

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 REPLY 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 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. Reference to the State's initial brief and the Defendant's answer brief will be by "IB" and "AB" respectively. The Appendix consists of the Fourth District Court of Appeal's opinion and mandate.

STATEMENT OF THE CASE AND FACTS

The State relies upon the statement of the case and facts presented int its initial brief.

SUMMARY OF THE ARGUMENT

The State did not concede that the requirements of pretrial release were not met; in fact, the State maintains that the Respondent qualified for pretrial detention under both sections 907.041(4)(b)(4)b and c, Florida Statutes (1997). However, the State also asserts that the Fourth District Court of Appeal erred in finding that as a matter of constitutional right the Defendant was entitled to pretrial bail following the forfeiture of the original bond due to the commission of new criminal offenses. This Court should approve Houser v. Manning, 719 So. 2d 307 (Fla. 3d DCA 1998), quash Paul v. Jenne, 728 So.2d 1167 (Fla. 4th DCA 1999), and find that the trial court has discretion, independent of section 907.041, Florida Statutes, to deny a subsequent bond upon defendant's violation of a condition of the original pretrial release when the defendant violates his bail condition by committing a new criminal offense.

ARGUMENT

WHETHER A TRIAL COURT HAS DISCRETION AND INHERENT AUTHORITY, INDEPENDENT OF SECTION 907.041(4), FLORIDA STATUTES, TO DENY A SUBSEQUENT BOND APPLICATION TO A DEFENDANT WHO VIOLATES A CONDITION OF HIS ORIGINAL BOND BY COMMITTING A NEW CRIMINAL OFFENSE.

The Respondent asserts the State conceded that the requirements for pretrial relief were not met and referenced the State initial brief, page 10. (AB 9). The State has not conceded this point.

The trial court's oral findings denying bond establish that the Respondent qualified for pretrial detention under both section 907.041(4)(b)(4) b and c, Florida Statutes (1997). As stated by the trial court:

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 (sic). 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.

(T pgs. 62-63)(emphasis supplied). This dual finding that Respondent qualified for pretrial detention was pointed out to the Fourth District Court of Appeal ("Fourth District") in the State's response to the petition for writ of habeas corpus as well as to this Court . (IB 18, note 2 and R - State's response, pgs. 9-10 and note 2). Thus, this Court may conclude that the trial court was right for either reason stated in the oral ruling and should quash the Fourth District's opinion in Paul v. Jenne, 728 So.2d 1167 (Fla. 4th DCA 1999) and remand to the trial court for re-revocation of the Respondent's bond.

Respondent claims the fact that the State did not file an Information charging him with carrying a concealed weapon proves he deserved to be granted bail. (AB 10-11) However, at the time the trial court made its bond decision, the State had not filed a "no Information" on the weapons charge. Thus, the trial court was laboring under the fact that a defendant on pretrial release for attempted second degree murder was arrested for possession of firearms with altered serial numbers. It is under these facts the propriety of the trial judge's decision must be reviewed.

"At common law, the court had discretion to grant bail in all cases, but no accused person had a right to release on bail." State v. Arthur, 390 So. 2d 717, 718 (Fla. 1980). Subsequently, pretrial release on bail has become a constitutional right within specified limitations. Article I, section 14 of the Florida Constitution now

provides:

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 conditions. If no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained.

Relying upon a the pre-1982 version of Article I, section 14, it has been recognized 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.' However, while it is constitutionally permissible to revoke for cause a reasonable bail already granted and to then deny subsequent applications, Middleton [v. Polk, 399 So.2d 1105, 1106 (Fla. 5th DCA 1981)], Article I, Section 14 requires that every person accused of a less-than-capital or -life offense be granted reasonable bail in the first instance.

Gardner v. Murphy, 402 So.2d 525 (Fla. 5th DCA 1981)(receding in part from Middleton v. Polk)(footnote omitted)(emphasis supplied).

Hence, while a defendant has a constitutional right to have a reasonable bond following his initial arrest, the defendant who violates a condition of his pretrial release is not entitled to automatic readmission to bond.

Pursuant to Houser v. Manning, 719 So. 2d 307 (Fla. 3d DCA 1998), a trial court has discretion in determining whether a

defendant may be readmitted to bail following a subsequent violation of the bond terms. Both the Third and Fifth District Courts of Appeal recognize that the readmission to pretrial release is discretionary; the defendant's constitution right to bond was satisfied when he was released initially, but by failing to meet the condition of bail, he has forfeited that right and should not be permitted to complain. However, under the Fourth District's analysis in the instant case as well as in Merdian v. Cochran, 654 So. 2d 573 (Fla. 4th DCA 1995) and its progeny, a defendant may continue to commit crimes while released on bail and the trial court is required to readmit the defendant to bond in a never ending cycle.

Respondent maintains that only in those cases where a defendant meets the provisions of section 907.041 may bail be denied. (AB 14). The State disagrees. Consistent with Article I, section 14, the criteria to be followed, when determining the propriety of bail are included in section 903.046, Florida Statutes (1997). A review of this provision reveals that the legislature gave trial judges discretion in granting or denying pretrial release. This is supported by section 907.041(1), Florida Statutes (1997) where the legislature's intent was delineated. In particular, the legislature acknowledged that pretrial bail is not mandatory when it wrote "it is the policy of this state that persons committing serious criminal offenses, posing a threat to

the safety of the community or the integrity of the judicial process, or failing to appear at trial be detained upon arrest." Section 907.041(1)(emphasis supplied). This Court has recognized, "there are circumstances under which the right to bail in otherwise bailable causes would be forfeited by breach of prior bonds." Ex. Parte McDaniel, 86 Fla. 145, 97 So. 317, 318 (1923). Thus, there is a clear distinction between the discretion afforded a trial court when confronted with an initial bond request and when the trial judge is asked to readmit a defendant to bond after a new crime has been committed.

The Fourth District erred in the instant case by granting the writ of habeas corpus after Respondent had committed new offenses while on bail for a dangerous crime without recognizing the two methods a defendant may be detained pretrial, either pursuant to section 907.041(4)(b)(4), Florida Statutes or under the trial court's power to deny a new bond after revocation. Reasonable bail is required when a defendant is first arrested, however, the trial judge has the inherent authority to deny readmission to bond when the court's orders are disregarded. See Middleton v. Polk, 399 So. 2d at 1105-06 (where a defendant's conduct "evinces a flagrant disregard of the court's authority or effort of process" the defendant's constitutional right to pretrial release may be forfeited), receded from on other grounds, Gardner, 402 So.2d 526.

A person granted release on bond must abide by certain

reasonable conditions, one of which is that he must not commit further criminal offenses. See section 903.047(1)(a), Florida Statutes (1997). Should the defendant fail to abide by the conditions of his bail, it may be revoked pursuant to Florida Rule of Criminal Procedure 3.131(g). Hence, release on bond is not an unconditional right as Respondent would have this Court find, but one which may be forfeited. See Gardner, 402 So. 2d at 526 ("it is constitutionally permissible to revoke for cause a reasonable bail already granted and to then deny subsequent applications").

Following case law and statutory provisions implementing the Florida constitution, the Third District Court of Appeal ("Third District") found that "[o]nce a defendant's bond has been properly revoked for a violation of a bond condition, the question whether to grant any further bond is addressed to the sound discretion of the trial court." Houser, 719 So. 2d at 309. Further, Houser agreed "[t]here is no reason why a defendant who has committed a new criminal offense while released on bond should then be conditionally released again in a revolving door fashion." Houser, 719 So. 2d at 310 (citation omitted). Hence, readmission to bond is not mandated when a defendant's bond was revoked due to a violation of the prior bond's condition of release, especially when there has been a commission of a new criminal offense.

Under the facts of the instant case, the trial court found the Respondent was on bond for a dangerous offense, that he committed a new criminal offense while out on bail, and that there were no

conditions of release that could protect the community. (T, pgs. 62-63). Thus, the instant order denying bond should have been affirmed by the Fourth District. This Court should find that not only did the Respondent qualify for pretrial detention under section 907.041, but that under the decision of the Third District in Houser, and the Fifth District Court of Appeal in Gardner, a trial court has inherent authority to deny a defendant re-admission to bail, when the defendant violates his pretrial release by committing a new crime.

CONCLUSION

Wherefore, based on the foregoing, Petitioner requests respectfully this Court approve the reasoning in Houser v. Manning, 719 So. 2d 307 (Fla. 3d DCA 1998), quash Paul v. Jenne, 728 So. 2d 1167 (Fla. 4th DCA 1999), and find the trial court may order pretrial detention, independent of section 907.041, when a defendant violates a condition of his bond by committing a new criminal offense.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing "Reply Brief of Appellant" has been furnished by courier, 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 June, 1999.

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