

IN THE SUPREME COURT OF FLORIDA

CASE NO. 95,266

KEN JENNE, as Sheriff of Broward County,
Florida, and **STATE OF FLORIDA**,

Petitioner,

vs.

BRIAN RIX,

Respondent.

ON DISCRETIONARY REVIEW FROM THE FOURTH DISTRICT COURT OF APPEAL

PETITIONER'S 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 Appellant

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, Brian Rix, 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". Respondents Answer Brief on the Merits will be identified as ("AB") followed by the appropriate page number(s).

STATEMENT OF THE CASE AND FACTS

Petitioner relies upon its Statement of the Case and Facts presented in the Initial Brief, but accepts the Respondent's proof that the Capias was issued in error. (AB 1, note 1).

SUMMARY OF THE ARGUMENT

Once afforded pre-trial release following an initial arrest, a defendant's constitutional rights have been satisfied. When a defendant forfeits his bond by committing another crime, especially one similar in nature to the crime for which the original bond had been granted, a new bond is not automatically required. This Court should adopt the reasoning in Houser v. Manning, 719 So. 2d 307 (Fla. 3d DCA 1998) and Gardner v. Murphy, 402 So. 2d 525 (Fla. 5th DCA 1981) and find that a trial court has the discretion and inherent authority to deny bail. It should be concluded that a defendant who has committed a crime while on pretrial release is not entitled to new bond as a matter of right, but that the trial court has discretion, independent of section 907.041, Florida Statutes (1997) to deny a subsequent bond upon defendant's violation of a condition of the original pretrial release.

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.

As found by the Fifth District Court of Appeal ("Fifth District") in Gardner v. Murphy, 402 So. 2d 525, 526 (Fla. 5th DCA 1981), Florida's constitution "grants reasonable, not unbridled release." Recognizing that bond could be revoked in the event that a defendant violates a reasonable condition of his bail, the district court concluded, "[h]aving been provided reasonable bail only to violate a condition thereof, a defendant cannot claim he has been deprived of his constitutional right to bail should the trial court reasonably deny subsequent applications for bail." Id. It is the Gardner case which formed the basis of the Third District Court of Appeal's ("Third District") opinion in Houser v. Manning, 719 So. 2d 307, 309-10 (Fla. 3d DCA 1998). Contrary to the rationale of the Third and Fifth Districts, the instant Respondent, would have this Court find that a trial judge has no discretion in the denial of a subsequent bond after a defendant has violated a reasonable condition of the original bail.

Article I, section 14 of the Florida Constitution 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.

Clearly, the trial court has the authority to deny pretrial release for any criminal offense so long as there is proof that no condition of release could protect the community, assure the defendant's presence, or uphold the judicial process. It is axiomatic that if a defendant violates his original bond by committing a new criminal act, the integrity of the judicial process has been compromised. By not abiding by the trial court's order to refrain from criminal activity while on bond, the defendant shows his indifference for the judicial process.

Respondent asserts that the Third District misinterpreted State v. Ajim, 565 So. 2d 712 (Fla. 4th DCA 1990) in finding that section 907.041 is complimentary to, and does not replace, a trial court's already-existing power to deny bail." Houser, 719 So. 2d at 311. (AB 8). Ajim was not misinterpreted by the Houser court, nor was it the sole basis of the Houser decision. In Ajim, the Fourth District Court of Appeal ("Fourth District") was asked to decide whether the trial court's conclusion that the Fourth District's prior mandate "removed all discretion to deny bail absent proof of the factors in section 907.041(4)(b)4a-c." Ajim, 565 So. 2d at 712. The Fourth District concluded a trial judge has discretion to deny pretrial release to defendants charged with crimes punishable by

death or life in prison and that such discretion is complimentary to and was not replaced by section 907.041, Florida Statutes. Because bail for a defendant charged with capital offenses or crime punishable by life is left to the sound discretion of the trial judge, so are the trial judge's findings that no reasonable conditions of bail could protect the community, assure the presences of the accused, or assure the integrity of the judicial process for a defendant charged with a lesser crime. Hence, the Fourth District in Ajim, implied that the trial court also has discretion in determining whether there are any pretrial release conditions which could satisfy Article I, section 14 of the Florida Constitution.

Additionally, Respondent maintains that reliance should not have been placed on Ex parte McDaniel, 86 Fla. 145, 97 So. 317 (Fla. 1923). (AB 9). The State disagrees because in fact, this Court, recognized "there are circumstances under which the right to bail in otherwiseailable causes would be forfeited by breach of prior bonds." Ex. Parte McDaniel, 86 Fla. at 149, 97 So. at 318. Thus, it has long been established that the trial court has discretion in these matters.

Nonetheless, whether this Court finds that the Third District misunderstood the breadth of Ajim, or that reliance upon McDaniel was misplaced, the reasoning in Houser was proper and should be adopted. Surveying the manner in which other states manage revocation of bond following the commission of a new criminal

offense, the Third District opined:

The rule in Gardner represents the prevailing American view. "The constitutional authority to arrest and detain a defendant who has violated the conditions of release cannot be doubted. Indeed, the very idea of a defendant's release being conditioned is meaningless without the power to rescind the release when the conditions are violated." ABA Standards for Criminal Justice 10-5.7 cmt., at 10-93 (2d ed.1986) (footnote omitted); see also id. Standards 10-1.3, 10-5.8; Wayne R. LaFave & Jerold H. Israel, Criminal Procedure § 12.4, at 613 (2d ed. 1992) ("[A] statute declaring that a felony defendant released on bail may have his bail revoked upon a showing he has committed another felony has been upheld. Indeed, it has been held that it is within the inherent power of a court to impose a release condition that the defendant not engage in further serious criminal conduct, and that revocation for violation of the condition is thus permissible even absent such a statutory provision."); 8A Am.Jur.2d Bail and Recognizance § 104, at 391 (1997) ("The power to enforce reasonable conditions of release is a necessary component of a trial court's jurisdiction over a criminal case."), and cases cited therein; State v. Ayala, 222 Conn. 331, 610 A. 2d 1162, 1171-72 (1992) ("Revocation of the defendant's release did not encroach upon his constitutional right to be released on bail. The defendant's failure to abide by the conditions of his release resulted in a forfeiture of his right to release.... As one court noted, in effect, 'the keys to continued freedom [were] left in the pocket of the accused.'" (footnote and citation omitted); State v. Holmes, 57 Ohio St. 3d 11, 564 N. E.2d 1066, 1069 (1991) ("The breach of a condition of release provides an adequate basis to revoke the release."); 3A Charles A. Wright, Federal Practice and Procedure § 769, at 150 (1982) (provision in Federal Rules of Criminal Procedure authorizing revocation of bail was repealed, "but since the language had merely embodied

the court's preexisting inherent power to enforce its own orders by revoking bail, the power to revoke at any time still exists. Thus any order releasing a person, whether on bail or on other conditions, may be revoked or modified on a showing of sufficient reason for this action." (footnotes omitted).

Houser, 719 So. 2d 308-09.

As is evident from the proceeding passage, 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, and whose bond has been revoked properly, is not entitled to automatic readmission to bond. While a trial court must set a reasonable bail for a defendant's initial arrest, the judge has inherent authority to deny bail when his orders are disregarded. Middleton v. Polk, 399 So. 2d 1105 (Fla. 5th DCA 1981)(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).

Under sections 903.046 and 903.047, Florida Statute (1997), a person granted release on bond must abide by certain reasonable conditions, some imposed by statute, and others imposed at the discretion of the trial court. 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, pretrial release is a right which may be forfeited by the subsequent actions of the defendant. Having satisfied the Respondent's constitutional rights to bond by the granting of an initial bail with reasonable

conditions in this case, the subsequent violation, especially the commission of a new criminal offense, similar to the one for which the Defendant was on bond¹, forfeits that bond and affords the trial court discretion to deny future bail.

Here, the Fourth District found the dictates of section 907.041(4)(b), Florida Statutes must be met, when pretrial release is denied and that the trial court has no discretion in the matter. Rix v. Jenne, 728 So. 2d 827 (Fla. 4th DCA 1999). As a result, the Fourth District has denied the trial court of its inherent authority to grant or deny a defendant bail. Such was a clear break with the rationale of McDaniel and Gardner. This Court should quash Rix, adopt Houser, and remand the case so that the Defendant's bond may be revoked.

¹ Respondent was admitted to bail for his 95 and 97 cases involving driving under the influence, battery on a law enforcement officer, possession of cocaine, and possession of drug paraphernalia. Subsequently, he was charged in 1998 with driving under the influence and possession of cocaine. This history evinces Respondent's total disdain for public safety and flagrant disregard for the trial court's order to not commit new criminal offenses. Due to his driving practices, he is a danger to the community. Based upon this proof, the trial judge acted within his discretion and authority to deny Respondent bond.

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 Rix v. Jenne, 728 So.2d 827 (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,

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 Boulevard
Suite 300
West Palm Beach, FL 33401-2299
(561) 688-7759
Counsel for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing "Reply Brief of Appellant" has been furnished by U.S. Mail to: Steven J. Hammer, Esq., Law Offices of Steven J. Hammer, P.A., 400 South Andrews Avenue, Fort Lauderdale, FL 33301 on this _____ day of July, 1999.

CELIA TERENCE
Assistant Attorney General
Bureau Chief, West Palm Beach

LESLIE T. CAMPBELL
Assistant Attorney General