

IN THE SUPREME COURT OF THE STATE OF FLORIDA

Case No.95,265

4Th DCA Case No.99-295

State of Florida,
Petitioner,

v.

Jean David Paul,
Respondent.

ON CERTIFICATION FROM
THE DISTRICT COURT OF APPEAL OF FLORIDA
FOURTH DISTRICT

RESPONDENT'S CORRECTED ANSWER BRIEF ON THE MERITS

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CERTIFICATE OF TYPE SIZE AND STYLE

In accordance with the Florida Supreme Court Administrative Order, issued on July 13, 1998, and modeled after Rule 28-2(d), Rules of the United States Court of Appeals for Eleventh Circuit, counsel for the Respondent hereby certifies that the instant brief has been prepared with 12 point Courier New type, a font that is not spaced proportionately.

Diane M. Cuddihy

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PRELIMINARY STATEMENT

The respondent, Jean David Paul, is¹ a defendant in the Circuit Court of the 17th Judicial Circuit, Criminal Division, Broward County, Florida and was the petitioner in the Fourth District Court of Appeal. The petitioner is the plaintiff in the trial court and was the respondent in the district court. The parties will be referred to as they appear before this Honorable Court.

References to the petitioner's appendix will be designated by the symbol "Ex" followed by the appropriate page number. References to the petitioner's initial brief will be designated by the symbol "IB." References to the respondent's appendix will be designated by the symbol "RA."

¹ The respondent's criminal case is still pending in the Circuit Court, 17th Judicial Circuit, in and for Broward County.

ISSUE ON APPEAL

WHETHER A CRIMINAL DEFENDANT MAY BE HELD WITHOUT BOND
PENDING TRIAL AFTER VIOLATING THE CONDITIONS OF THE
ORIGINAL BOND ABSENT AN ORDER FOR PRETRIAL DETENTION
ENTERED IN COMPLIANCE WITH FLORIDA STATUTE 907.041?

STATEMENT OF THE CASE AND FACTS

The respondent accepts the Statement of the Case and Facts set forth in the petitioner's initial brief, with the following additions and exceptions:

This case is before this Court on the state's application for discretionary review of the Fourth District Court of Appeal's decision granting habeas relief and certifying conflict with the Third District Court of Appeal's decision in Houser v. Manning, 719 So. 2d 307 (Fla. 3d DCA 1998).

The respondent is charged by information with attempted murder in the second degree. (Ex 1) The respondent was released on bond (Ex 2) and subsequently arrested for possession of cannabis, carrying a concealed firearm, possession of a firearm with an altered serial number, and possession of drug paraphernalia. (Ex 3) The state filed on February 3, 1999, during the pendency of the habeas petition, a "No Information" for all but the possession of drug paraphernalia charge, for which it filed an information for misdemeanor possession of marijuana. (RA 1)

After the respondent's arrest, the state filed in the original case a Motion to Revoke Bond requesting the trial court to revoke bond and detain the petitioner without bond. (Ex 5) The motion alleged that "there are no conditions of bond which would reasonably protect the community from risk of physical harm

and/or assure the integrity of the judicial process," but did not allege any grounds for pretrial detention.

In applying the pretrial detention statute, the court found that the respondent was not on probation, parole or other release pending completion of a sentence or on pretrial release for a dangerous crime when he was arrested for attempted second degree murder. (Ex 6 at 27) The state argued that the respondent's prior juvenile adjudication for burglary dwelling and grand theft qualified him for pretrial detention. (Ex 6 at 59-61) The defense argued that a juvenile conviction cannot support a pretrial detention order. (Ex 6 at 61)

The court revoked bond and ordered a no bond hold against the respondent. The court stated the following:

I'm making a finding that he did violate pretrial release by not refraining from any criminal activity of any kind under 903. There is probable cause to believe that he was carrying a concealed firearm, and to believe that the one firearm that he did have had an altered serial number, which was actually crossed off, and that he possessed marijuana and drug paraphernalia. . . We have testimony that we have taken from the police officer here, it is not charged, but he did indicate that he saw him smoking marijuana. Your client admits smoking marijuana on this occasion.

The Court does so find that he is on bond. This bond is for a dangerous crime, which is attempted second degree murder. The court finds, based upon what I have heard, that he poses a threat of harm to the community. He is presently charged with a dangerous crime. There is substantial probability that he committed the crime, and that the facts and circumstances of the crime indicate a disregard for the safety of the community, and that there are no conditions of release reasonably sufficient to protect the community from the risk of physical harm to

persons.

I would find that he did previously have a conviction for a dangerous crime within ten years, which is burglary dwelling. The fact that he is carrying guns, smoking marijuana, that certainly shows that he is a danger. I can't protect the community from him, except by putting him in jail until the case is concluded, that's my ruling. His bond is revoked. Draw me up an order.²

(Ex 6 at 62-63) (emphasis supplied.)

The district court granted habeas relief stating:

We continue to hold, as we did in *Meridian and Metzger*, that the court's authority to deny bond pending trial is circumscribed by the provision of Florida Statute section 907.041. The legislature has specifically delineated and narrowly limited those circumstances under which bond may be denied. We have no difficulty divining the legislative intent to curtail the court's power to deny bail, except in certain instances, in light of the constitutionally guaranteed right to bail. To effectuate its express policy of assuring the detention of "those persons posing a threat to the safety of the community or the integrity of the judicial process," the legislature enacted a pretrial detention statute, which sets forth a comprehensive list of conditions that will qualify a defendant for detention without bail. By providing clear and reasonable guidelines for courts to follow in considering denial of this basic and fundamental right, the legislature may very well have been motivated by a desire to achieve uniformity and fairness in judicial determinations of bail entitlement, as well as to provide trial courts with a means of identifying persons whose criminal histories and patterns signal a danger to society.

Paul v. Jenne, 24 Fla.L.Weekly D581 (Fla. 4th DCA March 3, 1999)

The district court certified conflict with the Third District

² The written order states: "State's motion to revoke/increase bond is hereby granted, for reasons as stated on the record in open court. Defendant remanded to custody No Bond." (Ex 7)

Court of Appeal's decision in Houser v. Manning, 719 So. 2d 307 (Fla. 3d DCA 1998). The state filed a Notice to Invoke Discretionary Jurisdiction and this Court postponed ruling on jurisdiction pending receipt of briefs on the merits.

SUMMARY OF ARGUMENT

The district court correctly held that a court is without authority to deny bond after a defendant has violated a condition of his original bond absent compliance with the pretrial detention statute. A criminal defendant has a basic and fundamental right to bond which may be constitutionally denied in only two instances. One exception to the right exists when a person is accused of a capital crime or a crime punishable by life imprisonment and the proof of guilt is evident and the presumption great. The second exception is established when no condition of release can reasonably protect the community, assure the presence of the accused, or assure the integrity of the judicial process. This second exception was codified in Florida Statute 907.041. The state failed to establish the need for pretrial detention pursuant to section 907.041. The judiciary has no authority to deny bond independent of the two constitutional exceptions to the right to pretrial release.

ARGUMENT

THE DISTRICT COURT CORRECTLY HELD THAT A TRIAL COURT CANNOT DENY BOND AFTER A DEFENDANT VIOLATES THE CONDITIONS OF HIS ORIGINAL BOND ABSENT AN ORDER OF PRETRIAL DETENTION ENTERED IN COMPLIANCE WITH FLORIDA STATUTE 907.041.

The Florida Constitution explicitly guarantees persons accused of crimes the right to pretrial release. The right to pretrial release may be constitutionally denied in only two instances: when a person is accused of a capital crime or an offense punishable by life imprisonment and proof of guilt is evident and presumption great, and when no conditions of release can reasonably protect the community, assure the presence of the accused, or assure the integrity of the judicial process.

Article I, section 14³ states:

Unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime or violation of municipal or county ordinance shall be entitled to pretrial release on reasonable condition. If no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the

³ Article I, Section 14 of the Florida Constitution, was amended effective January 1, 1983. Prior to that amendment, the section read:

Until adjudicated guilty, every person charged with a crime or violation of municipal or county ordinance shall be entitled to release on reasonable bail with sufficient surety unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great.

Article I, section 14 Fla.Const. (1968).

accused at trial, or assure the integrity of the judicial process, the accused may be detained.

The petitioner is requesting this Court to judicially establish a third category for the denial of bond. This Court is without authority to amend the constitution.

To implement the constitutional right to pretrial release, the legislature enacted Florida Statute 907.041 in 1983. The statute specifically sets forth criteria for determining whether a defendant may be detained without bond. Subsection

(4)(b), entitled "Pretrial Detention," provides:

(b). The court may order pretrial detention if it finds a substantial probability, based on a defendant's past and present patterns of behavior, the criteria in 903.046, and any other relevant facts that:

1. **The defendant has previously violated conditions of release and that no further conditions of release are reasonably likely to assure the defendant's appearance at subsequent proceedings;**
2. The defendant, with the intent to obstruct the judicial process, has threatened, intimidated, or injured any victim, potential witness, juror, or judicial officer, or has attempted or conspired to do so, and that no conditions of release will reasonably prevent the obstruction of the judicial process;
3. The defendant is charged with trafficking in controlled substances as defined by s. 893.135, that there is a substantial probability that the defendant has committed the offense, and that no conditions of release will reasonably assure the defendant's appearance at subsequent criminal proceedings; or
4. **The defendant poses the threat of harm to the community.** The court may so conclude if it finds that the defendant is presently charged with a dangerous crime, that there is

a substantial probability that the defendant committed such crime, that the factual circumstances of the crime indicate a disregard for the safety of the community, and that there are no conditions of release reasonably sufficient to protect the community from the risk of physical harm to persons. **In addition, the court must find that at least one of the following conditions is present:**

- a. The defendant has previously been convicted of a crime punishable by death or life imprisonment.
- b. The defendant has been convicted of a dangerous crime⁴ within the 10 years immediately preceding the date of his or her arrest for the crime presently charged.
- c. The defendant is on probation, parole, or other release pending completion of a sentence for on pretrial release for a dangerous crime at the time of the current arrest.

(Emphasis supplied.)

The lower court acknowledged the trial court's authority to revoke bond if a condition of bond is violated. Paul v. Jenne, *supra*; See also, Metzger v. Cochran, 694 So. 2d 842 (Fla. 4th DCA 1997) (trial court has authority to arrest and commit a defendant for a breach of the undertaking.) However, the court,

⁴ The respondent has a prior adjudication of delinquency for burglary of a dwelling, which is an enumerated "dangerous crime." section 907.041(4)(a)(1997). The district court held that a juvenile adjudication does not constitute a "conviction" and cannot be used to establish the need for pretrial detention. The district court did not certify that issue and it was not argued in the petitioner's initial brief.

recognizing the constitutional status of the right to bond, held that the trial court cannot deny further bond unless the state establishes the criteria for pretrial detention. The petitioner has conceded that the requirements for pretrial detention were not met in this case. (IB at 10) The district court should be affirmed.

The petitioner has requested this Court to find that it is within the trial court's discretion whether to grant further bond after it revokes a defendant's bond for breach of the undertaking. Breach of the undertaking is not a constitutionally recognized exemption to the right to pretrial release.

The petitioner boldly argues that Florida Statute 903.046 (1997) gives a trial court discretion in determining whether to grant bail in any case. (IB at 13) This argument ignores the constitutional right to bail long recognized by this Court. State v. Arthur, 390 So. 2d 717 (Fla. 1980); Russell v. State, 71 So. 27 (Fla. 1916); Ex parte McDaniel, 97 So. 317 (Fla. 1923)(right to bail is "organic").

Petitioner's contention that a trial court has discretion to deny bail advocates the denial of bail without requiring any standard of proof. The constitution permits the denial of bail when a person is accused of a capital crime or one punishable by life imprisonment, not at a court's discretion, but if proof of guilt is evident and presumption great. Article I, section 14 Fla.Const. (1983). This burden is greater than beyond a

reasonable doubt. Russell, supra, ("The question is whether. . .the evidence is sufficient to establish that degree of proof where the judge to whom the application is made may say that guilt is evident or the presumption is great, which is a greater degree of proof than that establishing guilt merely to the exclusion of a reasonable doubt"); Elderbroom v. Knowles, 621 So. 2d 518 (Fla. 4th DCA 1993)(state held to degree of proof greater than that required to establish guilt beyond a reasonable doubt.)

The second constitutional exception to the right to bond requires findings proven beyond a reasonable doubt that the defendant has previously violated bond and no other condition of bond will assure his presence, or that he threatened or intimidated witnesses, jurors or court personnel, or that he is charged with drug trafficking and no conditions will assure his presence, or that he is charged with a dangerous crime and has a qualifying record. Rule 3.132 (c) Fla.R.Crim. P. (1998);Section 907.041(b) Fla. Stat. (1997) Under the petitioner's proposal, a criminal defendant could be denied bond upon a meager showing that he had been rearrested, without any standard of proof. In the instant case, the state did not file any charges other than a misdemeanor against the respondent as a result of his arrest while on bond.

It is fundamental that a person accused of a crime has a right to bail with some limited and tightly circumscribed exceptions. Those exceptions have been codified by the

legislature. A trial court does not have the inherent authority to deny bail by carving out exceptions to the constitution.

The petitioner relies primarily on the Third District Court of Appeal's decision in Houser v. Manning, 719 So. 2d 307 (Fla. 3d DCA 1998), for its position that a court can deny bail if a defendant violates a condition of the original bond. The Houser Court held that section 907.041 and the amendment to Article I, section 14 were not intended to "cut back on the court's power to enforce bond conditions and revoke bond where bond conditions have been breached." Houser at 310-311.

The Houser Court relied on the Fourth District Court of Appeal's decision in State v. Ajim, 565 So. 2d 712 (Fla. 4th DCA 1990), for the proposition that "it has been explicitly held that section 907.041 is complementary to, and does not replace, a trial court's already-existing power to deny bail." Houser at 311. The Houser Court misinterpreted the Ajim decision.

In Ajim, the district court stated, "[t]he criteria for denying bail set forth in section 907.041 are complementary to, and do not replace, the discretion of the court to deny bail, recognized in State v. Arthur, as to crimes punishable by death or life in prison where the proof is evident and the presumption great." Ajim at 712. Taken in its context, the language of Ajim does not support the proposition that trial courts have discretion to deny bond beyond the criteria espoused in State v.

Arthur⁵ and section 907.041.

Similarly, the Third District Court relied on Gardner v. Murphy, 402 So. 2d 525 (Fla. 5th DCA 1981) and the Fourth District's fleeting reference to Gardner in Gomez v. Hinkley, 473 So. 2d 809 (Fla. 4th DCA 1985), as support for judicial discretion to deny bond. In Gardner, the fifth district *granted a petition for habeas relief* after the circuit court erroneously denied bond. Gardner at 526. In dicta, the court opined that "there are situations where Florida's constitutional right to be released on bail can be forfeited upon conduct that evinces a flagrant disregard of the court's authority or effort to evade its processes." Id. Although the Gardner opinion was rendered before the 1983 constitutional amendment, its language is consistent with the amendment which authorizes the denial of bond if no conditions of release can assure the presence of the accused or assure the integrity of the judicial process. Article I, section 14 Fla.Const. (1983). The Gardner opinion does not infuse courts with authority to otherwise deny bond.

The lower court rejected the holding in Houser, and refrained from tampering with the constitutional guarantee to pretrial bond. The court stated:

⁵ 390 So. 2d 717 (Fla. 1980) (it is within discretion of trial court whether to grant bail when defendant is charged with capital offense or offense punishable by life imprisonment and the proof of guilty is evident and the presumption is great.)

Although we agree with *Houser* that a trial court has the authority to revoke a defendant's bond under pretrial release rules allowing arrest and recommitment for bond violations, and pursuant to the court's inherent power to enforce its own orders, we disagree that a trial court has the absolute discretion to deny bond unless a defendant meets the criteria for detention without bond under the pretrial detention statutes. By breaching a condition of the bond originally set by a court, a defendant forfeits the right to continued release under the terms of *that* bond. However, the defendant does not forfeit his or her constitutionally guaranteed right to bail altogether; a refusal to readmit a defendant to any bail at all must be subject to the limitations of the pretrial detention statute. Indeed, Florida Rule of Criminal Procedure 3.132(b), which provides that a motion for pretrial detention may be filed *at any time prior to trial*, contemplates successive bail applications. The rule strongly suggests that it applies not just to release determinations upon initial arrest, but also to bond decisions following rearrests and renewed bond applications.

(emphasis in original) Paul v. Jenne, 24 Fla. L. Weekly D581 (Fla. 4th DCA March 3, 1999).

The legislature has specifically delineated under what circumstances bond may be denied. In Walker v. Bentley, 678 So. 2d 1265 (Fla. 1996), this Court recognized that although the power to punish for contempt is inherent, the legislature may limit the sanction for contempt. See also, A.A. v. Rolle, 604 So. 2d 813, 815 (Fla. 1992) ("It is beyond question that the legislature has the power to determine how and to what extent the courts may punish criminal conduct, including contempt.") Likewise, the legislature has limited the sanctions available to a court when a defendant violates a condition of bond. A trial

court's inherent power to revoke bond for violation of a condition of bond does not entitle the court to deny further bond. The legislature has limited the sanctions available after bond revocation by narrowly circumscribing those instances where bail can be further denied. If a defendant does not meet the criteria for pretrial detention, the court must set a bond.

The petitioner complains that the lower court has placed an additional burden on the state by requiring it to prove the criteria for pretrial detention after a defendant has violated the conditions of an initial bond. (IB 18) This burden was not created by the district court, but by the legislature in implementing the 1983 constitutional amendment to Article I, section 14.

Section 907.041(4)(b)(4) requires proof that a defendant is a danger to the community **and** that he is either on probation, parole or other form of release, or that he has a prior conviction within ten years for a dangerous crime, or has a prior conviction for a crime punishable by death or life imprisonment. Section 907.041(4)(b)(1) provides for pretrial detention if the defendant violates a condition of bond and "no further conditions of release are reasonably likely to assure the defendant's appearance[.]" Thus, the legislature anticipated that a defendant would violate a condition of bond and provided for pretrial detention in those circumstances where the court is not assured

that the defendant will appear for court.

The record does not establish any such concern on the part of the trial court. However, the court was aware that such a finding was required to support an order for pretrial detention based on violation of the bond. The trial court instructed the state that a violation of the bond must be accompanied by a finding that no reasonable condition would assure the defendant's presence before pretrial detention could be ordered.⁶ The court did not make any findings regarding the respondent's future appearances.

The respondent is charged with attempted second degree murder, a first degree felony, and has a constitutional right to pretrial release on reasonable conditions. Meridian v. Cochran, 654 So. 2d 573, 575 (Fla. 4th DCA 1995). The state failed to prove the requirements for pretrial detention and the district court correctly issued a writ of habeas corpus.

CONCLUSION

The argument presented above supports the district court's decision. The respondent respectfully requests this Honorable Court to affirm the district court.

Respectfully submitted,

ALAN H. SCHREIBER

⁶ The court advised the trial prosecutor, "The question is that you make sure that that [sic] is really to -- to see if he is going to appear." (T 27)

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered by U.S. Mail to Leslie T. Campbell, Assistant Attorney General and Celia Terenzio, Assistant Attorney General, Bureau Chief, Office of the Attorney General, 1655 Palm Beach Lakes Blvd., Suite 300, West Palm Beach, Fl. 33401-2299, this 23th day of May, 1999.

Diane M. Cuddihy