

IN THE SUPREME COURT OF FLORIDA

FILED
THOMAS D. HALL
JUN 19 2000

CLERK, SUPREME COURT
BY K. J.

RONALD COTE, :
 :
 Petitioner, :
 :
 vs. :
 :
 STATE OF FLORIDA, :
 :
 Respondent. :
 :
 _____ :

Case No. 3000-1307
DCA No. 2D98-04438

DISCRETIONARY REVIEW OF DECISION OF THE
DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

BRIEF OF PETITIONER ON JURISDICTION

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TENTH JUDICIAL CIRCUIT

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PRELIMINARY STATEMENT

In this jurisdictional brief, Petitioner, RONALD COTE, the defendant at the trial court level and the Appellant at the district court level, shall be referred to as Petitioner or by name. The State of Florida, as Respondent, first represented by the State Attorney for the Twelfth Judicial Circuit at the trial court level and now represented by the Florida Attorney General's office at the appellate level, shall be referred to as Respondent or the state. Citations to the record shall be designated by (V__, R__) referring to volume number and record page number.

STATEMENT CERTIFYING SIZE AND STYLE OF TYPE

Undersigned counsel certifies that the size and style of type used in this brief is Courier 12 point, a font that is not spaced proportionally.

STATEMENT OF THE CASE AND FACTS

The facts, according to the Second District Court of Appeal, Cote v. State, No. 2D98-04438 (Fla. 2d DCA March 7, 2000), rehrg den., May 8, 2000, (2-1 decision) (Fulmer, ACJ, dissenting), were:

While a juvenile, Mr. Cote entered a plea to a felony in case number 97-670, a case in which he was exposed to adult sanctions. Rather than imposing adult penalties, the trial court opted for the juvenile sanction of commitment to a Level 8 facility to be followed by community control that was not to extend beyond his 19th birthday. After Mr. Cote's sentencing hearing on August 26, 1997, a written order of commitment to the Department of Juvenile Justice (to be followed by aftercare probation) was entered in the felony case on September 18, 1997. Erroneously, the juvenile commitment

order indicated that it was entered in the juvenile division and reflected that Mr. Cote had entered a plea to a juvenile petition rather than to a felony information in felony division.

Subsequently, Mr. Cote was brought before the juvenile court judge for a contempt citation arising out of violations of his community control order. The juvenile judge indicated that the enforcement of Mr. Cote's juvenile sentence had been referred to the juvenile division of circuit court. Thus, upon a plea to the violations, Mr. Cote was held in indirect criminal contempt and was sentenced to serve a period of time in juvenile detention. Later, in this unique factual scenario, Mr. Cote was brought before the original felony division sentencing judge for violations of his community control order. The violations cited by the State were identical to those considered by the juvenile court judge. Mr. Cote argued that the violation hearing was prohibited by double jeopardy. The motion was denied and, upon plea, the court revoked the juvenile community control, withheld adjudication of guilt, and imposed a downward departure sentence of six years in prison, which was suspended on the condition that he successfully complete two years of community control followed by five years on probation. Petitioner, RONALD COTE, a juvenile at the time of the alleged crime (DOB 3-31-80), was charged in a direct felony information, case number 97-670-F filed on March 7, 1997, with one count of burglary of a dwelling with assault or battery, pursuant to § 810.02(1)(a), Fla. Stat. (1997), alleged to have occurred on February 19, 1997 in Manatee County, Florida. (V1, R01-02). On July 24, 1997, Mr. Cote entered a plea of no contest to the charge after which the trial court, withheld adjudication as an adult, and, instead, in the juvenile division, adjudicated him delinquent, and sentenced him as a juvenile to be committed to the Department of Juvenile Justice, level 8 facility, with aftercare probation not to exceed his nineteenth birthday. (V1, R20-21, 22-26, 29-30).

Cote v. State, No. 2D98-04438 at slp op. 1; see Appendix-A, copy of Second District Court of Appeal decision in Cote v. State, No. 2D98-04438 (Fla. 2d DCA March 17, 2000), rehrg den. May 8, 2000, (2-1 decision) (Fulmer, ACJ, dissenting).

A notice of appeal was filed on November 17, 1998, as to the judgment and sentence rendered on October 29, 1998, in case number

97-670-F from which Cote's direct appeal ensued. (V1, R72). On March 17, 2000, the Second District Court of Appeal, with Acting Chief Judge Fulmer dissenting, ruled against Mr. Cote and denied his direct appeal based on the juvenile division, being without divisional authority jurisdiction to act upon Mr. Cote's alleged violations of indirect criminal contempt, not having jurisdiction to legally impose sanctions such that constitutional prohibition against double jeopardy was not implicated when the felony division judge imposed sentence. Cote v. State, No. 2D98-04438 at slp op. 1. Cote, then, filed a motion for rehearing wherein he requested the Second District Court of Appeal to certify the double jeopardy and jurisdictional questions presented by this case either as questions of great public importance, or, alternatively, as in direct conflict with N.T. v. State, 682 So. 2d 688 (Fla. 5th DCA 1996) which was denied without opinion May 8, 2000. See Appendix-B, copy of Order Denying Motion for Rehearing. Notice to invoke discretionary jurisdiction, pursuant to Fla. R. App. P. 9.030(a)(2)(A)(iv), was filed June 7, 2000, from which this brief on jurisdiction now ensues. See Fla. R. App. P. 9.120(b) and (d).

SUMMARY OF THE ARGUMENT

The Second District Court of Appeal's decision in Cote v. State, No. 2D98-04438 (Fla. 2d DCA), rehrg den. (May 8, 2000), expressly and directly conflicts with the Fifth District Court of Appeal's decision in N.T. v. State, 682 So. 2d 688 (Fla. 5th DCA 1996) on the same question of law regarding whether prosecution for

both indirect criminal contempt in the juvenile division and a violation of community control in the felony division based on the same conduct violated constitutional guarantee against double jeopardy. This Court, therefore, should exercise discretionary jurisdiction pursuant to Fla. R. App. P. 9.030(a)(2)(A)(iv).

ARGUMENT

ISSUE I

WHETHER PROSECUTION FOR BOTH INDIRECT CRIMINAL CONTEMPT IN THE JUVENILE DIVISION AND A VIOLATION OF COMMUNITY CONTROL IN THE FELONY DIVISION BASED ON THE SAME CONDUCT VIOLATED CONSTITUTIONAL GUARANTEE AGAINST DOUBLE JEOPARDY?

Yes, prosecution for both indirect criminal contempt in the juvenile division and a violation of community control in the felony division based on the same conduct violated Petitioner's constitutional guarantee against double jeopardy. The Second District Court of Appeal's decision rendered in Cote v. State, No. 2D98-04438 (Fla. 2d DCA), rehrg den. (May 8, 2000) (2-1 decision) (Fulmer, ACJ, dissenting), is in express and direct conflict with the Fifth District Court of Appeal's decision in N.T. v. State, 682 So. 2d 688 (Fla. 5th DCA 1996) on that same question of law. Accordingly, this Court, pursuant to Fla. R. App. P. 9.030(a)(2)(A)(iv), should exercise discretionary jurisdiction.

The Second District Court of Appeal, in Cote v. State, No. 2D98-04438 (Fla. 2d DCA March 7, 2000), rehrg den., May 8, 2000, (2-1 decision) (Fulmer, ACJ, dissenting), ruled:

Despite the "juvenile division" misnomer appearing on the order of commitment, the felony case remained in felony division. No court order transferring divisions or

consolidating the felony case with other pending juvenile cases was entered. We conclude that the juvenile division was without divisional authority jurisdiction to act upon Mr. Cote's alleged violations. Jurisdiction of a court is frequently invoked by statutory law. Section 985.201, Florida Statutes (1997), confers in the circuit courts exclusive original jurisdiction of proceedings "in which a child is alleged to have committed a delinquent act or violation of law." As stated by our supreme court in State v. Griffith, 675 So. 2d 911, 913 (Fla. 1996), "[t]he Juvenile Justice Act vests the juvenile division with exclusive jurisdiction over all proceedings in which a child allegedly violates the law unless ... juvenile jurisdiction is waived." Here, juvenile jurisdiction was waived because the information against Mr. Cote was direct filed in the felony division. Accordingly, the juvenile proceeding did not come within the specified grant of jurisdictional authority awarded by section 985.201, Florida Statutes (1997), see Williams v. State, 737 So. 2d 1141 (Fla. 4th DCA 1999), nor could the parties confer jurisdiction upon the court by stipulation or by failure to object to its action, see Worley v. State, 396 So. 2d 1153 (Fla. 2d DCA 1981). Although juvenile court and criminal court are divisions of the circuit court, defense counsel cannot fail to object to the juvenile court judge's exercise of authority and then, when the client is convicted, seek a remedy later. The trial court's resources are not to be consumed in such a manner. See Griffith, 675 So. 2d at 913-914. Here, in fairness, we must also point out that the error went unnoticed by the State.

We conclude that the juvenile division was without divisional authority jurisdiction to act upon Mr. Cote's alleged violations. Therefore, the juvenile court judge could not legally impose sanctions, and the constitutional prohibition against double jeopardy was not implicated when the felony division judge imposed sentence.

Cote v. State, No. 2D98-04438 at slp op. 1. Acting Chief Judge

Fulmer, however, dissented:

I respectfully dissent because I believe the majority improperly concludes that "the juvenile court judge could not legally impose sanctions, and the constitutional prohibition against double jeopardy was not implicated when the felony division judge imposed sentence."

....

At the hearing on Mr. Cote's motion to dismiss, the State argued that the juvenile court did not have jurisdiction to conduct the contempt proceeding because

section 985.233(4)(e), Florida Statutes (1997), provides that once a child has been sentenced to juvenile sanctions in an adult court proceeding, "further proceedings involving those sanctions shall continue to be heard in the adult court." Therefore, the State argued, "whatever [the juvenile court judge] did is null and void." The trial court agreed and denied the motion.

Prior to the enactment of section 985.233(4)(e), there was no statutory provision specifying in which division the violation of a juvenile sanction imposed in adult court should be prosecuted. However, the addition of this provision does not alter my conclusion that the second prosecution and imposition of sentence on Mr. Cote violated the Double Jeopardy Clause. The majority concludes that "the juvenile division was without divisional authority jurisdiction to act upon Mr. Cote's alleged violations," and cites to the Juvenile Justice Act's provision regarding the jurisdiction of the juvenile division of the circuit court. Citing to Worley v. State, 396 So. 2d 1153 (Fla. 2d DCA 1981), [FN1] the majority also refers to the rule that parties cannot confer jurisdiction upon the court by stipulation or by failure to object to its action, and thereby suggests that "divisional authority jurisdiction" is subject matter jurisdiction. Furthermore, although the majority never expressly characterizes "divisional authority jurisdiction" as subject matter jurisdiction, it has treated it as such by affirming the trial court's denial of the motion to dismiss and upholding Mr. Cote's second prosecution and second sentence for the same law violation.

I am of the opinion that the jurisdiction of the juvenile division referred to in the Juvenile Justice Act is not subject matter jurisdiction, a view which the Fourth District also holds in Williams v. State, 737 So. 2d 1141 (Fla. 4th DCA 1999), and which finds support in State v. Griffith, 675 So. 2d 911, 913 (Fla. 1996), a decision cited by the majority. The majority cites to Griffith to explain that the Juvenile Justice Act vests the juvenile division with exclusive jurisdiction over all proceedings in which a child allegedly violates the law unless juvenile jurisdiction is waived. Because Mr. Cote was initially prosecuted by information filed in the felony division, the majority concludes that the juvenile proceeding did not come within the specified grant of jurisdictional authority awarded by the Act. I agree with this conclusion. However, the lack of statutory authority does not divest the juvenile court of subject matter jurisdiction, as Griffith demonstrates.

In Griffith, the district court reversed the conviction of a defendant who was prosecuted in the criminal division of the circuit court for offenses that

occurred when the defendant was under the age of sixteen. The district court's reversal was based on a finding that the criminal division lacked jurisdiction. The supreme court reversed the district court and began its discussion by acknowledging that the Juvenile Justice Act vests the juvenile division with exclusive jurisdiction over all proceedings in which a child allegedly violates the law unless juvenile jurisdiction is waived or a statutory exception applies. However, the court concluded that there was "no jurisdictional problem" that required reversal because "the juvenile court and the criminal court are both divisions of the circuit court." 675 So. 2d at 913. It cited to State v. King, 426 So. 2d 12 (Fla. 1982), as a case directly on point.

.....
The case before us is the reverse of the scenarios in Griffith and King, but the same rules should apply. When Mr. Cote was prosecuted for violating his juvenile sanctions, the proceeding, arguably, should have been conducted in the felony division, not the juvenile division. However, both the juvenile division judge and the felony division judge are circuit judges, and it is the circuit court that has subject matter jurisdiction over felony proceedings. Therefore, I conclude that the juvenile court judgment of contempt and sentence are not void for lack of subject matter jurisdiction. They may very well be voidable, in which case a timely objection is required. But, unlike Griffith and King, in this case, the State, not the defendant, seeks to set aside the voidable judgment. In Griffith and King, there was a single prosecution and conviction and it was the defendant who was seeking to overturn the conviction. That is not the case before us. What Mr. Cote seeks to set aside here is the second prosecution and second sanction imposed on him for a single offense, which are both contrary to the protections promised by the Double Jeopardy Clause, under which Mr. Cote timely asserted his right in the trial court. Therefore, I also disagree with the majority's conclusion, relying on Griffith, that it was incumbent on Mr. Cote to object to the initial contempt proceeding in the juvenile division.

I am of the opinion that it was incumbent on the State to object to the juvenile contempt proceeding in order to preserve its authority to prosecute Mr. Cote's alleged violation of his juvenile sanction in the felony division. Thus, I would hold that the State waived its challenge to the juvenile contempt judgment by failing to object to the proceeding in the juvenile division and, therefore, the otherwise voidable contempt judgment and sentence should stand. Consequently, Mr. Cote's prosecution for both indirect criminal contempt in the juvenile division and a violation of community control in the

felony division violated his constitutional guarantee against double jeopardy. See N.T. v. State, 682 So. 2d 688 (Fla. 5th DCA 1996). I would reverse.

Cote v. State, No. 2D98-04438 at slp op. 2-4 (footnote 1 omitted).

On the question of law regarding whether prosecution for both indirect criminal contempt in the juvenile division and a violation of community control in the felony division based on the same conduct violated constitutional guarantee against double jeopardy, the Second District Court of Appeal's decision in Cote v. State, No. 2D98-04438 (Fla. 2d DCA March 7, 2000), rehrg den., May 8, 2000, (2-1 decision) (Fulmer, ACJ, dissenting) is in express and direct conflict with N.T. v. State, 682 So. 2d 688 (Fla. 5th DCA 1996), wherein the Fifth District Court of Appeal held:

N.T. was placed on community control for the offense of grand theft. The community control order required that he keep scheduled appointments with his community control officer and continue to reside with his mother. A short time later, he violated these conditions and was placed back on community control. Subsequently, a second petition for violation of community control alleging similar violations was filed. The trial court, sua sponte, issued an order to show cause why N.T. should not be held in indirect criminal contempt. At the show cause and violation of community control hearing, defense counsel moved to dismiss the order to show cause on double jeopardy grounds. The trial court denied the motion, found that N.T. had violated the conditions of his community control, and adjudicated him guilty of indirect criminal contempt of court.

The issue in this case is whether N.T.'s prosecution for both the violation of community control and indirect criminal contempt violated his constitutional guarantee against double jeopardy. In United States v. Dixon, 509 U.S. 688, 113 S. Ct. 2849, 125 L. Ed. 2d 556 (1993), the United States Supreme Court held that the double jeopardy protections apply to both criminal contempt proceedings and criminal prosecutions.

.....
A similar result was reached in State v. Woodland, 602 So. 2d 554 (Fla. 4th DCA 1992), wherein the defendant entered a plea of guilty to the charge of driving under

the influence causing serious bodily injury. She was sentenced to five years' probation with a special condition that she serve one year in the county jail. When she failed to surrender herself to the county jail as ordered by the trial court, the state filed an affidavit of violation of probation. Three years later, Woodland was extradited from Mexico and, upon her return, the state filed a petition for rule to show cause why she should not be held in contempt of court for disobeying the court order. The trial court dismissed the contempt action finding that prosecution for both the violation of probation and the contempt of court charge was a violation of the double jeopardy clause. In affirming, the fourth district applied the Blockburger test and determined that the elements of the action for contempt were identical to the elements of the violation of probation. Specifically, the court reasoned that the state was required to prove that the defendant disobeyed the same court order in order to establish the violation of probation and the offense of criminal contempt and thus, the contempt charge was subsumed within the violation of probation action. Id. at 555.

.....
In our view, this provision seeks to ensure that trial judges consider alternative sanctions before placing juveniles in secure detention facilities for contempt of court and in no way authorizes the imposition of cumulative punishments. Accordingly, we hold that N.T.'s prosecution for contempt of court arising out of his violation of community control is barred as violating the double jeopardy clause. U.S. Const. Amend. V; Fla. Const., Art. I, § 9. In so holding, we acknowledge the problems confronting trial judges presiding over juvenile delinquency proceedings who, day in and day out, do their best to help children and to protect society. They are required to carry out these responsibilities without having the benefit of adequate tools. In this regard, current programs for juvenile offenders are too few and too crowded. Even when adequate programs are available, delays in placement diminish their potential effectiveness.

The trial court in the instant case had previously adjudicated N.T. guilty of violating his community control when confronted with a second petition to violate community control. The court's other options were (1) to reward the juvenile for violating the order of community control by terminating the supervision and freeing him from legal constraints; (2) to order that he be committed to a Department of Juvenile Justice; or (3) to place the juvenile back in community control and await a third violation. The trial court, having a much better vantage point than our own, thought that a short but tough and

quick response was best for the juvenile. However, notwithstanding the trial court's good intentions, the prosecution for indirect criminal contempt constituted a violation of N.T.'s Fifth Amendment protection against double jeopardy. We are therefore constrained to reverse.

N.T. v. State, 682 So. 2d at 689-91.

Thus, the Second District Court of Appeal's decision in Cote v. State, No. 2D98-04438 (Fla. 2d DCA March 7, 2000), rehrg den., May 8, 2000, (2-1 decision) (Fulmer, ACJ, dissenting) is in express and direct conflict with the Fifth District Court of Appeal's decision in N.T. v. State, 682 So. 2d 688 (Fla. 5th DCA 1996) on the same question of law regarding whether prosecution for both indirect criminal contempt in the juvenile division and a violation of community control in the felony division based on the same conduct violated constitutional guarantee against double jeopardy. Accordingly, this Court should exercise discretionary jurisdiction pursuant to Fla. R. App. P. 9.030(a)(2)(A)(iv).

CONCLUSION

Petitioner, RONALD COTE, based on the facts, arguments, and citations to legal authorities presented above, respectfully, requests this Court exercise discretionary jurisdiction, pursuant to Fla. R. App. P. 9.030(a)(2)(A)(iv), to review the Second District Court of Appeal's decision in Cote v. State, No. 2D98-04438 (Fla. 2d DCA March 17, 2000), rehrg den., May 8, 2000, which expressly and directly conflicts with the Fifth District Court of Appeal's decision in N.T. v. State, 682 So. 2d 688 (Fla. 5th DCA 1996) on the same question of law regarding double jeopardy.

APPENDIX

ITEM:

PAGE NO.

A. Copy of Second District Court of Appeal decision in Cote v. State, No. 2D98-04438 (Fla. 2d DCA March 17, 2000), rehrg den., May 8, 2000, (2-1 decision) (Fulmer, ACJ, dissenting) 2

B. Copy of Order Denying Motion for Rehearing in Cote v. State, No. 2D98-04438 (Fla. 2d DCA March 17, 2000), rehrg den., May 8, 2000 3

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

RONALD COTE,)
)
 Appellant,)
v.)
)
STATE OF FLORIDA,)
)
 Appellee.)
_____)

Case No. 2D98-4438

Opinion filed March 17, 2000.

Appeal from the Circuit Court for Manatee
County; Peter A. Dubensky, Judge.

James Marion Moorman, Public Defender,
and Richard P. Albertine, Jr., Assistant
Public Defender, Bartow, for Appellant.

Robert A. Butterworth, Attorney General,
Tallahassee, and Timothy A. Freeland,
Assistant Attorney General, Tampa, for
Appellee.

CASANUEVA, Judge.

Mr. Cote appeals the denial of his motion to dismiss a petition alleging
that he violated the terms of his community control. He contends that his sentence
violated his constitutional right to be protected against double jeopardy. We affirm.

While a juvenile, Mr. Cote entered a plea to a felony in case number 97-
670, a case in which he was exposed to adult sanctions. Rather than imposing adult

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penalties, the trial court opted for the juvenile sanction of commitment to a Level 8 facility to be followed by community control that was not to extend beyond his 19th birthday. After Mr. Cote's sentencing hearing on August 26, 1997, a written order of commitment to the Department of Juvenile Justice (to be followed by aftercare probation) was entered in the felony case on September 18, 1997. Erroneously, the juvenile commitment order indicated that it was entered in the juvenile division and reflected that Mr. Cote had entered a plea to a juvenile petition rather than to a felony information in felony division.

Subsequently, Mr. Cote was brought before the juvenile court judge for a contempt citation arising out of violations of his community control order. The juvenile judge indicated that the enforcement of Mr. Cote's juvenile sentence had been referred to the juvenile division of circuit court. Thus, upon a plea to the violations, Mr. Cote was held in indirect criminal contempt and was sentenced to serve a period of time in juvenile detention. Later, in this unique factual scenario, Mr. Cote was brought before the original felony division sentencing judge for violations of his community control order. The violations cited by the State were identical to those considered by the juvenile court judge. Mr. Cote argued that the violation hearing was prohibited by double jeopardy. The motion was denied and, upon plea, the court revoked the juvenile community control, withheld adjudication of guilt, and imposed a downward departure sentence of six years in prison, which was suspended on the condition that he successfully complete two years of community control followed by five years on probation.

Despite the "juvenile division" misnomer appearing on the order of commitment, the felony case remained in felony division. No court order transferring divisions or consolidating the felony case with other pending juvenile cases was entered. We conclude that the juvenile division was without divisional authority jurisdiction to act upon Mr. Cote's alleged violations. Jurisdiction of a court is frequently invoked by statutory law. Section 985.201, Florida Statutes (1997), confers in the circuit courts exclusive original jurisdiction of proceedings "in which a child is alleged to have committed a delinquent act or violation of law." As stated by our supreme court in State v. Griffith, 675 So. 2d 911, 913 (Fla. 1996), "[t]he Juvenile Justice Act vests the juvenile division with exclusive jurisdiction over all proceedings in which a child allegedly violates the law unless . . . juvenile jurisdiction is waived." Here, juvenile jurisdiction was waived because the information against Mr. Cote was direct filed in the felony division. Accordingly, the juvenile proceeding did not come within the specified grant of jurisdictional authority awarded by section 985.201, Florida Statutes (1997), see Williams v. State, 737 So. 2d 1141 (Fla. 4th DCA 1999), nor could the parties confer jurisdiction upon the court by stipulation or by failure to object to its action, see Worley v. State, 396 So. 2d 1153 (Fla. 2d DCA 1981). Although juvenile court and criminal court are divisions of the circuit court, defense counsel cannot fail to object to the juvenile court judge's exercise of authority and then, when the client is convicted, seek a remedy later. The trial court's resources are not to be consumed in such a manner. See Griffith, 675 So. 2d at 913-914. Here, in fairness, we must also point out that the error went unnoticed by the State.

We conclude that the juvenile division was without divisional authority jurisdiction to act upon Mr. Cote's alleged violations. Therefore, the juvenile court judge could not legally impose sanctions, and the constitutional prohibition against double jeopardy was not implicated when the felony division judge imposed sentence.

The double jeopardy clause provides three basic rights: protection against a second prosecution for the same offense after an acquittal; protection against a second prosecution after a conviction; and preclusion of the imposition of multiple punishments for the same offense. See Jones v. Thomas, 491 U.S. 376, 380-382 (1989); State v. Wilson, 680 So. 2d 411 (Fla. 1996). Because Mr. Cote's felony sentence exposes him to the possibility of further punishment by incarceration, we hold that Mr. Cote is entitled to an accounting of the time spent in detention pursuant to the improper juvenile court order, and that time must be credited against a subsequent term of incarceration, if any. See Thomas, 491 U. S. at 382.

In conclusion, we point out that section 985.233(4)(e), Florida Statutes (1997), enacted subsequent to the filing of the information against Mr. Cote but prior to the invalid sentencing by the juvenile judge, prohibits the transfer to juvenile court of felony proceedings where a juvenile sanction is imposed. This procedural statute should preclude a similar situation from occurring in the future.

Affirmed.

WHATLEY, J., Concur.

FULMER, A.C.J., Dissents with opinion.

FULMER, Acting Chief Judge, Dissenting.

I respectfully dissent because I believe the majority improperly concludes that "the juvenile court judge could not legally impose sanctions, and the constitutional prohibition against double jeopardy was not implicated when the felony division judge imposed sentence."

It is clear from the following comments made by the juvenile court judge at the beginning of the contempt proceeding that everyone was aware that Mr. Cote's juvenile sanction had been originally imposed in a felony proceeding filed in adult court:

[H]e was actually filed on in adult court and Judge Dubensky or Dunnigan one gave him juvenile sanctions. So, the enforcement of juvenile sanction comes here. If, in fact, they choose to violate it, it will go up there. But right now we're just doing contempt so we're kind of enforcing the sanctions here.

The State responded, "Okay," and the proceeding continued. Neither the State nor Mr. Cote objected.

At the hearing on Mr. Cote's motion to dismiss, the State argued that the juvenile court did not have jurisdiction to conduct the contempt proceeding because section 985.233(4)(e), Florida Statutes (1997), provides that once a child has been sentenced to juvenile sanctions in an adult court proceeding, "further proceedings involving those sanctions shall continue to be heard in the adult court." Therefore, the State argued, "whatever [the juvenile court judge] did is null and void." The trial court agreed and denied the motion.

Prior to the enactment of section 985.233(4)(e), there was no statutory provision specifying in which division the violation of a juvenile sanction imposed in adult court should be prosecuted. However, the addition of this provision does not alter

my conclusion that the second prosecution and imposition of sentence on Mr. Cote violated the Double Jeopardy Clause. The majority concludes that "the juvenile division was without divisional authority jurisdiction to act upon Mr. Cote's alleged violations," and cites to the Juvenile Justice Act's provision regarding the jurisdiction of the juvenile division of the circuit court. Citing to Worley v. State, 396 So. 2d 1153 (Fla. 2d DCA 1981),¹ the majority also refers to the rule that parties cannot confer jurisdiction upon the court by stipulation or by failure to object to its action, and thereby suggests that "divisional authority jurisdiction" is subject matter jurisdiction. Furthermore, although the majority never expressly characterizes "divisional authority jurisdiction" as subject matter jurisdiction, it has treated it as such by affirming the trial court's denial of the motion to dismiss and upholding Mr. Cote's second prosecution and second sentence for the same law violation.

I am of the opinion that the jurisdiction of the juvenile division referred to in the Juvenile Justice Act is not subject matter jurisdiction, a view which the Fourth District also holds in Williams v. State, 737 So. 2d 1141 (Fla. 4th DCA 1999), and which finds support in State v. Griffith, 675 So. 2d 911, 913 (Fla. 1996), a decision cited by the majority. The majority cites to Griffith to explain that the Juvenile Justice Act vests the juvenile division with exclusive jurisdiction over all proceedings in which a child allegedly violates the law unless juvenile jurisdiction is waived. Because Mr. Cote was initially prosecuted by information filed in the felony division, the majority concludes that the juvenile proceeding did not come within the specified grant of jurisdictional authority

¹ Worley is a case that addresses the subject matter jurisdiction of county and circuit courts over misdemeanors.

awarded by the Act. I agree with this conclusion. However, the lack of statutory authority does not divest the juvenile court of subject matter jurisdiction, as Griffith demonstrates.

In Griffith, the district court reversed the conviction of a defendant who was prosecuted in the criminal division of the circuit court for offenses that occurred when the defendant was under the age of sixteen. The district court's reversal was based on a finding that the criminal division lacked jurisdiction. The supreme court reversed the district court and began its discussion by acknowledging that the Juvenile Justice Act vests the juvenile division with exclusive jurisdiction over all proceedings in which a child allegedly violates the law unless juvenile jurisdiction is waived or a statutory exception applies. However, the court concluded that there was "no jurisdictional problem" that required reversal because "the juvenile court and the criminal court are both divisions of the circuit court." 675 So. 2d at 913. It cited to State v. King, 426 So. 2d 12 (Fla. 1982), as a case directly on point.

In King, a juvenile was indicted, tried as an adult, and convicted for crimes that were not punishable by death or life imprisonment. The juvenile appealed his conviction, asserting that he could not be charged by indictment and tried as an adult under the provisions of chapter 39, Florida Statutes (1981). The district court of appeal agreed and reversed. The supreme court held that a juvenile charged with an offense not punishable by death or life imprisonment has a right not to be charged by indictment under Article I, §15(b) of the Florida Constitution. Nevertheless, the supreme court reversed the decision of the district court because the juvenile failed to object in the trial

court and, the supreme court concluded, thereby waived his right not to be charged and tried by indictment.

The supreme court then addressed another question in King that has particular significance to this case and which underscores my dissent. Because the juvenile in King asserted his right not to be tried by indictment for the first time on appeal, the supreme court had to consider whether the error was a fundamental error affecting the court's jurisdiction and thereby rendering the judgment void. The court answered this question by first noting the distinction between judgments that are void and those that are voidable, pointing out that "[o]bjections to a void judgment can be raised at any time, whereas objections to a voidable judgment must be timely made. . . . If a court has jurisdiction of the subject matter and of the parties, the proceeding is not a nullity and the judgment is not void." 426 So. 2d at 14. The court then concluded that, in the case before it, the trial court had jurisdiction of the subject matter because it was a circuit court which has jurisdiction of all felonies and that any objection King had to jurisdiction over his person was waived by his personal appearance.

The case before us is the reverse of the scenarios in Griffith and King, but the same rules should apply. When Mr. Cote was prosecuted for violating his juvenile sanctions, the proceeding, arguably, should have been conducted in the felony division, not the juvenile division. However, both the juvenile division judge and the felony division judge are circuit judges, and it is the circuit court that has subject matter jurisdiction over felony proceedings. Therefore, I conclude that the juvenile court judgment of contempt and sentence are not void for lack of subject matter jurisdiction. They may very well be voidable, in which case a timely objection is required. But,

unlike Griffith and King, in this case, the State, not the defendant, seeks to set aside the voidable judgment. In Griffith and King, there was a single prosecution and conviction and it was the defendant who was seeking to overturn the conviction. That is not the case before us. What Mr. Cote seeks to set aside here is the second prosecution and second sanction imposed on him for a single offense, which are both contrary to the protections promised by the Double Jeopardy Clause, under which Mr. Cote timely asserted his right in the trial court. Therefore, I also disagree with the majority's conclusion, relying on Griffith, that it was incumbent on Mr. Cote to object to the initial contempt proceeding in the juvenile division.

I am of the opinion that it was incumbent on the State to object to the juvenile contempt proceeding in order to preserve its authority to prosecute Mr. Cote's alleged violation of his juvenile sanction in the felony division. Thus, I would hold that the State waived its challenge to the juvenile contempt judgment by failing to object to the proceeding in the juvenile division and, therefore, the otherwise voidable contempt judgment and sentence should stand. Consequently, Mr. Cote's prosecution for both indirect criminal contempt in the juvenile division and a violation of community control in the felony division violated his constitutional guarantee against double jeopardy. See N.T. v. State, 682 So. 2d 688 (Fla. 5th DCA 1996). I would reverse.

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327

May 8, 2000

CASE NO.: 2D98-4438
L.T. No. : 97-670-F

Ronald Cote,

v. State Of Florida,

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

Appellant's motion for rehearing is denied.

Appellant's request to certify the double jeopardy and jurisdictional questions presented by this case either as questions of great public importance or, alternatively, as a question in direct conflict with N.T. v. State, 682 So. 2d 688 (Fla. 5th DCA 1996) as to the double jeopardy issue is denied.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

Richard P. Albertine, Jr., A.P.D. Timothy A. Freeland, A.A.G. R. B. "Chips" Shore

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James Birkhold
Clerk



APPENDIX - B

CERTIFICATE OF SERVICE

I certify that a copy has been mailed to Robert Butterworth, Suite 700, 2002 N. Lois Ave., Tampa, FL 33607, (813) 873-4739, on this 16 day of June, 2000.

Respectfully submitted,

JAMES MARION MOORMAN
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Tenth Judicial Circuit
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