

IN THE SUPREME COURT OF FLORIDA

CASE NO. 95,265

STATE OF FLORIDA,

Petitioner,

vs.

JEAN DAVID PAUL,

Respondent.

ON DISCRETIONARY REVIEW FROM THE FOURTH DISTRICT COURT OF APPEAL

PETITIONER'S SUPPLEMENTAL REPLY BRIEF ON THE MERITS

ROBERT A. BUTTERWORTH
Attorney General
Tallahassee, Florida

CELIA TERENCE
Assistant Attorney General
Bureau Chief, West Palm Beach
Florida Bar No. 656879

LESLIE T. CAMPBELL
Assistant Attorney General
Florida Bar No. 0066631
1655 Palm Beach Lakes Blvd.
Suite 300
West Palm Beach, FL 33401-2299
Telephone: (561) 688-7759

Counsel for Petitioner

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 the Eleventh Circuit, counsel for the State of Florida, Appellant herein, hereby certifies that the instant brief has been prepared with 12 point Courier New type, a font that is not spaced proportionately.

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PRELIMINARY STATEMENT

Petitioner, the State of Florida, was the prosecution in the trial court and Respondent in the Fourth District Court of Appeal. Petitioner will be referred to herein as "the State". Respondent, Jean David Paul, was the defendant in the trial court and Petitioner in the Fourth District Court of Appeal. He will be referred to herein as "Respondent" or "Defendant". References to the record will be indicated as "R" followed by the title of the document referenced. Reference to the transcript will be by "T" followed by the page number.

STATEMENT OF THE CASE AND FACTS

The State will rely upon its Statement of the Case and Facts presented in its initial and supplemental initial briefs.

SUMMARY OF THE ARGUMENT

When this Court accepted jurisdiction, it was upon a certification of conflict between the Third District Court of Appeal's ("Third District") decision in Houser v. Manning, 719 So. 2d 307 (Fla. 3d DCA 1998), and the Fourth District Court of Appeal's ("Fourth District") opinion in Paul v. Jenne, 728 So. 2d 1167 (Fla. 4th DCA 1999). Recently, the legislature agreed with the Houser reasoning and rejected the Paul rationale when it created section 903.0471, Florida Statutes (2000). In answering the Court's question posed in its June 9, 2000 order, the State addressed the larger policy issue before this Court, namely, whether a trial judge may revoke a defendant's bond and deny pretrial release upon a finding that the defendant committed a new crime. This policy issue has been settled by the legislature and, therefore, is moot. However, as to the instant Defendant, the Court must resolve the matter by determining whether the Fourth District erred in requiring a new bond be awarded to the Defendant and rejecting the rationale of Houser that trial courts have the inherent authority to revoke an existing bond and deny pretrial release when a new crime is committed. 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 applicability nor constitutionality of section 903.0471 are before this Court.

ARGUMENT

PASSAGE OF CHAPTER 2000-178 LAWS OF FLORIDA
CLARIFIES AND ANSWERS THE BROAD POLICY ISSUE
PRESENTED IN THE INSTANT APPEAL; THE
APPLICABILITY AND CONSTITUTIONALITY OF THE
CHAPTER LAW IS NOT RIPE FOR REVIEW.

On June 9, 2000, this Court ordered the parties to serve supplemental briefs addressing:

How the recent enactment of Act effective June 2, 2000, chapter 2000-178, affects the issue presented by this case, and whether this appeal is moot by virtue of this recent amendment.

In answering this inquiry and stating the matter was moot, the State considered the larger policy question at issue: whether a court may revoke a defendant's bond and deny pretrial release upon a finding the defendant committed a new crime. This was the basis of the conflict between Paul and Houser which formed the foundation for this Court's acceptance of jurisdiction. With the broader picture in mind, the State informed the Court the conflict between Paul and Houser was resolved by the enactment of section 903.0471¹ as the statute makes it clear courts are empowered to deny pretrial release to defendants who violate their bail terms by committing a new crime; therefore, the policy issue has been answered. However, the case in controversy remains ripe for resolution.

¹ Section 903.0471, Florida Statutes (2000) provides, "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."

This Court must determine whether the Fourth District's decision was erroneous when the trial court was ordered to grant a bond to the Defendant after he had violated his initial bond by committing new crimes. This review must be made in light of Houser and the legislature's obvious adoption of the Third District's reasoning. Clearly, irrespective of section 903.0471, a trial court has the inherent authority to deny bond to those defendants who violated the terms of their initial bail by committing a new criminal offense. Houser, 719 So. 2d at 309-10. See, Thomas v. Jenne, 25 Fla. L. Weekly D790 (Fla. 4th DCA March 29, 2000) (Gross, J. concurring in the opinion, dissenting from the denial of the motion for rehearing en banc)(reasoning that the Fourth District's coupling of section 907.041, Florida Statutes with Rule 3.132 Florida Rules of Criminal Procedure when a defendant violated the terms of his original bond by committing a new criminal offense "limited the inherent power of the trial courts and compromised the integrity of the judicial process, without a clear signal for the legislature that the decision on bond revocation should be elevated to such an exalted position in the criminal process") See also, State of Connecticut v. Ayala, 610 A. 2d 1162, 1171-72 (Conn. 1992)(determining judge's finding of probable cause to believe defendant committed new crime while on bail gave the court power, either pursuant to its jurisdiction over the criminal case, or pursuant to §54-64(c), to revoke the defendant's release and also reasoning that "having been released on bail, and having

subsequently violated the condition placed upon the release that he not commit a federal, state or local crime, the defendant cannot be heard to complain that his constitutional right to bail was violated").

In his answer brief, Respondent urges the Court not to apply section 903.0471, but to affirm the decision of the Fourth District. The State maintains the enactment of section 903.0471 gives this Court **guidance** for resolution of the instant case by embracing the reasoning in Houser. Gamble v. State, 723 So. 2d 905, 907 (Fla. 5th DCA 1999)(finding "courts have a duty to consider subsequent legislation in arriving at a correct interpretation of a prior statute"). The Court should adopt the reasoning in Houser, quash the decision in Paul, and remand the matter to the Fourth District with instructions to revoke Defendant's existing bond and deny further pretrial release.

Respondent's attempt to have this Court find that section 903.0471 may not be applied retroactively and to review the statute's constitutionality is improper. These issues are not before the Court and their discussion does not answer the limited question posed by the Court in its June 9, 2000 order. The constitutional attack upon section 903.0471 is not ripe for review as neither the trial nor appellate court considered this provision. Additionally, the Defendant has not been deprived of any right under section 903.0471, therefore, he has no standing to complain

at this time. It is well settled; 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 Article IV section 1(c) of the Florida Constitution, 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 Article IV, Section 1(c) of the Florida Constitution 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 Respondents' constitutional challenge² to

² 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, 1270-1271 (Fla. 4th DCA 1985), cause dismissed sub , City of Pompano Beach v. Enroute Ltd., Inc., 480 So. 2d 1293 (Fla. 1985) (opining "it is a fundamental maxim of judicial restraint that 'courts should not decide constitutional issues unnecessarily.' [citations omitted]. '[i]f there is one doctrine more deeply rooted than any other in the process of constitutional adjudication, it is that we ought not to pass on questions of constitutionality ... unless such adjudication is unavoidable.'"); Springfield v. State, 443 So. 2d 484, 485 (Fla. 2d DCA 1984) (finding that although statute was ex post facto violation as applied to appellant, argument could not be addressed because issue was not raised in trial court); Collie

section 903.0471. Although this Court may rely upon the newly enacted section 903.0471 for guidance, Gamble, 723 So. 2d at 907, 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 by the trial court and reviewed by the Fourth District. As such, the State will not address the Defendant's attacks upon the statute further, but should the Court order additional briefing of the constitutional claims, the State will provide its analysis.

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) (same).

CONCLUSION

Wherefore, based on the foregoing, Petitioner asserts that section 903.0471 guides the Court to the conclusion the Fourth District Court of Appeal erred in reversing the trial court and ordering pretrial release for the Defendant. This Court should adopt the decision in Houser, quash the Fourth District Court of Appeal's decision in Paul, and remand the case with instructions the Defendant's bond should be revoked.

Respectfully submitted,
ROBERT A. BUTTERWORTH
Attorney General
Tallahassee, Florida

CELIA TERENCE
Assistant Attorney General
Bureau Chief, West Palm Beach
Florida Bar No. 656879

LESLIE T. CAMPBELL
Assistant Attorney General
Florida Bar No. 0066631
1655 Palm Beach Lakes Blvd. Suite 300
West Palm Beach, FL 33401-2299
(561) 688-7759

Counsel for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing "Initial Brief of Appellant" has been furnished by U.S. Mail and Facsimile, to: Diane M. Cuddihy, Chief Assistant Public Defender, Broward County Courthouse, 201 S.E. 6th Street, North Wing - Third Floor, Fort Lauderdale, Fl 33301 on this _____ day of August 2000.

CELIA TERENCE
Assistant Attorney General
Bureau Chief, West Palm Beach

LESLIE T. CAMPBELL
Assistant Attorney General