IN THE SUPREME COURT OF FLORIDA

CHARLES ONWU,

Petitioner,

v. Case No. 89,026

STATE OF FLORIDA, and
the HONORABLE ALFRED HOROWITZ,
County Court Judge of Broward County,
and the HONORABLE DALE ROSS, Chief Judge
of the Seventeenth Judicial Circuit,

Respondents.

_____/

RESPONSE

COMES NOW Respondents, by and through undersigned counsel, and responds to the petition for writ of prohibition/petition for review of administrative order as follows.

1. On March 27, 1996, Respondent, Chief Judge Dale Ross enacted administrative order no. I-96-C-6. The administrative order made all County Court Judges in Broward County acting Circuit Court Judges for the limited purpose of determining competency and to enter orders pursuant to Fla. Stat. §§ 916.106(2), 394.461(4)(6) and Fla. R. Cr. P. 3.210-3.219.

2. The administrative order does not violate the separation of powers doctrine. The administrative order allows County Court Judges in Broward County to act as Circuit Court Judges for the limited purpose of determining competency and the appropriate placement pursuant to sections 916.106(2) and 394.461(4)(6). All actions pursuant to the administrative order are done by a County Judge acting as a Circuit Court Judge. Recently this court has specifically approved such administrative orders dealing with judicial assignments. See Wild v. Dozier, 672 So. 2d 16 (Fla. 1996)(county court judge was properly appointed to successive six month assignments to preside in circuit court over half of criminal cases in county, assignment via administrative order permitted provided that assignment is directed to a specified, limited class of cases, is used to maximize the efficient administration of justice, and requires county judges to supplement and aid circuit court judges rather than replace them); Holsman v. Cohen, 667 So. 2d 769 (Fla. 1996)(assignment via administrative order of circuit court judge to handle limited number of county court domestic violence misdemeanors was appropriate since assignment was directed to specific class of cases and was used to maximize efficient administration of justice and did not replace county court judges in domestic violence court); J.G. v. Holtzendorf, 669 So. 2d 1043

(Fla. 1996)(same); Rivkind v. Patterson, 672 So. 2d 819 (Fla. 1996)(monthly assignments via administrative order of county court judges as temporary circuit court judges to rule on injunctions in domestic violence cases valid as a logical and lawful means to ensure expeditious and efficient resolution of violence issues in circuit court). The administrative order at bar was enacted as a management devise to most effectively utilize court resources and associated personnel and to ensure prompt and efficient resolution of competency matters in the Seventeenth Judicial Circuit.

3. Respondents, based on the discussion of the recent case law as noted above, respectfully requests that the petition be immediately dismissed. Clearly, the chief judge of a judicial circuit has the authority to enact such an administrative order. "[A]s the administrative officer of all courts within a judicial circuit, the chief judge is best equipped to assess the needs of each trial court and to allocate the judicial labor available within the circuit accordingly." Wild, 672 So. 2d at 18. 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." The responsibilities of the chief judge include planning for the prompt disposition of cases, the assignment of

judges, the control of dockets, and the regulation and use of courtrooms. Wild v. Dozier, 672 So. 2d 16 (Fla. 1996); Holsman v. Cohen, 667 So. 2d 769 (Fla. 1996). This is exactly what the administrative order in question accomplishes. Immediate dismissal will allow for the prompt and efficient administration of justice below.

4. Petitioner also argues that he cannot be forensically committed pursuant to chapter 916 since he is charged with a misdemeanor. This issue is not properly before this court in the present petition. Respondents acknowledge that this court's opinion in Wild v. Dozier, 672 So. 2d 16 (Fla. 1996) allows petitioner to attack the enactment of an administrative order dealing with judicial assignments in this court through the filing of a petition for writ of prohibition. However, Respondents know of no mechanism allowing Petitioner to bootstrap other substantive issues into the present petition. This is exactly what petitioner is attempting to do at bar as petitioner extensively argues that chapter 916 does not allow for forensic commitment of criminal defendants charged with misdemeanors. This court should limit its review of the present petition to the validity of the administrative order entered below.

5. If Petitioner wishes to address the commitment of

criminal defendants charged with misdemeanors pursuant to chapter 916 it should be done in the Fourth District Court of Appeal on direct appeal after a commitment or via a petition for writ of prohibition in the Fourth District.[1] Although this court has constitutional authority[2] to issue writs of prohibition to circuit courts, such jurisdiction is only exercised when the final order of the trial court would have been directly reviewable by this court. see e.g. Tsavaris v. Scruggs, 360 So. 2d 745 (Fla. 1977)(court exercises prohibition jurisdiction over circuit court where death sentence and direct Supreme Court review is possible); State ex rel. Sarasota County v. Boyer, 360 So. 2d 388 (Fla. 1978)(before Supreme Court will exercise jurisdiction it is necessary to show on the face of the matter it appears that a lower court is about to act in excess of its jurisdiction in a case which is likely to come within Supreme Court's jurisdiction to review); Moffit v. Willis,

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[1]Since Petitioner has not been committed pursuant to chapter 916 the issue is not ripe for review in this court. If this court were to rule on the merits of the substantive issue it would be issuing an unauthorized advisory opinion. Interlachen Lakes Estates, Inc. v. Brooks, 341 So. 2d 993, 995 (Fla. 1976).

[2]Florida Constitution article V, sec. 3(b)(7). This court has noted that "We do not consider the [1980 amendment to article V]... to have either expanded or contracted our jurisdiction to issue writs of prohibition to courts." Moffit v. Willis, 459 So. 2d 1018, 1020 (Fla. 1984).

459 So. 2d 1018 (Fla. 1984)(court exercises prohibition jurisdiction because it was likely that the circuit judge would have construed a constitutional provision and on direct appeal the district court would have construed portion of state or federal constitution) Public Service Commission v. Fuller, 551 So. 2d 1210 (Fla. 1989)(court exercises prohibition jurisdiction as circuit court had no authority to conduct proceedings which were in exclusive realm of PSC subject to Supreme Court review)

6. At bar, Petitioner has not been committed pursuant to chapter 916. This court should defer ruling, as a matter of comity, to the Fourth District's own power to review the issue on direct appeal if and when the commitment actually occurs or to allow the Fourth District to review a writ filed in that court.

7. Even if this court decides to review the issue on the merits it is clear that the plain language of chapter 916 allows for forensic commitment of criminal defendants charged with misdemeanors. Respondents would first point out the obvious; there is no language in chapter 916 indicating the legislature wanted to delineate between persons charged with felonies and persons charged with misdemeanors. If this were the legislative intent it would have been clearly spelled out in the plain language of the statute. The language in chapter 916 indicates the chapter is applicable to

all criminal defendants. For example, chapter 916 applies to forensic clients or patients and the terms are broadly defined in §916.106(4) as follows:

> (4) "Forensic client" or "patient" means any mentally retarded or mentally ill person who is committed to the department and:
>
> (a) Who has been determined to need treatment for a mental illness or mental retardation;
>
> (b) Who has been found incompetent to stand trial or incompetent for sentencing, has been acquitted of a criminal offense by reason of insanity, has criminal charges pending, or has been found guilty of a criminal offense but is not an inmate of the Department of Corrections or any other correctional facility;

(emphasis added) The chapter is applicable to "...every person adjudicated incompetent..." §§916.13(1); 916.13(2)(a). For example §916.13 is titled: "Involuntary commitment of defendant adjudicated incompetent to stand trial or incompetent for sentencing." Subsection (1) states:

> (1) CRITERIA.- Every person adjudicated incompetent to stand trial or incompetent for sentencing, pursuant to the applicable Florida Rules of Criminal Procedure, may be involuntarily committed for treatment upon a finding by the court of clear and convincing evidence that:

(emphasis added) The above reference to the Florida Rules of Criminal Procedure is significant as the Florida Rules of Criminal Procedure "...shall govern the procedure in all criminal proceedings in state courts..." Fla. R. Crim. P. 3.010.(emphasis

added)

Likewise, §916.15(2), titled: "Involuntary commitment of defendant adjudicated not guilty by reason of insanity" follows the same pattern. It is applicable to "Every person acquitted of criminal charges by reason of insanity found to meet the criteria for involuntary commitment ...in accordance with...the applicable Florida Rules of Criminal Procedure." (emphasis added)

Respondents' position is fully supported by the committee note appearing under the 1992 amendment to Florida Rule of Criminal Procedure 3.210. The committee note states:

> INTRODUCTORY NOTE RELATING TO AMENDMENTS TO RULES 3.210 TO 3.219. In 1985, the Florida Legislature enacted amendments to part I of chapter 394, the "Florida Mental Health Act," and substantial amendments to chapter 916 entitled "Mentally Deficient and Mentally Ill Defendants." The effect of the 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.

8. The plain language of chapter 916 does not prohibit the forensic commitment of a criminal defendant charged with a misdemeanor. Respondents agree with Petitioner that provisions of the Baker Act, chapter 394, are also applicable to criminal defendants charged with misdemeanors. Indeed, Petitioner has twice

been placed in the civil mental health system pursuant to the Baker Act in recent months. However, Respondents strongly disagree that the Baker Act is the exclusive statute applicable to incompetent defendants charged with or convicted of misdemeanors. It is important to note that the ultimate placement of the individuals under chapter 916 is left to the Department of Health and Rehabilitative Services. Such placement does not have to be in a separate and secure facility where HRS determines that appropriate treatment can be provided in a civil mental health treatment facility. §916.105(1)[3]

WHEREFORE, Respondents respectfully requests that the petition be dismissed at the earliest possible time.

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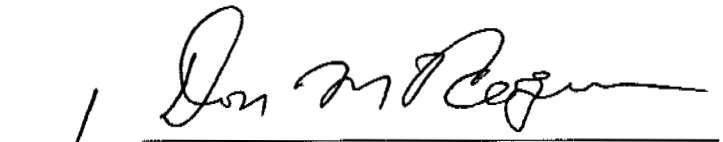
[3]This section requires treatment in a separate and secure facility "except [for] those clients found by the department to be appropriate for treatment in a civil mental health treatment facility." see Department of Health and Rehabilitative Services v. Pelz, 609 So. 2d 155 (Fla. 5th DCA 1992).

Respectfully submitted,

ROBERT A. BUTTERWORTH
Attorney General



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing "Response" has been forwarded by mail and fax to: Diane Cuddihy, Assistant Public Defender, 201 S.E. 6th Street, North Wing, 6th Floor, Ft. Lauderdale, Florida 33301 on this 6th day of December, 1996.

Of Counsel