1] The committee note certainly did not overturn this Court's holding 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). According to this rule of statutory construction, chapter 916 should be construed in conjunction with chapter 394. Both statutes reflect the legislature's intent to treat differently mentally ill persons charged with minor criminal offenses.

amendments is to avoid tying mentally ill or deficient defendants in the criminal justice system to civil commitment procedures of the 'Baker Act'... Chapter 916 now provides for specific commitment criteria of mentally ill or mentally retarded criminal defendants who are either incompetent to proceed or who have been found not guilty by reason of insanity in criminal proceedings." In 1985, the Legislature amended section 916.13 to include criteria for commitments. The earlier versions of that section did not set forth any such criteria. Section 916.13 Fla.Stat. (1981); Section 916.13 Fla.Stat. (1983) Apparently, criminal courts were turning to the criteria set forth in the Baker Act to determine whether to commit an individual under chapter 916. Taken in that context, the committee note does not refute the Petitioner's argument that the Legislature intended to treat differently mentally ill persons accused of minor crimes. It is important to note that Florida Statute 916.106(2) which defines "court" as the "circuit court" *was enacted in the 1985 revision.*

In addition, although the 1985 amendments to chapter 394 did delete from the Baker Act language referring to mentally ill persons accused of crimes, that deletion does not defeat Petitioner's argument. The 1985 Legislature revised Florida Statue 394.459, deleting the following language:

> Persons who are mentally ill and who are charged with, or who have been convicted of, committing criminal acts shall receive appropriate treatment. In a criminal case involving a person who has been adjudged incompetent to stand trial or not guilty by reason of insanity, or who has been found by the court to meet the criteria for involuntary placement pursuant to s. 394.467(1), a jail may be used as an emergency facility for up to 15 days. The department shall remove such person from the jail no later than the end of this period. In all cases in which a patient adjudicated pursuant to chapter 916 is held in a jail, treatment shall be provided in the jail for up to the end of the 15 day period by the local receiving facility, the patient's physician or clinical psychologist, or any other mental health program available to provided such treatment.

Laws of Florida, 1985, vol. I, part 2, pp. 1139-1140. Importantly, the Legislature *did not amend* section 394.461(4),which provides for the transfer to local receiving facilities of mentally ill persons in police custody for non-criminal or minor criminal behavior. Florida Statute 394.461(4) 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[2] 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.)

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.

5. The Respondents contend that Florida Statute 916.106(2), defining "court" as "circuit

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[2] Section 394.455(8) excludes from the definition of receiving facility a county jail.

court," is inconsistent with the rules of criminal procedure 3.010. Petitioner does not take issue with this Court's rule making authority. Article V, section 2(a) Fla. Const. (1968); State v. Garcia, 229 So. 2d 236 (Fla. 1969). However, the rules of procedure are not exclusively procedural[3], nor is chapter 916 inconsistent.

Chapter 916 pertains to the evaluation and involuntary hospitalization of individuals charged with crimes. Florida Statute 916.106(2) defines the term "court" as circuit court for the purposes of chapter 916. The rules of criminal procedure do not define the term court. However, they do apply to all criminal proceedings, including criminal proceedings in county court. Rule 3.010 Fla.R.Crim.P (1994)[4] Regardless of the rules' application to the county court, chapter 916 is not inconsistent because Rule 3.212(c)(3)(A) provides for commitment of an incompetent in accordance with Florida Statutes. Thus, although the rules set forth the procedure to follow when competency is questioned or commitment is necessary, they defer to the legislature's determination regarding when commitment is appropriate.

The United States Supreme Court acknowledged that the involuntary commitment of an

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[3] Some rules codify longstanding substantive law. Rule 3.210(a) states that "(A) person accused of an offense or a violation of probation or community control who is mentally incompetent to proceed at any material stage of a criminal proceeding shall not be proceeded against while incompetent." Subsection (b) defines the term "material stage." Rule 3.210 (a) and (b) are clearly substantive: prosecution of a mentally incompetent individual violates all notions of due process. The successive rules delineate the procedure to follow when competence is put in question. Rule 3.212(C) provides for commitment upon a finding of incompetence. The rule states that a defendant may be committed for treatment to restore competency if the "court finds that *the defendant meets the criteria for commitment as set forth by statute. . . .*" (emphasis added.)

[4] Rule 3.010 states: "(T)hese rules shall govern the procedure in all criminal proceedings in state courts(.)"

individual "constitutes a significant deprivation of liberty that requires due process protection." Addington v. Texas, 441 U.S. 418, 99 S.Ct. 1804, 1809, 60 L.Ed.2d 323 (1979).

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 has done by enacting 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.

6. Respondents do not address Petitioner's argument that the administrative order is unconstitutional because it allows a circuit court to adjudicate a misdemeanor that does not arise from the same incident as a felony, contrary to section 26.012(2)(d) Fla.Stat. (1995). Florida Statute 34.01 bestows on the county courts 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.

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 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,

ALAN H. SCHREIBER
Public Defender
17TH Judicial Circuit

FOR: Diane M. Cuddihy
Assistant Public Defender
Florida Bar No. 434760
201 S.E. 6th Street
North Wing - Third Floor
Ft. Lauderdale, Florida 33301
(954) 831-8814

Counsel for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petition for Writ of Prohibition was delivered by U.S. Mail to Don Rogers, Assistant Attorney General, Department of Legal Affairs, 1655 Palm Beach Lakes, Blvd., Suite 300, West Palm Beach, Florida, this 30 day of December, 1996.

for Diane M. Cuddihy