

91,533

IN THE SUPREME COURT OF FLORIDA

FILED

CLERK, SUPREME COURT

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Chief Deputy Clerk

ROBERT F. MILLIGAN,)
Comptroller,)
Florida Office of the Comptroller,)
and Head of the Department of)
Banking & Finance,)

Appellant,)

vs.)

PALM BEACH COUNTY BOARD)
of COUNTY COMMISSIONERS,)
BURT AARONSON, Chairman,)

Appellee.)
_____)

FLORIDA S. CT. # 91,533

4th DCA CASE # 97-02927
L.T.CASE CL 97-3951 AE

Florida Bar #475696

INITIAL BRIEF OF APPELLANT THE STATE OF FLORIDA

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ISSUE

WHETHER THE TRIAL COURT'S DISMISSAL OF COMPLAINT FOR WRIT OF MANDAMUS WAS AN ERRONEOUS INTERPRETATION OF STATUTORY LAW.

POINT

WHETHER THE TRIAL COURT ERRED IN FAILING TO READ RELEVANT STATUTES *IN PARI MATER/A* AND FAILED TO PROPERLY INTERPRET LEGISLATIVE INTENT.

- a. **Whether the county wherein a crime is committed is required to pay the appellate filing fees for an indigent appellant.**
- b. **Whether Florida law “waives” or “exempts” payment of filing fees for an insolvent appellant.**
- c. **Whether the legislative intent is meant to include filing fees in the section 939.15, Florida Statutes, “costs” to be paid by the county.**

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PRELIMINARY STATEMENT

Plaintiff below, Robert F. Milligan, Comptroller, Florida Office of the Comptroller, and Head of the Department of Banking & Finance, will be referred to herein as the Comptroller, appellant or the department. Defendant below, Palm Beach County Board of County Commissioners, Burt Aaronson, Chair, will be referred to as Palm Beach County, appellee or the commission. References to the transcript will be (tr. page ___) and references to the record on appeal will be (r. page ___).

STATEMENT OF THE CASE AND FACTS

The appellant filed a Complaint for Writ of Mandamus (r. page 1), alleging that the Palm Beach County Board of County Commissioners failed in fulfilling its statutory mandate to allocate payment for indigent defendants' appellate filing fees to the Clerk of the Fourth District Court of Appeal. The Palm Beach County Attorney's office answered by filing its Motion to Dismiss (r. page 696) and Motion to Quash Subpoena (r. page 694). The Motion to Dismiss is based on the appellee's position that there is no clear legal duty on the part of the county to remit indigent defendant appellate filing fees, that appellant has no legal right to compel performance and that appellant has other remedies available to it. The trial court dismissed the department's complaint (r. page 710). The dismissal was based on the court's determination that section 939.15, Florida Statutes, does not require the county to pay indigent criminal appellate filing fees and because the statute refers to "costs", not fees (tr. page 25). This appeal was filed based on the trial court's erroneous interpretation of the statutory language. Subsequent to the Notice of Appeal (r. pages 71 1, 717) to the Fourth District Court of Appeal, appellant filed a Suggestion for Review by

the Florida Supreme Court. The District Court of Appeal granted the Suggestion on October 3, 1997.

SUMMARY OF THE ARGUMENT

Florida law requires the county in which a crime is committed to pay the filing fees of an indigent criminal appellant. Although section 939.15, Florida Statutes, is the directive for payment by a county, the legislature has enacted laws that compliment, facilitate and explain the statutory mandate. Read *in pari materia*, the statutory scheme is explicit.

ISSUE

THE TRIAL COURT DISMISSAL OF COMPLAINT FOR WRIT OF MANDAMUS WAS AN ERRONEOUS INTERPRETATION OF STATUTORY LAW

The issue to be resolved sub *judice*, does not turn on the facts, as they are undisputed. This Court is asked to determine, de novo, whether there was an improper application of statute by the trial court and whether the appellant's interpretation of the statutory language was correct as to the legislative intent. A determination that the trial court erroneously dismissed the department's cause of action will be tantamount to a ruling that Florida law requires a county to pay the appellate filing fees of indigent defendants appealing to state appellate courts.

The appellant filed a Complaint for Writ of Mandamus alleging that the Palm Beach County Board of County Commissioners failed in fulfilling its statutory mandate to allocate payment for indigent defendants' appellate filing fees to the Clerk of the Fourth District Court of Appeal. The Palm Beach County Attorney's office answered by filing its Motion to Dismiss and Motion to Quash Subpoena. The Motion to Dismiss is based on the appellee's position that there is no clear legal duty on the part of the county to remit indigent defendant appellate filing fees, that appellant has no legal right to compel performance and that appellant has other remedies available to it. The trial court dismissed the department's complaint. This appeal was filed because the trial court erroneously interpreted the statutory language which mandates remittance by

the county to the Clerk of the Court. It should be noted that these funds are paid to the State of Florida General Revenue Fund.

POINT

THE TRIAL COURT ERRED IN FAILING TO READ RELEVANT STATUTES *IN PARI MATER/A* AND IN INTERPRETING LEGISLATION.

a. The county wherein a crime is committed is required to pay the appellate filing fees for an indigent appellant.

Section 939.15, Florida Statutes (1995), requires the county, where a crime was committed, to pay indigent appellant or defendant costs, upon affidavit and proof of necessity or certification, as allowed by law, to the District Court of Appeal.

939.15 Costs paid by county in cases of insolvency.-When the defendant in any criminal case pending in any circuit or county court, a district court of appeal, or the Supreme Court of the state has been adjudged insolvent by the circuit judge or the judge of the county court, upon affidavit *and* proof as required by s. 924.17 in cases of appeal, or when the defendant is discharged or the judgment reversed, the costs allowed by law shall be paid by the county in which the crime was committed, upon presentation to the county commissioners of a *certified copy of the judgment of the court against such county for such costs*. However, this section does not apply to indigent defendants represented by the public defender. In such cases, costs incurred pursuant to s. 27.54(3) shall be paid by the county upon *certification by the public defender as being useful and necessary* in the preparation of a criminal defense, provided that the reasonableness of such expenses may be contested by the county in the criminal proceeding.

Section 939.15, Florida Statutes (emphasis added). This provision delineates which entity is to certify, order, affirm or prove the necessity of the costs and that payment be made by the county. In *Cheney v. Rowe*, 11 So. 2d 585 (Fla. 1943), the Court recognizes section 939.15, Florida Statutes, as the catalyst for certification of indigence. The requirement that the county, in which a crime was committed, be liable for the costs of an indigent person has been the law in Florida for at least 63 years.

Section 8489, C.G.L., section 6175, R.G.S., provides that, in case the plaintiff in error in a criminal case shall be utterly unable to pay the costs of the cause, and shall establish satisfactorily to the court by competent evidence that he is utterly unable to pay the costs or give bond therefor, as required by section 8489 C.G.L., section 6154, R.G.S., in cases of appeal, the costs allowed by law shall be paid by the county in which the crime was committed. In *Rast v. State*, [77 Fla. 225, 81 So. 523], supra, the terms of the above statute were upheld and enforced by order of this court made in a proceeding similar to that now before us.

Rolle v. State, 115 Fla. 64,66, 154 So. 892 (Fla. 1934). There has not been any indication that the legislature intended, or intends, to modify the county's responsibility.

This Court recently directed that it wasn't the county that was responsible for indigent costs related to court reporter fees for transcription for a Rule 3.850 petitioner represented by the Office of Capital Collateral in that "the legislature has determined that CCR is to bear this responsibility... ." *Porter v. State*, 22 Fla. L. Weekly S601 (Fla. September 25, 1997), see also, *Hoffman v. Haddock*,

695 So. 2d 682 (Fla. 1997). *Sub judice*, there has been no such statement of legislative enactment as to the shifting of responsibility for payment of indigent appellant filing fees. Until the legislature does determine to revise its position, the county bears the responsibility of paying the fees incident to an indigent criminal appeal. This Court has stated “Article II, section 3 of the Florida Constitution expressly sets forth the separation of powers doctrine: The powers of the state government shall be divided into the legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.” *Coalition for Adequacy and Fairness in School Funding v. Chiles*, 680 So. 2d 400, 407 (Fla. 1996). Appellant stresses that given the statutory directive that a county pay the indigent criminal appellant’s filing fee and the rules dictating payment of the filing fee to the DCA clerk, that judicial intrusion into the legislative scheme is not warranted.

A plain language approach to section 939.15, Florida Statutes, demonstrates that the county wherein a crime is committed is responsible for the costs of an indigent defendant’s expenses, including expenses incurred pursuing rights of appeal. In *State v. Byrd*, 378 So. 2d 1231 (Fla. 1979), this Court determined that section 939.15, Florida Statutes, does not bestow any rights on an indigent defendant, the right to payment of court costs having been previously granted in *Griffin v. Illinois*; 351 U.S. 12 (1956).

The requirement to pay court costs as a condition of probation is not precluded by the wording of section 939.15 which directs the county to pay the costs of

indigents. The right of an indigent to have his court costs, including the cost of his transcript, paid for by the government is not dependent upon the existence of section 939.15.

Byrd, at 1232. Rather, the *Byrd* holding specifies that the purpose of section 939.15, Florida Statutes, is to “prescribe which governmental entity in the State of Florida must pay the court costs of an indigent defendant in a criminal case.” *Id.*, at 1232. Moreover, the county is directed to pay the cost. An adjunct to *Griffin* is *Douglas v. California*, 372 U.S. 814 (1963), wherein the Court holds that where a “state affords a first appeal of right, it must supply indigent appellants with an attorney, .-. because under the doctrine of equal protection, indigent appellants must have the same ability to obtain meaningful appellate review as wealthy appellants.” *In re, Order on Prosecution of Criminal Appeals by Tenth Judicial Circuit Public Defender*, 561 So. 2d 1130, 1131 (Fla. 1990). The *Douglas* Court has endowed indigent appellants with rights. Section 939.15, Florida Statutes, by incorporation of section 924.17, Florida Statutes, implements these indigent appellate rights.

In 1989, section 939.15, Florida Statutes, was amended by removing those indigent defendants who are represented by the public defender from the dictates of the first sentence which demands county payment for insolvent appellants or in cases where a defendant is discharged or the judgment is reversed. The legislature added two sentences which refer to indigent defendants represented by the public defender. These last two sentences do not apply to indigent **appellants**. The 1989 amendment addresses the

requirement for certification of necessity and use of the costs enumerated in section 27.54(3), Florida Statutes, by the public *defender*. Otherwise, in cases where an indigent defendant is not represented by a public defender or the defendant is discharged or the judgment reversed the costs are paid by the county when *the* judge orders *the* county *to pay*.

Notwithstanding section 939.15, Florida Statutes, reference to section 924.17, Florida Statutes, the payment of appellate costs incurred by indigent appellants no longer requires affidavit and proof as that provision was eliminated. Case law dictates the manner in which the status of insolvency remains with the defendant/appellant through the appeals process. *Amendments to the Florida Rules of Appellate Procedure*, 685 So. 2d 773 (Fla. 1996). Section 924.17, Florida Statutes, directs that indigent appeals are supersedeas, without prepayment of costs by the insolvent appellant.

Appellee would posit that here ends the appellant's contention that the county pay the filing fees, ergo, the filing fee is without cost and therefore the clerk of a district court of appeal provides the services of the clerk's office not only free of charge to an indigent criminal appellant, but without reimbursement for the expenses incurred. That the legislature did not intend this result is demonstrated by other references to payment of appellate filing fees elsewhere in the statutory scheme of expenditures, and are to be read *in pari materia*. "The principle of *in pari materia* requires that a law be construed together with any other law relating to the same purpose such that they are in harmony." *State v. Cohen*, 1997 WL 360971 (Fla. 4th DCA 1997). "A statutory phrase

should also be viewed not only in its internal context within the section, but in harmony with interlocking statutes.” *WFTV, Inc. v. Wilken*, 675 So. 2d 674, 679 (Fla. 4th DCA 1996).

Section 939.15, Florida Statutes, was amended by the Laws of Florida Chapter 89-129, an act relating to financial affairs. This act has five sections. Section 1 amends section 939.15, Florida Statutes, as noted; section 2 amends a portion of section 27.56, Florida Statutes; section 3 incorporates the 1988 supplement section 27.3455, Florida Statutes; section 4 creates section 925.037, Florida Statutes and section 5 provides that the act becomes effective on July 1, 1989. Inclusion of section 939.15, Florida Statutes, and section 27.3455, Florida Statutes, in the same act is significant in aiding this Court’s understanding of appellant’s position. Florida Constitution Article III, section 6, requires an enactment to include one subject. That mandate is not meant to hinder an end goal, rather it is meant to avoid surprise and to prevent “hodgepodge, logrolling legislation,”¹ Appellant herein maintains that the inclusion of section 939.15, Florida Statutes, and section 27.3455, Florida Statutes, in the same act mandates interpretation of these sections *in pari materia*.

Section 939.15, Florida Statutes, denotes where the determination of insolvency originates; this provision, as noted above, also designates the county as the payee. Further proof that the legislature contemplated designation of the county as the payee is found in Chapter 27, Florida Statutes (1997):

¹ *In re Advisory opinion to the Governor*, 509 So. 2d 292, 312 (Fla. 1987).

(1) Each county shall submit annually to the Comptroller and the Auditor General a statement of revenues and expenditures as set forth in this section. . . provided that such statement identify total county expenditures on:

(c) Each of the services outlined in ss. 27.34(2) and 27.54(3).

(d) Appellate filing fees in criminal cases in which an indigent defendant appeals a judgment of a county or circuit court to a district court of appeal or the Florida Supreme Court.

(3) The priority for the allocation of funds collected pursuant to s. 938.05(1) shall be as follows?

(a) Reimbursement to the county for actual county expenditures incurred in providing the state attorney and public defender the services outlined in ss. 27.34(2) and 27.54(3), with the exception of office space, utilities, and custodial services.

(d) At the close of the local government fiscal year, funds remaining in the special trust fund after reimbursements made pursuant to paragraphs (a), (b), and (c) shall be used to reimburse the county for county costs incurred in the provision of . . . appellate filing fee[s] in criminal cases in which an indigent defendant appeals a judgment of a county or circuit court to a district court of appeal or the Florida Supreme Court , . .

Sections 27.3455(1)(c) and (d) & (3)(a) and (d), Florida Statutes (1997). A

clearer, more recent statement as to legislative intent would be hard to find³.

The 1997 legislature not only reenacted section 27.3455, Florida Statutes, but Senate Bill No. 388, Chapter 97-271, additionally created new schemata for imposition of mandatory costs and the distribution of these funds. Chapter 97-271 creates chapter 938, Florida Statutes:

Section 1. The Legislature declares its intent to provide for the creation of a new chapter of the Florida Statutes

² Section 938.31(1997), calls for incorporation by reference, so that any reference to Chapter 938, F.S., constitutes a general reference to Chapter 938.

³ The legislature reenacted s. 27.3455, effective July 1, 1997, with a modification as to numbering - s. (1) was previously (4), and (3) was previously (6). Additionally, reference is made to s. 938.05(1), instead of subsection (1).

consolidating and categorizing the provisions relating to court costs, in order to accomplish the purposes of assisting the judiciary and other court participants to identify and locate applicable law relating to court costs and thereby facilitating the uniform imposition and collection of court costs.

Id. The legislature returned to section 27.3455, Florida Statutes, subsequent to its 1989 amendment to section 939.15, Florida Statutes. If the county were not expected to pay the filing fees, why did the Florida Legislature reenact the above quoted statutes? The opportunity to repeal, clarify or otherwise act was presented, yet no substantive modification was made to sections 27.3455(1)(d) & 27.3455(3)(d), Florida Statutes, nor to a county's requirement to pay indigent appellant filing fees pursuant to section 939.15, Florida Statutes.

b. Florida law does not “exempt” the payment of filing fees for an insolvent criminal appellant.

This Court recently addressed the requirement that indigent inmates pay filing fees. In *Amendments to the Florida Rules of Appellate Procedure*, 685 So. 2d 773 (Fla. 1996), this Court in clarifying an amendment to **Rule 9.430, Fla. R. App. P.**, did not change the language that “[I]f the motion [for insolvency status] is granted, the party may proceed without further application to the court and *without either the prepayment of fees or costs in the lower tribunal or court or the giving of security therefore.*” /cf., at 829 (emphasis added). The vernacular is “prepayment”, which is not the equivalent of “no payment”. The Court quoted the 1977 Committee Notes upon adoption of this Rule 9.430:

This rule governs the manner in which an indigent may proceed with an appeal without payment of fees or costs and without bond. Adverse rulings by the lower tribunal must state in writing the reasons for denial. Provision is made for the review by motion. Such motion may be without the filing of fees as long as a notice has been filed, the filing fees not being jurisdictional. *This rule is not intended to expand the rights of indigents to proceed with an appeal without payment of fees or costs.* The existence of such rights is a matter governed by substantive law.

Id. (emphasis added). The Court did not have to reference the Committee Notes to the original enactment. Having done so, the Court accepts that an indigent appeal is not without recompense to the clerk of the court. In fact, substantive law requires payment by insolvent appellants, while specifically exempting other classes of persons.

Rule 2.040(b)(3), Fla. R. Jud. Admin., requires the clerk of the district court of appeal to collect a filing fee as provided by law. The rule specifically states that the fee is “not to be exacted in advance in appeals in which a party has been adjudicated insolvent for the purpose of an appeal or in appeals in which the state is the real party in interest as moving party. The payment of the fee shall not be required in habeas corpus proceedings or appeals therefrom.”

Section 35.22(3), Florida Statutes, directs the clerk of the district court of appeal to collect \$250.00 for each appeal filed, specifically exempting the State of Florida acting as an appellant. The State of Florida was exempted in 1985, by chapter 85249, s.3, Laws of Florida, there were no other exemptions noted or created. The legislature revisited section 35.22, Florida Statutes, in 1989, 1993

and 1995, providing ample opportunity to exempt indigent defendants from the payment of filing fees.

Rule 2.040(b)(3), Fla. R. Jud. Admin., and section 35.22(3), Florida Statutes, both speak to the same issue: the requirement that the clerk of the district court of appeal collect a filing fee. Pursuant to the rule, indigents and the state need not *prepay* this fee, while habeas corpus petitioners are exempted from payment altogether. In 1980 this Court recommended that the exemption for criminal habeas corpus petitioners be extended to civil habeas corpus petitioners. No recommendation was made that indigent appellants be included in the exemption. *In re: Florida Rules of Judicial Administration*, 391 So. 2d 214 (Fla. 1980). Section 35.22(3), Florida Statutes, sets the rate as well as the authority to collect the fee, *exempting* the state from payment. Neither the rule nor the statute exempts indigents from the payment of the filing fee. An insolvent appellant does not lose the right to appeal an adverse judgment due to inability to pay; hence the section 939.15, Florida Statutes, requirement that the county in which the crime was committed pay the fees.

The 4th DCA in *Fields v. Zinman*, 394 So. 2d 1133 (Fla. 4th DCA 1981), held that the right of an insolvent criminal appellant to have the filing fee, among other costs, waived, extended to appellate civil litigants. The issues therein were twofold, one having to do with inclusion of civil litigants, the other as to applicability of fee waiver to appellants. The court therein interpreted section 57.081, Florida Statutes (1979), in a manner that is instructive, *sub judice*, if not directly on point. While eschewing the plain language approach to its

interpretation as to whether the amendment to section 57.081, Florida Statutes, applies vertically to appeals, the court states “[o]ur problem in applying this rule is that the amendment could easily have but obviously did not include specific reference to appeals. One has to suppose that if the real and sole purpose for the amendment was to include proceedings in the appellate courts then the legislature would have taken the trouble to insert words to that effect in the amendatory provision” *Id.*, at 1135. Concomitantly, in the case at bar, had the legislature wanted a final exclusion of indigent criminal appellants from section 939.15, Florida Statutes, it would have legislated as such.

c. The legislative intent is meant to include filing fees in section 939.15, Florida Statutes, as part of the “costs” to be paid by the county.

In *Bell v. State*, 281 So. 2d 361 (Fla. 2nd DCA 1973), the court reversed the trial court’s ruling that an indigent defendant be required, as a precondition to obtaining bond, to reimburse “costs” associated with transcript preparation, public defender fees, costs of trial and the cost of the *filing* fee necessary to take the appeal. In determining whether certain ‘taxable costs’ were to be recovered by the defendant, the *court* in *Warren v. Capuano*, 269 So. 2d 380 (Fla. 4th DCA), *affirmed* 282 So. 2d 873 (Fla. 1972), allowed recovery of *filing* fees. Rule 9.400, Fla. R. App. P., defines “taxable costs” to include *filing* fees. By way of analogy, as this citation deals with a reversal of a final judgment, the court in *Ferber v. State*, 380 So. 2d 1063 (Fla. 2nd DCA 1980), holds pursuant to section 939.15, Florida Statutes, “that the trial court erred in denying appellant the right

to recover any costs incurred incident to his appeal... . [W]e note that appellant is only entitled to recover those costs which are legally taxable.” *Id.*, at 1064.

There is both constitutional and statutory authority for the reimbursement of costs to an acquitted or discharged defendant. The determination of which costs may be taxed has been left to the courts.

There are many expenses which one may incur because he is charged with a crime. Yet, only those items reasonably within the scope of statutory authority are taxable.

Doran v. State, 296 So. 2d 86,87 (Fla. 2nd DCA 1974). While the *Doran* court determined that there was no reason to burden the public wile with bail bond premiums, this Court has placed ‘filing fees’ within the rubric of ‘taxable costs’. Rule 9.400, Fla. R. App. P.

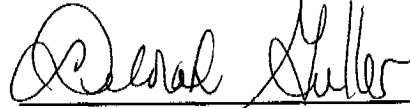
Section 939.15, Florida Statutes, is meant to include filing fees. The statute implements certain constitutional guarantees to trial and appeal therefrom. To decide that an appellate filing fee is not within the parameters of costs that implement a right to appeal, is the equivalent of denying an indigent’s right to a fair and free appeal on the merits.

CONCLUSION

Appellant respectfully requests this Court to declare the statutory language of section 939.15, Florida Statutes, mandatory as to the county being responsible for the payment of indigent criminal appellant filing fees.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing has been sent by Federal Express to Daniel P. Hyndman, Esq., attorney for appellee, Assistant County Attorney, P.O. Box 1989, West Palm Beach, Florida 33402 on this 20th day of October, 1997.



Deborah Guller, Esq.