IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,
Petitioner,

v.

CASE NO. 96,401

DCA No. 99-957

JAMES J. NORRIS, JR.
Respondent.

DISCRETIONARY REVIEW OF A DECISION OF THE FIFTH DISTRICT COURT OF APPEAL

HON. PEYTON HYSLOP RESPONDENT'S ANSWER BRIEF ON THE MERITS

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PREFACE

The action in the court below was initiated by James J. Norris, Jr. by filing an Amended Petition for Writ of Prohibition, Mandamus and Certiorari. Per the 1995 amendment to Fla.R.App.P. 9.100(e)(1)(2), the judge of the lower tribunal is a formal party to the petition for prohibition and must be named as such in the body of the petition, but not in the caption. Accordingly, the Honorable Peyton Hyslop, although not named a party in the caption, was a respondent in the action below.

Technically, Judge Hyslop may now be denominated as a petitioner in the action herein; however, Judge Hyslop is not appealing the decision of the Fifth District Court of Appeal which quashed Administrative Order A99-6. The decision was correctly decided. Judge Hyslop does have an interest in this case, has appeared at every step of the proceedings below, and files his brief as a Respondent arguing in favor of affirming the district court opinion.

CERTIFICATE OF FONT

The undersigned certifies that this brief is submitted in Times New Roman, 14 point font, not proportionately spaced.

STATEMENT OF THE CASE AND FACTS

The Respondent agrees with the limited factual statement of the Petitioner. However, additional facts are necessary to fully explain Judge Hyslop's actions and the procedural course of this issue.

The *Norris* case was not the first time the issue herein had been presented to the Fifth District Court of Appeal. The State filed a Petition For Writ of Prohibition in Fifth District Court of Appeal in *State v. Lindsey,* DCA Case No. 98-101raising the same issue presented herein.[1] That action, and this subsequent action, arrived before the Fifth District as follows:

There is one first appearance calendar each morning in Hernando County. County Court Judge Peyton Hyslop has been designated by the chief judge of the circuit to be the

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[1] The original petition included a request for prohibition and in such cases facts outside the record below may be appropriate to establish an affirmative defense destroying the basis for issuing the writ. See, *State ex rel. Robinson v. Nelson*, 212 So.2d 827 (Fla. 1st DCA 1968); Trawick, Fla. Prac.& Proc., section 36-3.

Judge Hyslop made a request for judicial notice in *Lindsey* for matters outside the record below and included those requested matters with a summary in the appendix to his response in *Lindsey*. The request was not ruled on because the issue in *Lindsey* was deemed moot. A request for judicial notice was also made in *Norris* seeking to incorporate the summary, appendix and factual matters initially supplied in *Norris*.(App. 9-10) The request was granted and all factual allegations contained in the summary, appendix and Statement of the Facts became a part of the *Norris* record.(App. 11).

judicial officer conducting all the week day first appearances in the county -- both felony and misdemeanor. Judge Hyslop is on a rotation with judges in a three county area to conduct weekend first appearances in the area. Judge Hyslop has been working this first appearance schedule for almost nine years.

Two Hernando County circuit court judges asked Judge Hyslop by letter to refrain from modifying bonds set on felony warrants unless they authorized him to do so in the warrants. (App. 12-13) In fact, almost every warrant issued by Judges Springstead and Law state the bail set therein is not authorized to be modified by the judge presiding at the first appearance.

Judge Hyslop responded by letter stating that he would continue to conduct first appearances as mandated in the rules of criminal procedure. (App. 14)

Thereafter, Judge Springstead signed an arrest warrant for a William Lindsey which contained a preset bond amount. When he endorsed the warrant, Judge Springstead circled a provision that the first appearance judge could not change the amount of bond set in the warrant. (App. 29) Judge Hyslop conducted Lindsey's first appearance and reduced the pretrial release bond despite the circled provision. Lindsey posted bail set by Judge Hyslop and was released from pretrial custody. A circuit court judge subsequently remitted the bail and changed Mr. Lindsey's pretrial status to release on recognizance.

The State then filed a Petition for Writ of Prohibition seeking to prohibit Judge Hyslop from modifying bonds at first appearance where the warrant issuing judge indicated on the warrant that the first appearance judge may not change the amount of bond. The Fifth District Court of Appeal denied the petition as moot. Hence, the Hernando County judges continued their regular practice.[2] Judge Springstead, circled the provision on almost every arrest warrant that the bond on the warrant, preprinted by law enforcement in conformity with the uniform bond schedule, was not to be modified by the first

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[2] All but three of the three hundred thirty one felony cases filed in Hernando County from January, April and August 1997 (three randomly selected months) were physically reviewed in preparation for the response to the District Court in *Lindsey*. The three files not reviewed could not be located. A summary of the findings of that review highlights several relevant facts, and is appended hereto. (App. 15-28). Eighty seven of the review cases involved arrest warrants. Sixty one of them were signed by Judge Springstead. Fifty nine of those stated that bail could not be modified at first appearance. Two warrants failed to check either option. Fifteen of the warrants were signed by Judge Law, and all them stated that bail could not be modified at first appearance.

Judges Springstead and Law do not personally select the amount of bail that is to be endorsed on their arrest warrants. Rather, law enforcement submits a pre-printed warrant with the amount of bond they selected already typed in. (App. 29) A review of the summary shows this amount usually is the amount from a bond schedule. (App. 30-34)

Moreover, of the seventy four warrants signed with no authorization to modify bail at first appearance, fifteen or 20% of those cases were ultimately nolle prossed, dismissed or a no information was filed. And, only one of the seventy four defendants served any term of incarceration following conviction.

Additionally, on some warrants -- without any compliance with the procedural requirements for pretrial detention -- Judge Springstead sets a "No Bond," and states that the first appearance judge cannot modify that provision. (App. 35)

appearance judge. In turn, at first appearance, Judge Hyslop considered the factors enumerated in Rule 3.131, made an independent bond determination and imposed reasonable conditions for pretrial release -- even if that sometimes entailed modifying the bond amount set in the warrant.

Subsequently, on February 6, 1999, Chief Judge William T. Swigert issued Administrative Order A99-6, ordering that no first appearance judge could change the amount of bond set in an arrest warrant.(App. 7-8) The order codified the requests made by Judge's Springstead and Law to Judge Hyslop in their earlier letter.

On March 29, 1999 Judge Hyslop conducted the First Appearance for James Norris. Norris was arrested on an arrest warrant signed by Judge Springstead. Judge Springstead did not personally select the amount of bail endorsed on the arrest warrant.[3] Rather, law enforcement submitted a pre-printed warrant with the amount of bond they selected already typed in. (App. 36) The amount was the same as that contained in a bond schedule. (App. 37)

Judge Hyslop determined that Norris was a local resident, was employed in Hernando County, had relatives living in the county, had no prior criminal record, earned

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[3] Judge Hyslop by assignment occasionally signs felony arrest warrants. He has personal knowledge that the warrants prepared by law enforcement and brought to him for signature contain pre-printed bond amounts, and that those warrants are similar to the one in question herein.

$160 take home per week, supported himself and paid child support for his daughter, had never had a failure to appear and voluntarily turned himself in. (App. 56-60) The State did not have any information that Norris's release to the community would pose any probability of danger. (App. 61)

Judge Hyslop determined that Norris could not afford to post a $20,000 bond, and the under the circumstances a bond in the amount of $1,500 would be reasonable for Norris' pretrial release. (App. 80) Judge Hyslop specifically stated that he would have imposed a bond in the amount of $1,500 but for Administrative Order 99-6 which prohibited him from modifying the bond set by Judge Springstead in the arrest warrant. (App. 80)

Tellingly, the Honorable Judge Richard Tombrink, the judge assigned to try Norris' criminal case, subsequently reduced Norris' bond to $1,000.

The Public Defender representing Norris then petitioned the Fifth District Court of Appeal for a Writ of Prohibition prohibiting Judge Hyslop from following Administrative Order A99-6, and alternatively filed a Petition for Certiorari seeking to have the Administrative Order quashed.

Judge Hyslop filed a response agreeing with the Petitioner and urging that there was no legal authority for including non-modification provisions in arrest warrants and that the administrative order unconstitutionally prevented him from performing his duties.

The Fifth District Court of Appeal agreed and quashed Administrative Order A99-6. And this appeal follows.

SUMMARY

County Court Judge Peyton Hyslop is a committing magistrate assigned by the chief judge of the circuit to conduct first appearances. The rules of procedure require that Judge Hyslop conduct a hearing at first appearance to determine pretrial release, and that at such hearing an individualized determination must be made taking into account enumerated criteria.

James Norris was arrested pursuant to an arrest warrant which contained a preset bond amount filled in by law enforcement that complied with a uniform bond schedule. The circuit judge signing the warrant circled a provision that the first appearance judge could not change the amount of the bond set in the warrant. Such a prohibition was authorized in the circuit by Administrative Order A99-6 which requires every judge to endorse an amount of bond on a capias or warrant, [4] and prohibits a first appearance judge from changing the amount of bond initially set in the warrant.

In connection with Norris' first appearance on the criminal charge, County Court Judge Hyslop performed all the duties required of him by the first appearance rule, evaluated the factors for release enumerated in the rule, found that reasonable bail was

[4] Of course, this pronouncement is superfluous because Fla.R.Crim.P. 3.121(a)(7) requires an arrest warrant to be endorsed with the amount of bail and Fla.R.Crim.P.3.131(j) requires bond to be endorsed on a capias.

$1,500, and would have released Norris on that condition but for Administrative Order A99-6.

The administrative order effectively does away with bond determinations at the first appearance -- contrary to rule, statute and the Florida constitution. Administrative Order A99-6 violates the plain requirements of the first appearance rule by preventing the first appearance judge from determining the conditions of a defendants' pretrial release. The administrative order placed Judge Hyslop in an untenable dilemma that was resolved by the Fifth District Court of Appeal.

Norris petitioned to have the order quashed. Upon review, the Fifth District determined that a reading in *pari materia* of Rules 3.121(a)(7) and 3.131(b) clearly provides that a defendant is entitled to an independent bail determination in front of the first appearance judge after a consideration of all relevant factors. The court noted that any reliance on Rule 3.131(d)(1) to support the issuance of order A99-6 is misplaced. The court further recognized that the source of the entitlement to a reasonable pretrial release springs from the Florida Constitution. Accordingly, Administrative Order A99-6 was quashed.

In a brief opinion, the First District concurred with the *Norris* court's reasoning and reversed an "informal policy" regarding the refusal of some first appearance magistrates to modify a bail amount endorsed by another judge on an arrest warrant without the

consent of the judge. *Faoutas v. State*, 24 Fla. Law Weekly D1866 (Fla. 1st DCA Oct. 15, 1999) The *Faoutas* court stated, "Although not before us at the moment, the same result would obtain even if such policy was reduced to an administrative order. *Id.*

There is no legal authorization for either Administrative Order A99-6 or the informal policy condemned in *Faoutas*. This Court should affirm the *Norris* decision which correctly quashed an order that contravened the Florida Constitution and rules of procedure.

ARGUMENT

THE FIFTH DISTRICT COURT OF APPEAL WAS CORRECT IN QUASHING AN ADMINISTRATIVE ORDER THAT PERMITTED A JUDGE SETTING BAIL IN AN ARREST WARRANT TO PROHIBIT A FIRST APPEARANCE JUDGE FROM MODIFYING THAT SET BAIL AMOUNT. (As restated by Respondent.)

OVERVIEW

Justice Ervin noted the inequities in the bail bond system 25 years ago in his dissenting opinion in *In re Florida Rules of Criminal Procedure,* 272 So.2d 65, 69-72 (Fla. 1972). Those inequities have not changed over the years. The imposition of release conditions based on a bond schedule in every case, precluding an individualized determination of bail at first appearance, results in 1) discrimination against the poor, 2) burdens on innocent families, 3) loss of jobs, 4) the public suffers from paying for unnecessary detention, and 5) defendants presumed innocent are subjected to the psychological and physical deprivations of jail life, usually under more onerous conditions than are imposed on convicted defendants.

This case does not involve restrictions on release to persons who pose a threat to the community. In the present case, Norris ultimately was released pretrial on a bond lower than that set in the arrest warrant.

Nor does the case involve peripheral arguments raised by the Petitioner. The Petitioner repeatedly urges in the brief on the merits that the arrest warrant judge is the person most familiar with the defendant's history and therefore, *arguendo*, is in a better

position to set bond than is the first appearance judge. However, there is nothing in the record to indicate the judge signing the arrest warrant knew Norris or his circumstances; rather, a bond amount was typed in by the officer seeking the warrant and the judge merely adopted that amount. But, even if the arrest warrant judge was provided extensive, *ex parte* information about a defendant's history, fundamental notions of due process require the amount of bond be determined at a hearing with the defendant having the right to be heard.

The Petitioner also fears that if first appearance judge is allowed to modify the amount of bond set in an arrest warrant, "then conceivably any judge in the State sitting at first appearance could modify a firm bond amount without any information about the defendant, and without any party before the court with any knowledge of the case." This argument assumes that a first appearance judge sitting in a locale removed from the commission of the crime will fail to follow the rules of criminal procedure, might not conduct a proper hearing, and might lower the bond without a sufficient factual basis. Judge Hyslop is unwilling to concede such an assumption.

The issue in this case does not involve any of the above peripheral concerns. The only question is whether the administrative order is constitutional and whether there is a legal basis for its adoption in the first place. Resolution of this later issue requires an

analysis of Florida Rule of Criminal Procedure 3.131(d)(1)(D). The Fifth District Court of Appeal was correct in quashing Administrative Order A99-6 for two reasons:

1. ANY ADMINISTRATIVE ORDER, OR CONSTRUCTION OF A RULE, THAT PRECLUDES A FIRST APPEARANCE JUDGE FROM MAKING INDIVIDUALIZED CONSIDERATIONS OF PRETRIAL RELEASE CONDITIONS IS UNCONSTITUTIONAL.

Florida Rule of Judicial Administration 2.020(c) defines administrative order as "a directive necessary to administer properly the court's affairs but not inconsistent with the constitution ..." The Fifth District cited the constitutional provision to which Order A99-6 must be consistent. *Norris v. State*, 24 Fla. Law Weekly D1866 (Fla. 5th DCA August 6, 1999)

Article I, section 14 of the Florida Constitution was amended in 1982 to provide that every person charged with a crime is entitled to pretrial release on reasonable conditions.

To be reasonable, release must be considered in a timely manner and in a fashion that takes into account the unique individual characteristics of each defendant. *Rawls v. State*, 540 So.2d 946, 947 (Fla. 5th DCA 1989); *Lawyer v. Crawford,* 517 So.2d 36 (Fla. 3d DCA 1987); *Glosson v. Solomon*, 490 So.2d 94, 95 (Fla. 3d DCA 1986). See also, *Stack v. Boyle*, 342 U.S. 1, 72 S.Ct. 1, 96 L.Ed. 3 (1951) (Jackson, J. concurring).

The Florida Supreme Court explicitly stated in *The Florida Bar*, 436 So.2d 60 (Fla. 1982) that they amended and adopted Rules of Criminal Procedure 3.130 and 3.131 to comply with the new constitutional mandate. In fact, the language of Fla.R.Crim.P. 3.131(a) exactly parrots the constitutional amendment.

The hearing at first appearance, per Fla.R.Crim.P. 3.131(b), insures the constitutional command of release on reasonable conditions by requiring the first appearance judge to make an individualized bail determination in a timely manner after arrest. See, *Kelsey v. McMillan*, 560 So.2d 1343, 1344 (Fla. 1st DCA 1990)["An accused has the right to an individualized review of his bail based on facts and circumstances of his situation and alleged offense."] Judges must base release decisions on how individual defendants fit within the factors specified in section 903.046(2), Fla.Stat. and Fla.R.Crim. P. 3.131(b)(3). See also, *Flores v. Cocalis*, 453 So.2d 1198, 1199 (Fla. 4th DCA 1984); *Goode v. Wille*, 382 So.2d 408, 410 (Fla. 4th DCA 1980); cf. *Puffinberger v. Holt*, 545 So.2d 900, 902 (Fla. 4th DCA 1989).

Accordingly, first appearance judges are compelled to conduct a case-by-case bail determination at first appearance in order to comply with the constitution and the rules of procedure. To the extent that Administrative Order A99-6 prohibits first appearance judges from performing their duty, the order is unconstitutional and should be quashed.

2. SECTION 3.131(d)(1)(D) WAS NOT INTENDED TO PRECLUDE A FIRST APPEARANCE JUDGE FROM MODIFYING A CONDITION OF RELEASE SET IN AN ARREST WARRANT.

In its own support, Administrative Order A99-6 specifically cites rule 3.131(d)(1)(D) which provides, in part, that a judge of inferior jurisdiction cannot modify or set a condition of release unless he, "Is the first appearance judge and was authorized by the judge initially setting or denying bail to modify or set conditions of release." An analysis of the complete rule, set forth below, illustrates the Order's reliance on subsection 3.131(d)(1)(D) is taken out of context, that it conflicts with the requirements of 3.131(a) & (b), is not applicable to the first appearance setting, is not legitimate authority for the traditional practice of setting no-modification provisions in arrest warrants, and, as noted by the Fifth District, "is misplaced."

(d) **Subsequent Application for Setting or Modification of Bail**.

(1) When a judicial officer not possessing trial jurisdiction orders a defendant held to answer before a court having jurisdiction to try the defendant, and bail has been denied or sought to be modified, application by motion may be made to the court having jurisdiction to try the defendant, or in the absence of the judge of the trial court, to the circuit court. The motion shall be determined promptly. No judge or a court of equal or inferior jurisdiction may modify or set a condition of release, unless the judge:

(A) imposed the conditions of bail or set the amount of bond required;

(B) is the chief judge of the circuit in which the defendant is to be tried;

(C) has been assigned to preside over the criminal trial of the defendant; or

(D) is the first appearance judge and was authorized by the judge initially setting or denying bail to modify or set conditions of release.

The literal wording of the rule precludes its application in the first appearance context. Fla.R.Crim.P. 3.131(d) is captioned as follows, "**Subsequent Application for Setting or Modification of Bail**." Applying traditional rules of construction, a rule's heading is not dispositive of its contents, but may be used in construing the section. Therefore, the heading suggests the rule only applies to subsequent applications for bail.

The question next becomes whether the application to which the rule refers is subsequent to the bail set in the arrest warrant or subsequent to that set at first appearance. The section must only apply after the first appearance because the bail hearing conducted at first appearance is not done on application, but is a matter of right. Section 903.035 discusses applications for bail. It is plain from that statute that the first appearance bail hearing is not done on application. Rule 3.131 requires that every defendant be given a first appearance hearing. A defendant does not have to apply for such a hearing. Accordingly, a subsequent application cannot take place at first appearance because there has not yet been the first application.

The Petitioner does not acknowledge the Rule's use of the word "application;" instead, it grafts the word "hearing" into the Rule. In addressing the Rule, the petitioner states, " In this instance, the subsequent hearing is the first appearance, for the judge

issuing the warrant has already made a prior judicial determination as to the appropriate amount of bond."

Transposing the word "hearing" for the word "application" yields an interpretation that is even more illogical than calling the first appearance a "subsequent application" when there has been no first application. How can the first appearance be a subsequent hearing when there has been no first hearing? The Petitioner cannot seriously suggest that the *ex parte* information, if any, provided by law enforcement seeking a warrant constitutes a "hearing." In either event, the first appearance is neither a subsequent application nor hearing; therefore, rule 3.131 is not authority for Administrative Order A99-6.

Moreover, by a literal interpretation, the Rule is only applicable to proceedings conducted after first appearances held by a county court judge. The introductory clause of the rule states as follows: "When a judicial officer not possessing trial jurisdiction orders a defendant held to answer before a court having jurisdiction to try the defendant, ..." Analyzing this passage, all circuit court judges possess trial jurisdiction over felonies. So, the first sentence of the rule does not apply to circuit court judges who hold defendants to answer by executing an arrest warrant. Accordingly, the Chief Judge's reliance on the rule is misplaced from the outset.

By elimination, the Rule literally only applies to county court judges, not possessing felony trial jurisdiction, who at first appearance make a non-adversarial probable cause determination holding defendants to answer. It is only subsequent to first appearance that defendants may make application to the court having trial jurisdiction for reconsideration of the county court decision. It follows that the first sentence of the rule is not intended to prevent the first appearance judge from altering a warrant condition.

Further, the last sentence of subsection 3.131(d)(1) was added with the 1982 amendment to the rules, and provides that no judge of equal or inferior jurisdiction may modify a condition of release, unless an exception applies. Applying the construction that all sentences in a paragraph are related and that latter sentences in a paragraph modify and amplify former sentences, this last sentence must mean that the bail decision made upon application subsequent to the first appearance determination is not modifiable unless an exception applies.

The exception in 3.131(d)(1)(D) does not apply in the present case. Fla.R.Crim.P. 3.121(a) sets forth the required contents of arrest warrants. Nothing in that rule mentions no-modification clauses. Fla.R.Crim.P. 3.121(a)(7) requires an arrest warrant be endorsed with the amount of bail; but, the rule does not authorize the warrant judge to deny a first appearance judge the ability to change that initial bail.

The rule is a synthesis of prior law. Case law and statute have long required a judge to endorse the amount of bail on a warrant. See, *Ex parte Hatcher*, 86 Fla. 330, 98 So.2d 72 (Fla 1923); section 32.09, Fla. Stat. (1970)(repealed 1972). "The intent and purpose of the endorsement as to the amount of bail was to enable the arresting officer to accept proper bail without the necessity of contacting the judge to fix the amount of the bail bond." *State v. Martin*, 213 So.2d 889 (Fla. 4th DCA 1968). Nothing in the prior law authorized no-modification provisions.

In contrast to Fla.R.Crim.P. 3.121(a)(7), Rule 3.131(j) states:

> After an indictment or information has been filed, if the accused has not already been arrested and is not in custody or at large on bail, the judge is required to endorse the amount of bail, if any, and may authorize the setting or modification of bail by the judge presiding over the defendant's first appearance.

The above rule specifically provides authority for the inclusion of a no modification of bail provision in the case of capiases (not arrest warrants) issued as a result of informations and indictments.

Fla.R.Crim.P. 3.121(a)(7) which provides the requirement of bail endorsement on arrest warrants does not contain the preclusion language of 3.131(j). Under the principle of statutory construction, *expressio unius exclusio alterius*, the mention of one thing implies the exclusion of the other. *Capers v. State*, 678 So.2d 330, 332 (Fla. 1996); *Moonlit Waters Apartments, Inc. v. Cauley*, 666 So.2d 898, 900 (Fla. 1996).

Accordingly, the exception in rule 3.131(d)(1)(D) only applies to rule 3.131(j) situations because those are the only situations where a judge has authority to state whether or not a first appearance judge can alter release conditions.

In addition, section 903.02(2)(d), Fla. Stat. tracks rule 3.131(d)(1) and prohibits a judge of inferior jurisdiction from reducing the amount of bond previously set unless the reducing judge is the designee of the chief judge and a judge has not yet been assigned to the criminal trial. No trial judge was assigned the Norris case at the time of his first appearance. Judge Hyslop was the designee of the chief judge at the first appearance. Accordingly, statutorily Judge Hyslop had the authority to reduce Norris's bond.

Summing up the construction of the rule, 3.131(d) provides that once a county court judge has held a defendant to answer all subsequent applications for setting or modification of bail should be to the judge having trial jurisdiction, or in his absence to the circuit court. Any bond decision subsequent to the first appearance determination cannot be modified further unless the modification is made by the same judge who imposed the conditions subsequent to the first appearance determination, is the chief judge of the circuit, has been assigned to preside over the criminal trial, or is the first appearance judge following the filing of an indictment or information, where the defendant is not in custody or at large on bail, and the judge endorsing bail on the indictment or information authorized the first appearance judge to modify bail.

Administrative Order A99-6 erroneously relied on the case of *McCoy v. State*, 702 So.2d 252 (Fla. 3d DCA 1997). The *McCoy* court was not confronted with the arguments presented herein, and did not interpret the rule or address its constitutionality. The *McCoy* court only answered whether a first appearance judge can set release conditions when the judge setting bail in the arrest warrant does not check either option -- that the bond may or may not be modified. The obvious answer, as both sides in *McCoy* agreed and as the court explicitly held, is yes. Every other pronouncement in the opinion was not essential to the holding, and constitutes non-controlling dicta.

It should be noted that rule 3.131(d) was not intended to prevent a first appearance judge from modifying a bail condition set by the judicial officer signing an arrest warrant. Rather, the purpose of the rule was to prevent forum shopping for subsequent applications to set or modify conditions of release. See, *State v. Paterno*, 478 So.2d 420 (Fla. 3d DCA 1985). There is no question of forum shopping in this case. Mr. Norris was simply assigned to appear before Judge Hyslop on the regular first appearance calendar. There is only one such calendar every morning in Hernando County. Judge Hyslop conducts all the regular felony first appearances, except weekend appearances that are rotated between all judges in a three county area. Therefore, there can be no question of forum shopping in Mr. Norris case because there is only one forum and only one judge that regularly hears the first appearances.

Moreover, to state that defendants are "in a more advantageous position if they were arrested in Hernando County, due to the proclivity of the only judge in that county to substantially reduce the predetermined amount of bail in the arrest warrant" is both an untruth and an affront to Judge Hyslop's judicial integrity. The record in this case shows that in both *Lindsey* and *Norris* a third judge reduced the bond below the reduction, or the recommended reduction, made by Judge Hyslop.

Even if the Petitioner's allegations were true, and Judge Hyslop was the only judge in the county substantially lowering the amount of the preset bond on arrest warrants, Judge Hyslop should be applauded for such moral courage. See, *State v. Bennett*, 520 So.2d 635 (Fla. 4th DCA 1988). As evidenced by the summary in this case, 20% of those defendants held on "firm" bonds ultimately had their charges dismissed. And, only one of the seventy four defendants was sufficiently dangerous to the community to ultimately receive a term of incarceration following conviction. All of the inequities in the bail bond system noted by Justice Ervin are given opportunity to sprout and flourish when bonds are set without individualized determinations made at a first appearance where the defendant has the opportunity to be heard.

CONCLUSION

The plain effect of the Administrative Order 99-6 is to deny consideration of pretrial release at a first appearance hearing whenever a citizen is arrested on a warrant. The Order is unconstitutional and contravenes the rules of procedure. The Fifth District Court of Appeal's action in quashing the order should be affirmed.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Request for Oral Argument has been furnished to the Belle B. Schumann, Attorney General's Office, 444 Seabreeze Blvd. 5th Floor, Daytona Beach, FL.32118, to Elizabeth Osmund at the Office of the Public Defender, 20 N. Main Street, Brooksville, Fl. 34601, and to the Honorable William T. Swigert, 110 N.W. 1st Avenue, Ocala, Florida 34601 by regular U.S. mail delivery on February 7, 2000.

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