

IN THE SUPREME COURT OF FLORIDA

CASE NO. 95,155

MICHAEL RIECHE,

Petitioner,

-vs-

LOIS SPEARS, Interim Director,
Dade County Department of Corrections, and
THE STATE OF FLORIDA,

Respondents.

ON PETITION FOR DISCRETIONARY REVIEW

SUPPLEMENTAL ANSWER BRIEF OF RESPONDENT ON THE MERITS

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INTRODUCTION

The Petitioner, MICHAEL RIECHE, was the Defendant in the trial court and the Appellant in the Third District Court of Appeal (hereafter, "Third District"). The State of Florida was the prosecution in the trial court and the Appellee in the Third District. In this brief, the parties will be referred to as they stood in the trial court. The symbols "R.", "S.R.", and "S.R.2." will refer to the record on appeal, the supplemented record filed by the Defendant, and the supplemented record filed by the State, respectively. Moreover, the symbols "App." and "App.2" followed by a letter will refer to the documents contained in the appendix to the State's Answer Brief and the Instant Supplemental Brief, respectively.

CERTIFICATE OF FONT AND TYPE SIZE

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STATEMENT OF THE CASE AND FACTS

The State will rely on its Statement of the Case and Facts presented in its Answer Brief, along with the following additions.

After the parties in the instant matter briefed this Court on the merits, the legislature responded to the conflict created by the decisions of *Houser v. Manning*, 719 So.2d 307 (Fla. 3d DCA 1998), and *Paul v. Jenne*, 728 So.2d 1167 (Fla. 4th DCA 1999) by enacting on June 2, 2000, chapter 2000-178, Laws of Florida (hereafter, "the Act"). (App.2 A) In addition to amending §§ 903.046, 903.26, and 907.041, Fla.Stat., chapter 2000-178 created § 903.0471, Fla.Stat. (2000), which provides for the trial court to revoke a defendant's existing bond and order pretrial release upon a finding of probable cause that the defendant committed a new crime. (App.2 A)

Based upon this recent enactment, this Court on June 9, 2000, ordered the parties in the instant matter to serve supplemental briefs responding to the following question (verbatim):

HOW THE RECENT ENACTMENT OF ACT EFFECTIVE JUNE 2, 2000, CHAPTER 2000-178, AFFECTS THE ISSUE PRESENTED IN THIS CASE, AND WHETHER THIS APPEAL IS MOOT BY VIRTUE OF THIS RECENT AMENDMENT.

POINT INVOLVED ON APPEAL

HOW THE RECENT ENACTMENT OF ACT EFFECTIVE JUNE 2, 2000, CHAPTER 2000-178, AFFECTS THE ISSUE PRESENTED IN THIS CASE, AND WHETHER THIS APPEAL IS MOOT BY VIRTUE OF THIS RECENT AMENDMENT.

SUMMARY OF THE ARGUMENT

In response to the conflict between the decisions of *Houser v. Manning*, 719 So.2d 307 (Fla. 3d DCA 1998), and *Paul v. Jenne*, 728 So.2d 1167 (Fla. 4th DCA 1999), the legislature created § 903.0471, Fla.Stat. (2000), through the passage of chapter 2000-178 (the Act). The Act gives the trial court authority to revoke bond and order pretrial detention upon a probable cause determination of a new crime committed while on bail. Hence, the legislature agreed with the holding in *Houser* and rejected the reasoning in *Paul*, and as such, the issue in the instant appeal is moot.

Moreover, because jurisdiction was accepted on the basis of a conflict between the district courts' resolutions of bond issues under a pre-existing statute and judicial authority, neither the retroactivity nor the constitutionality of the Act are before this Court. Nevertheless, the State would rely on its argument contained in its Answer Brief which delineates why the holding in *Houser* is constitutional.

ARGUMENT

THE PASSAGE OF CHAPTER 2000-178 LAWS OF FLORIDA CLARIFIES AND ANSWERS THE BROAD POLICY ISSUE PRESENTED IN THE INSTANT APPEAL; THE CHAPTER LAW MAKES THE ISSUE IN THIS INSTANT APPEAL MOOT.

First, the State would submit that the issue pending in the present appeal is now moot. The instant appeal concerns the resolution of the conflict between the decisions of *Houser v. Manning*, 719 So.2d 307 (Fla. 3d DCA 1998), and *Paul v. Jenne*, 728 So.2d 1167 (Fla. 4th DCA 1999).

In *Houser*, the Third District found that judges have the inherent authority to deny bail after a bond violations, such as by committing a new crime; whereas in *Paul*, the Fourth District ruled that readmittance to bail was required unless the defendant qualified for detention under § 907.041, Fla.Stat. Hence, the question at issue in the instant case is whether a court may revoke a defendant's bond and deny pretrial release upon a finding that the defendant committed a new crime.

The State argued in its Answer Brief that the conflict should be resolved in favor of the Third District's opinion because it correctly interpreted the legislative intent evidenced by the then recently vetoed legislation, as well as the legislative intent and case law that courts have the inherent authority to deny bond and that the 1982 constitutional amendment and the pretrial detention statute were only supplements to that authority. Fla.Const.Art. I,

§ 14 (amended 1982); *Houser*, 719 So.2d at 3110; *State v. Ajim*, 565 So.2d 712 (Fla. 4th DCA 1990); *State v. Fox*, 647 So.2d 1051, 1051-1052 (Fla. 5th DCA 1994); *Driggers v. Carson*, 486 So.2d 25 (Fla. 1st DCA 1986); see also *Thomas v. Jenne*, 25 Fla.L.Weekly D790 (Fla. 4th DCA Mar. 29, 2000) (Gross, J. concurring in ruling but dissenting from denial of motion for rehearing en banc) (the Fourth District's prior decisions coupling § 907.041 with Rule 3.132, Fla.R.Crim.P., when defendant violates terms of original bond by committing a new offense "limited the inherent power of the trial courts and comprised the integrity of the judicial process, without a clear signal from the legislature that the decision on bond revocation should be elevated to such an exalted position in the criminal process").

After the parties briefed the issue in the instant case, section 3 of chapter 2000-178 creating § 903.0471, Fla.Stat. (2000), was passed, and it specifically addressed violations of pretrial release by providing the following:

notwithstanding section 907.041, a court may, on its own motion, revoke pretrial release and order pretrial detention if the court finds probable cause to believe that the defendant committed a new crime while on pretrial release.

(App.2 A) This was the legislature's resolution to the conflict between *Houser* and *Paul*. The Act makes it clear that courts are empowered to deny pretrial release to defendants who violate their bail terms by committing a new crime. Because the Act resolves the

conflict between the district courts, the issue of whether trial courts have the inherent authority to deny bail is moot.

The Defendant argues in his supplemental brief that the Act does not affect the legal issue presented herein because the Act only applies prospectively and the Act is unconstitutional. First, these issues are improper because they are not before this Court and do not answer the limited question posed in this Court's June 9, 2000 order. The constitutional attack upon the Act is not ripe for review as neither the trial nor the appellate court considered the provision. Furthermore, the Defendant has not been deprived of any right under the Act; hence, he has no standing to complain at this time.

It is well settled that Florida courts may exercise their judicial power only if the matter under review presents a case in controversy. The dispute must be real with actual consequences, not just a hypothetical outcome. While this Court may render advisory opinions to the governor under Art. IV, sec. 1(c), Fla.Const., it otherwise acts as other appellate courts and is unauthorized to issue advisory opinions. See *Osterndorf v. Turner*, 426 So.2d 539, 548 (Fla. 1982); *Schwarz v. Nourse*, 390 So.2d 389, 392 (Fla. 4th DCA 1980) (finding only Art. IV, sec. 1(c), Fla.Const. authorizes governor to request advisory opinion of Supreme Court "no other advisory opinions are authorized within the courts of Florida"; "the function of the courts should be limited

to controversies between actual litigants"). Thus, this Court should not consider the Defendant's constitutional challenge to the Act.¹ Although this Court may rely upon the Act for guidance, *Gamble v. State*, 723 So.2d 905, 907 (Fla. 5th DCA 1999), a determination on the merits of this case must be based upon the law which was in effect at the time the Defendant's bond was considered below. *Id.* (finding courts have duty to consider subsequent legislation in arriving at correct interpretation of prior statute).²

Nevertheless, the State would rely on its argument contained in its Answer Brief, to avoid repetition, as to why the holding in *Houser* is not inconsistent with the constitutional right to pretrial release and does not violate due process rights. Moreover, the fact that the legislature ultimately decided to create an entirely new section (§ 903.0471) separate and apart from

¹ Florida courts have held repeatedly they will not rule on a constitutional issue unless it has been preserved properly for review; "the constitutional application of a statute to a particular set of facts ... must be raised at the trial level." *Trushin v. State*, 425 So.2d 1126, 1129-1130 (Fla. 1982); *State v. Johnson*, 616 So.2d 1, 3 (Fla. 1993); *In re: Forfeiture of One Cessna 337H Aircraft*, 475 So.2d 1269, 1271-1271 (Fla. 4th DCA 1985); *cause dismissed sub, City of Pompano Beach v. Enroute Ltd., Inc.*, 480 So.2d 1293 (Fla. 1985); *Springfield v. State*, 443 So.2d 484, 485 (Fla. 2d DCA 1984); *Collie v. State*, 710 So.2d 1000 (Fla. 2d DCA 1998), *rev. denied*, 722 So.2d 192 (Fla. 1998), *cert. denied*, 119 S.Ct. 624 (1998).

² The State will not address the Defendant's attack upon constitutionality of the Act further, but should this Court order additional briefing of such claims, the State will provide its analysis.

§ 907.041, Fla.Stat., only is further support that there is indeed a distinction between release in the *first instance* (§ 907.041), and release after bond is granted but where the defendant commits a new offense (the Act; § 903.0471).

CONCLUSION

Based upon the foregoing, the State submits that this appeal is moot based upon the recent enactment of Act effective June 2, 2000, chapter 2000-17, and that Act supports the conclusion that the Third District properly held that the Defendant was not entitled to release after he violated the terms of his bond. This Court should therefore affirm.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief of Respondent was mailed this ____ day of September, 2000, to John E. Morrison, Assistant Public Defender, 1320 N.W. 14th Street, Miami, Florida, 33125.

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**APPENDIX TO RESPONDENTS'
SUPPLEMENTAL BRIEF**

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DESCRIPTION

APPENDIX

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"A"