IN THE SUPREME COURT OF THE STATE OF FLORIDA

STATE OF FLORIDA, et al.,

Petitioner,

v.

Case No. 96,489
5 DCA Case No. 99-1517

STACY CASTILLEGA,

Respondent.

_____/

ON DISCRETIONARY REVIEW FROM THE
DISTRICT COURT OF APPEAL, FIFTH DISTRICT
AND THE FIFTH JUDICIAL CIRCUIT IN AND FOR
HERNANDO COUNTY, FLORIDA

PETITIONER'S INITIAL BRIEF ON THE MERITS

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STATEMENT OF THE CASE AND FACTS

The decision below relied exclusively upon a case from the same district decided shortly before this case, namely, Norris v. State, 737 So.2d 1240 (Fla. 5th DCA 1999), currently pending before this Court as State v. Norris, Case No. 96,401. The opinion in this case did not relate any facts or procedural history. The facts of this case are essentially the same as the facts in Norris, with the exception that the original arrest warrant for Castillega set the bond at $5,500. At first appearance on June 8, 1999, Judge Hyslop stated that he believed that a bond of $2,000 was appropriate. The facts from the Norris decision are as follows:

"The Chief Judge of the Fifth Judicial Circuit issued administrative order A99-6, which authorizes the judge who issues a capias or warrant to establish the amount of bond and prohibits any modification of the bond amount by any other judge without the consent of the issuing judge. Thereafter, an arrest warrant was issued by Circuit Judge Springstead for the arrest of (James Norris). Judge Springstead set the amount of bail in the warrant at $20,000 without authorization for the first appearance judge to modify the bond amount. At first appearance, County Judge Hyslop determined that under the circumstances $1,500 would be a reasonable bond. However, Judge Hyslop was not authorized to

modify the bond under administrative order A99-6. (Norris) filed the instant petition asserting that his right to a meaningful first appearance was denied by the non-modification rule. Norris v. State,737 So.2d 1240, 1241(Fla. 5th DCA 1999)

The decision in Norris interpreted Florida Rule of Criminal Procedure 3.131 to require that conditions of pretrial release must be independently determined at first appearance. "Binding the first appearance judge by the initial endorsement of bail amount on the warrant deprives the defendant of a meaningful bail determination at first appearance. Although a bail amount is endorsed on the warrant, that amount is only in effect until the bond amount is set at first appearance after an independent consideration of conditions for release by the first appearance judge and the defendant is afforded an opportunity to be heard." Norris v. State, 737 So.2d at 1242. The court granted the petition for writ of certiorari and quashed administrative order A99-6.

Judge Goshorn dissented, expressing dismay at the lack of civility evident in the case, and disagreed that rule 3.131(d)(1)(D) does not apply to first appearances. "The very issue in this case is the authority of first appearance judges to modify a bond amount that has been previously set. The procedure to be followed is clearly set for in the rule. Moreover, I agree

with the opinion of Chief Judge Schwartz in McCoy v. State, 702 So.2d 252 (Fla. 3d DCA 1997)..." Norris v. State, 737 So.2d at 1242.

SUMMARY OF ARGUMENT

At issue in this case is whether the rules of criminal procedure permit the first appearance judge to modify a bail bond when a person is arrested pursuant to an arrest warrant and the issuing magistrate has set a firm bond. The judge issuing the arrest warrant has found probable cause for the arrest, become familiar with the defendant and the circumstances of the crime, and indicated on the face of the arrest warrant that a bail amount should not be modified. This act is the original setting of the bail bond. Therefore, under these circumstances, the first appearance is a subsequent hearing. Florida Rule of Criminal Procedure 3.131(d)(1)(D) states that no judge may modify or set a condition of release unless the judge "is the first appearance judge and has been authorized by the judge initially setting or denying bail to modify or set conditions of release." In those few instances when the judge issuing an arrest warrant indicates that bail cannot be modified, the first appearance judge is without authority to do so under the plain meaning of the rule.

CERTIFICATE OF FONT

The undersigned hereby certifies that this brief is submitted

in Courier New, 12 point font, a font that is not proportionally spaced.

ARGUMENT

WHEN A JUDGE ISSUING AN ARREST WARRANT SETS A BAIL AMOUNT AND INDICATES THAT IT CANNOT BE MODIFIED, THE FIRST APPEARANCE JUDGE CANNOT MODIFY THAT FIRM BAIL BOND

This Court accepted jurisdiction in on the basis that the decision below relied upon a case which conflicts with the decision in McCoy v. State, 702 So.2d 252 (Fla. 3d DCA 1997), and the provisions of the rules of criminal procedure adopted by this Court. See, State v. Norris, Case No. 96,401.

The decision in this case relied upon Norris v. State, 737 So.2d 1240 (Fla. 5th DCA 1999), which quashed the administrative order[1] which "...authorizes the judge who issues a capias or warrant to establish the amount of bond and prohibits any modification of the bond amount by any other judge without the

[1]Petitioner contends that this administrative order conforms with the rules of criminal procedure. Whether or nor this administrative order was properly issued is irrelevant and an unnecessary diversion. In essence, this order is superfluous in view of the clear provisions of rule 3.131(d)(1)(D).

consent of the issuing judge." The defendant was deprived of a bail determination at first appearance, held the fifth district, if the initial endorsement of bail amount on the warrant was firm.

In McCoy v. State, supra, the third district held, "...that the failure of the judge who sets bail or other release conditions in an arrest warrant to check the appropriate box on the accompanying form that the bond may not be modified by the first appearance judge constitutes an affirmative authorization within the meaning of Florida Rule of Criminal Procedure 3.131(d)(1)(D) for the first appearance judge to modify that bond. Stated otherwise, the Dade County first appearance judge has the authority and the duty independently to consider the appropriate conditions of release for a defendant arrested on a warrant issued by another judge *so long as that judge does not specifically preclude him from doing so*." (Emphasis added) The legal principle upon which the McCoy decision is founded is that when a capias or arrest warrant has issued and a judge sets a bond amount, this is the initial bond amount for the purposes of the rule. The Court's decision in McCoy adopted the State's position that any subsequent change is controlled by rule 3.131(d).

The district court's decision in Norris finds that rule 3.131(b) contemplates that the first appearance judge can conduct

an independent consideration of the conditions for release. This holding is unworkable and misinterprets the rule. This holding confuses the setting of bond in the first instance, a proper function of first appearance the majority of the time, with instances such as are presented in this case, where a magistrate has already found probable cause for the issuance of an arrest warrant, and, being most familiar with the facts of the case and the defendant's history, determined that a particular amount of bond is appropriate and should not be modified. In this limited situation, the first appearance is a subsequent hearing.

Florida Rule of Criminal Procedure 3.191(d), states: "(1)...No judge or a court of equal or inferior jurisdiction may modify or set a condition of release, unless the judge:...(D) is the first appearance judge *and was authorized* by the judge initially setting or denying bail to modify or set conditions of release. (emphasis added) The obvious corollary of this rule is that where the first appearance judge is *not* authorized by the judge initially setting bail to modify the terms of release, he or she cannot do so.

The title of the rule quoted above is "Subsequent Application for Setting or Modification of Bail". In this instance, the subsequent hearing <u>is</u> the first appearance, for the

judge issuing the warrant has already made a prior judicial determination as to the appropriate amount of bond. The third district correctly recognizes this crucial distinction, but the decision below does not. The trial judge of equal or lesser jurisdiction had no authority under the rule to modify the bond amount.

This interpretation is further bolstered by the committee note when rule 3.131(d) was adopted in 1983. This note states that this rule was intended to replace former rule 3.130(f) (concerning first appearance) and "contemplates all subsequent modifications of bail including all increases or reductions of monetary bail or any other changes sought by the state or by the defendant." (Emphasis added) This indicates that it was contemplated that in some cases first appearance would be the subsequent hearing. One of those situations is presented in this case, where the judge issuing the arrest warrant has fixed the appropriate amount of bail, and indicated that it cannot be modified.

From the acrimonious history of this and related cases, it is clear that defendants with outstanding arrest warrants in this particular circuit were 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. Such forum shopping should not be permitted. "The purpose of the rule [3.131(d)] is to prevent forum shopping and to keep bail hearings before the judge with the most knowledge of the case whenever practical. To that end, the rule specifically delineates which judges have authority to set or modify bail after a prior decision on the matter. It is quite clear that an alternate judge...is not permitted by the rule to alter the bail status concerning a defendant." State v. Paterno, 478 So.2d 420 (Fla. 3 DCA 1985) This Court has long established that the proper procedure for reducing bail is to return to the same judge that set the bail in the first instance, and argue relevant factors to that judge. State ex rel Scaldeferri v. Sandstrom, 285 So.2d 409 (Fla. 1973). The rule contemplates that this application for modification of bail can be had with as little as three hours' notice. Fla.R.Crim.P. 3.131(d)(2).

If is not unusual for persons to be arrested outside of the territorial jurisdiction of the judge who issued the arrest warrant and set the amount of bond. If this Court permits the first appearance judge to reconsider a firm bond on an arrest warrant, then conceivably any judge anywhere in the State sitting at first appearance could modify a firm bond without any

information about the defendant, and without any party before the court with any knowledge of the case. In those few cases such as this where the arrest warrant does not permit modification of bond, the first appearance judge should not permitted to modify bond. The rule expressly prohibits the subsequent judge, in this instance the first appearance judge, from modifying the conditions of release. To hold otherwise might also have the effect of permitting the State to seek an increase in bail at first appearance under these circumstances. Compare, Stacey v. Cochran, 664 So.2d 974 (Fla. 4th DCA 1995); see also committee note, 1983 Amendment to Rule 3.131, rendering subsection (d) applicable to both the defendant and the State.

The judge issuing the arrest warrant has found probable cause for the arrest, become familiar with the defendant and the circumstances of the crime, and indicated on the face of the arrest warrant that the bail amount should not be modified. This act is the original setting of the bail bond. In those few instances when the judge issuing an arrest warrant indicates that bail cannot be modified, the first appearance judge is without authority to do so under the plain meaning of rule 3.131(d)(1)(D).

CONCLUSION

Based upon the foregoing argument and authority, Petitioner respectfully requests this Honorable Court to reverse the district court's decision in this case.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing brief has been furnished by U.S. Mail to the Hon. William T. Swigert, Sr., at 110 N.W. 1st Avenue, Ocala, FL 34475, to Hon. Peyton Hyslop, at 20 N. Main Street, Room 340, Brooksville, FL 34601, to Assistant Public Defender Elizabeth Osmond, at 20 N. Main Street, Brooksville, FL 34601, and to A.R. Mander, III, Greenfield, Mander, Hanson, Murphy and Dwyer, at 14217 Third Street, Dade City, FL 33523, this ____ day of January, 2000.

_____

Belle B. Schumann
Assistant Attorney General

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_____/

APPENDIX TO PETITIONER'S INITIAL BRIEF ON THE MERITS

State v. Castillega, 739 So.2d 666 (Fla. 5th DCA 1999)

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No. 99-1517.

District Court of Appeal of Florida,

Fifth District.

Aug. 20, 1999.

Petition for Writ of Prohibition, William T. Swigert, Sr. and Peyton B. Hyslop, Respondent Judges.

Howard H. Babb, Jr., Public Defender, and Elizabeth Osmond, Assistant Public Defender, Brooksville, for Petitioner.

No Appearance for Respondents.

PER CURIAM.

This petition is treated as a petition for writ of certiorari and the petition is granted. Pursuant to Norris v. State, 24 Fla. L. Weekly D1866, 737 So.2d 1240 (Fla. 5th DCA 1999), the order is quashed.

WRIT OF CERTIORARI GRANTED; ORDER QUASHED.

DAUKSCH and GRIFFIN JJ., concur.

GOSHORN, J., dissents, with opinion.

GOSHORN, J., dissenting.

I respectfully dissent for the reasons set forth in my dissent in Norris v. State, 24 Fla. L. Weekly D1866, 737 So.2d 1240 (Fla. 5th DCA 1999).

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