IN THE SUPREME COURT OF FLORIDA

CASE NO. 01-100

CHARLES MURRAY,

Petitioner,

-vs-

THE STATE OF FLORIDA,

Respondent.

ON PETITION FOR DISCRETIONARY REVIEW

BRIEF OF PETITIONER ON MERITS

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INTRODUCTION

Charles Murray, the petitioner for discretionary review, also petitioned this Court for a writ of habeas corpus or in the alternative, a writ of mandamus in case number SC01-174. Because a restatement of the case, facts and argument would be redundant, the petitioner will adopt as his brief the statements of case and facts and the argument on the merits in the petition and subsequent reply in case number SC01-174. The only additional matter this brief will address is to which District Court of Appeal this Court should transfer the case if it does not decide the merits itself.

SUMMARY OF THE ARGUMENT

This Court has the jurisdiction to decide Mr. Murray's petition for habeas corpus on the merits and should do so. Two years of illegal detention is enough.

If this Court does not do so, it must decide which District Court of Appeal should decide this case on the merits. *Alachua Regional* created a location-of-the-detention-facility rule, which has resulted in problems, conflicts, and anomalies in the law. More importantly, the reluctance to review an order of a court not under their supervisory or appellate jurisdiction, coupled with the state's ability to forum shop and language about "limited" review, has resulted in a diminished right to habeas corpus review. The right to habeas corpus relief is a fundamental right central to the protection of liberty. The state cannot diminish, or in Mr. Murray's case eliminate, that right merely by moving someone to a different facility within the state.

The rule created in *Alachua Regional* is not found in the constitutional language. The Florida Constitution ties the district court of appeal's habeas corpus jurisdiction to the courts they supervise, not the location of the detention facility. This Court should reconsider and recede from *Alachua Regional*.

ARGUMENT

ALACHUA REGIONAL JUVENILE DETENTION CENTER v. T.O. SHOULD BE RECONSIDERED. JURISDICTION TO HEAR HABEAS CORPUS PETITIONS CHALLENGING DETENTION ORDERS SHOULD BE IN THE DISTRICT COURT OF APPEAL WITH SUPERVISION OVER THE CIRCUIT COURT THAT ENTERED SUCH ORDERS.

In the companion petition for writ of habeas corpus or mandamus, this Court has the jurisdiction to decide Mr. Murray's specific performance claim, and this Court should do so. By the time this Court hears oral argument in this case, Mr. Murray will have been awaiting a decision on the merits of his habeas corpus petition for more than two years. Habeas corpus is supposed to be a "speedy method of affording judicial inquiry into the cause of any alleged unlawful custody." *Porter v. Porter*, 53 So. 546, 547 (Fla. 1910). Mr. Murray should not have to wait for yet another court to consider the merits of his claim.

If this Court does not decide the issue of the specific performance of Mr. Murray's plea agreement, however, this Court should assign that task to either the Third or the Fourth District Court of Appeal. Pursuant to this Court's opinion in *Alachua Regional Juvenile Detention Center v. T.O.*, 684 So. 2d 814 (Fla. 1996), the answer is clear: the petitioner correctly brought the habeas corpus petition in the Fourth District Court of Appeal because it has territorial jurisdiction over the facility where the state has chosen to detain Mr. Murray.

The Fourth District Court of Appeal's various dispositions of this case illustrate the problems created by this location-of-the-detention-facility rule. Initially, the Fourth District Court of Appeal transferred the case to the Third District Court of Appeal (A. 60).[1] After the Third District transferred it back, the Fourth District dismissed the petition for lack of jurisdiction, claiming that the petition did not challenge the illegality of the detention order (A. 62). The Fourth District specifically suggested seeking relief in either the Third District Court of Appeal or the Dade County Circuit Court (A. 62). After a successful motion for rehearing, the Fourth District again dismissed, claiming that Mr. Murray should file an appeal or petition for certiorari in the Third District Court of Appeal (A. 64). After yet another motion for rehearing, the court dismissed for a third time, now because the petition did not claim a violation of the commitment statute (A. 66).[2] Thus, the rationale for dismissing Mr. Murray's petition changed with every order, but the desire for the Third District Court of Appeal to handle this case never faltered. This case history illustrates that appellate courts are reluctant to review a trial court's detention order

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[1]Because of the shortened briefing schedule, undersigned counsel has not received an index of the record before this Court. Therefore, all citations will be to the appendix filed with the companion petition for habeas corpus. Citations to page numbers in this appendix will be abbreviated "A."

[2]As detailed in the petitioner's jurisdictional brief in this case and incorporated herein by reference, this holding is incorrect because habeas corpus remedies illegal incarcerations that violate the constitution, not just statutory violations.

if that trial court is not under their appellate supervision. The result is that for more than two years Mr. Murray has not received a decision on the merits of his habeas corpus petition.

Additionally, *Alachua Regional* contains the seeds of abuse by the state. As the state has complete control over where it holds someone in custody, the state can forum shop merely by moving the petitioner. Moreover, language in *Alachua Regional* allowed the state to argue that Mr. Murray's right to habeas corpus relief was "limited" because the Fourth District Court of Appeal did not also have supervisory or appellate jurisdiction over the circuit court entering the illegal detention order.[3]

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[3]The language in the opinion states:

> As the district court below correctly acknowledged, however, certain restrictions apply when the court entertaining the habeas corpus petition does not have supervisory or appellate jurisdiction over the court that issued the order or other process under challenge. In such a case, *the scope of the reviewing court's inquiry is limited* to whether the court that entered the order was without jurisdiction to do so or whether the order is void or illegal. The reviewing court may not discharge the detainee if the detention order is merely defective, irrelegular, or insufficient in form or substance.

684 So. 2d at 816.

These "limitations" are the same limitations applicable to habeas corpus generally: "As a general rule, habeas corpus does not lie to correct mere irregularities of procedure where there is jurisdiction; and in order to sustain the writ there must be illegality, or want of jurisdiction." *State ex rel. Grebstein v. Lehman*, 100 Fla. 481, 485, 129 So. 818, 820 (1930) (quoting *Ex parte Senior*, 37 Fla. 1, 14, 19 So. 652, 653 (1896)).

At the very least, this Court should recede from this language in *Alachua*

As argued in the companion petition for habeas corpus, the state cannot move a person out of a territorial jurisdiction and then argue that by its own act of moving the person, that person's right to habeas corpus review is somehow limited. The right to habeas corpus relief is a fundamental right central to the protection of liberty. *See, e.g., Allison v. Baker*, 11 So. 2d 578, 578 (Fla. 1943) ("The writ is venerated by all free and liberty loving people and recognized as a fundamental guaranty and protection of their right of liberty."). The state cannot diminish, or in Mr. Murray's case eliminate, that right merely by moving someone to a different facility within the state.

Furthermore, *Alachua Regional* conflicts with the rules governing one of the highest volume uses of habeas corpus—petitions for belated appeal. By rule, those petitions are original proceedings like all other petitions for writs under Florida Rule of Appellate Procedure 9.100. *See* Fla. R. App. P. 9.141(c)(1). Those petitions are not filed in the district court of appeal with territorial jurisdiction over the prison where the state is holding the defendant, however. *Contra Alachua Regional*, 684 So. 2d at 816. Instead, those petitions are filed in the court where the appeal should have been filed, which is the district court of appeal with supervisory and appellate

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Regional and reaffirm that the state cannot diminish the right of habeas corpus merely by moving the person to the territorial jurisdiction of a different district court of appeal.

jurisdiction over the circuit court entering the allegedly erroneous order. *See* Fla. R. App. P. 9.141(c)(2) ("Petitions seeking belated appeal or alleging ineffective assistance of appellate counsel shall be filed in the appellate court to which the appeal was or should have been taken.").

Alachua Regional also causes conflicts with Florida Rule of Appellate Procedure 9.040(c), which provides in part: "If a party seeks an improper remedy, the cause shall be treated as if the proper remedy had been sought." In its second attempt to dismiss Mr. Murray's petition, the Fourth District Court of Appeal held that certiorari or appeal was the correct remedy, not habeas corpus (A. 64). Rule 9.040 required the Fourth District Court of Appeal to treat the petition as if it had asked for the "correct" remedy and decide the case accordingly. By segregating habeas corpus jurisdiction from all other types of appellate jurisdiction, however, *Alachua Regional* made compliance with that rule impossible.

Alachua Regional's fragmentation of review also creates other anomalies where the power of the circuit court exceeds that of the district court of appeal. For instance, a circuit court can issue arrest warrants that a valid throughout the state. *See* § 901.04, Fla. Stat. (2000). The appellate court with appellate and supervisory jurisdiction over that court, however, loses jurisdiction to hear a petition for habeas corpus challenging that warrant if the person was arrested and held outside its territorial jurisdiction. Moreover, a circuit court routinely orders prisoners brought

before it from prisons around the state. *See* § 944.17(8), Fla. Stat. (2000) (providing for prisoners to be transferred back to county sheriff on court order). After it ordered the detention in question here, the Eleventh Judicial Circuit Court has ordered Mr. Murray brought before it many times for hearings on motions and other pretrial procedures. Yet under *Alachua Regional* the supervisory district court of appeal cannot order Mr. Murray be brought before it to examine the legality of his detention in habeas corpus proceedings.

Given these problems, conflicts and anomalies, the rationale in *Alachua Regional* needs to be reexamined:

> [I]t appears that a district court of appeal does not have the constitutional power to issue a writ directed to a person outside the district court's territorial jurisdiction. Article V, section 4(c) of the Florida Constitution grants the marshal of a district court 'the power to execute the process of the court throughout the territorial jurisdiction of the court.' By negative implication, we find that this power does not extend beyond those physical boundaries. Moreover, the proper respondent in a habeas corpus petition is the party that has actual custody and is in a position to physically produce the petitioner. Thus, the Fifth District Court could not have issued the writ to the Center because it is located in Alachua County, which falls outside the Fifth District's territorial jurisdiction and into that of the First District.

Alachua Regional, 684 So. 2d at 816 (citations omitted). The basis for that opinion is therefore some combination of: 1) an assumed inability to enforce a writ outside of a district court of appeal's territorial jurisdiction because of its marshal's limited

power to execute process; and 2) the formality that the custodian is the proper respondent to a petition for habeas corpus. Both these grounds are questionable.

Initially, the *Alachua Regional* opinion never explains how a limitation on a marshal's ability to execute process relates to the jurisdiction of the court. Courts often have jurisdiction to decide cases and issue final orders that other courts must then enforce. The Full Faith and Credit Clause of the United States Constitution and a host of statutes exist to solve this problem. *See, e.g.,* U.S. Const. art. IV, §1; §§55.501-55.509, Fla. Stat. (2000) (Florida Enforcement of Foreign Judgments Act); §§55.601-55.607, Fla. Stat. (2000) (Uniform Out-of-country Foreign Money-Judgment Recognition Act).

Furthermore, no practical problems prevent any district court of appeal from ordering a release from a facility anywhere in the state. Although not mentioned in the *Alachua Regional* opinion, by statute a district court of appeal's marshal can execute process throughout the state: "[The marshal of the district court] shall have the power to execute the process of the court *throughout the state*, and in any county may deputize the sheriff or deputy sheriff for such purpose." § 35.26(2), Fla. Stat. (2000).[4]

Additionally, the technical requirement of naming the custodian as respondent

[4]Throughout this brief, all emphasis in quotations is supplied.

in a habeas corpus petition is a mere formality. For instance, although Mr. Murray named the custodian in the accompanying petition for habeas corpus, only the real party in interest, the State of Florida, filed a response. Habeas corpus does not concern itself with such technicalities or formalities: "The procedure for the granting of [a writ of habeas corpus] is not to be circumscribed by hard and fast rules or technicalities which often accompany our consideration of other processes." *Anglin v. Mayo*, 88 So. 2d 918, 919 (Fla. 1956).

The only apparent advantage of seizing on this technicality is the hope that it creates a bright-line rule dividing jurisdiction among the district courts of appeal. Unfortunately, this technicality is insufficient to accomplish even this goal because in a modern state, the custodian acts in more than one place. Although *Alachua Regional* assumed that the custodian was the detention facility, the legal custodian in that case was undoubtably either the Department of Juvenile Justice or its predecessor. Similarly, the legal custodian in this case is the Department of Children and Family Services. That department has its headquarters Tallahassee, and therefore a petition in the First District Court of Appeal would be appropriate. Under the "sword-wielder" doctrine, however, state agencies can be sued in any jurisdiction where they affirmatively act to deprive someone of his or her rights. *See, e.g., Smith v. Williams*, 35 So. 2d 844 (Fla. 1948); *State v. Lindquist*, 698 So. 2d 299 (Fla. 2d DCA 1997). The Department of Children and Family Services first took custody of Mr. Murray in

Miami-Dade County, within the territorial jurisdiction of the Third District Court of Appeal, before transporting him first to Martin County and later to Palm Beach County, both within the Fourth District Court of Appeal's territorial jurisdiction. At any time, the department could transfer Mr. Murray to another facility in Arcadia, within the territorial jurisdiction of the Second District Court of Appeal. Therefore, at least three (and potentially four) district courts of appeal have territorial jurisdiction over the custodian in this case.

This fact reveals that although the opinion in *Alachua Regional* is written in terms of jurisdiction, the rule it creates sounds more like venue. Even given technical concern with territorial jurisdiction over the custodian, *Alachua Regional* always chooses the locus of the detention facility instead of where the custodian takes someone into custody or otherwise affirmatively acts. This locus-of-the-detention-facility rule makes sense in petitions for habeas corpus challenging conditions or confinement or treatment at specific facilities. *See* § 394.459(8)(b), Fla. Stat. (2000) (Baker Act patient "may file a petition in the circuit court *in the county where the patient is being held* alleging that the patient is being unjustly denied a right or privilege granted [by statute] or that a procedure authorized [by statute] is being abused.").

Such a venue choice, however, creates the problems, anomalies and conflicts discussed above when applied to petitions for habeas corpus challenging a detention

order, as in this case. *Cf.* § 394.459(a), Fla. Stat. (2000) (providing that Baker Act patients may file habeas corpus petitions to challenge orders detaining them in receiving or treatment facilities. This subsection, unlike subsection (b) governing petitions challenging conditions of confinement and treatment, does not require that the petition be brought before the circuit court with territorial jurisdiction over the facility).

The constitutional language defining the district courts of appeal's jurisdiction does not contain this locus-of-the-facility rule. The reasoning in *Alachua Regional* confuses two constitutional provisions. The limitations on the power of the marshal are in section 4(c) dealing with "CLERKS AND MARSHALS." Section 4(b), however, deals with "JURISDICTION." The constitution contains no indication that the provision providing for marshals is a limit on jurisdiction. Instead, the constitution specifically sets forth the district court's jurisdiction on habeas corpus:

> A district court of appeal or any judge thereof may issue writs of habeas corpus returnable before the court or any judge thereof *or before any circuit judge within the territorial jurisdiction of the court*.

§ 4(b)(3), Fla. Const. This provision limits jurisdiction only by the courts before which the district court can order a writ "returned" (or in modern parlance, "answered"). As such, the constitution ties the habeas corpus jurisdiction of district courts to the circuit courts they supervise, not to the location of the petitioner. A

district court of appeal will make the writ returnable before the circuit court if the record is insufficient for the appellate court to rule. *See State ex rel. Scaldeferri v. Sandstrom*, 285 So. 2d 409, 413 n.4 (Fla. 1973).

The proper circuit court to create a record depends on the nature of the petition. As discussed above, if the petition challenges conditions of confinement or treatment, the circuit court where the facility is located is the proper court to create a record. Accordingly, the district court of appeal with territorial jurisdiction over the facility is a proper court in which to bring such a petition. If the petition challenges a detention order, however, the circuit court that entered that order is the proper court to create a record. Therefore, the district court of appeal with supervisory jurisdiction over that circuit court is the proper court to hear this type of petition.

The *Alachua Regional* opinion cites several cases where circuit courts were held to have habeas corpus jurisdiction over decisions of other courts even if they did not have supervisory or appellate jurisdiction. The opinion concluded: "Though these cases address the ability of a circuit court to review the order of another circuit court, we see no reason why the same principle should not apply when the reviewing court is a district court of appeal." 684 So. 2d at 816. This Court should reexamine that assumption.

The *Alachua Regional* opinion did not discuss the constitutional language tying the district courts of appeal's habeas jurisdiction to the circuits courts they

supervise. That opinion also omitted that this language is different from the constitutional language giving the circuit court habeas corpus jurisdiction:

> The circuit courts . . . . shall have the power to issue writs of mandamus, quo warranto, certiorari, prohibition and habeas corpus, and all other writs necessary or proper to the complete exercise of their jurisdiction.

Art. V, § 5(b), Fla. Const. This difference in language is strong evidence that a different meaning was intended. *Cf. Department of Prof. Reg. v. Durrani*, 455 So. 2d 515, 518 (Fla. 1st DCA 1984) ("The legislative use of different terms in different portions of the same statute is strong evidence that different meanings were intended."). This Court has already held that different constitutional language creates different appellate jurisdictions for circuit courts and district courts of appeal. *See Blore v. Fierro*, 636 So. 2d 1329, 1331 (Fla. 1994).

Moreover, the line of cases on the circuit courts' habeas jurisdiction began before the existence of district courts of appeal. Back then, necessity required circuit courts to have habeas corpus jurisdiction over each other's decisions or this Court would have been inundated with every habeas corpus petition filed in the state. Circuit courts reviewing one another, however, proved "awkward and undesirable within the circuit and inconsistent orders in the same case may result." *State ex rel. Scaldeferri v. Sandstrom*, 285 So. 2d at 409. With the creation of the district courts of appeal, however, such peer review was no longer necessary. Petitions challenging

a detention order can be brought before, or transferred to, the appropriate supervisory district court of appeal.[5] *See id*.

In this case, the appropriate court is the Third District Court of Appeal because the petition challenges a detention order by one of the circuit courts under its supervision. This result follows from the constitutional language tying the district courts of appeal's habeas corpus jurisdiction to the circuit courts they supervise, not the facility in which the state has placed the petitioner. *Alachua Regional* is inconsistent with this constitutional language and this Court should recede from that decision.

[5]Such a procedure would not deprive the circuit court of habeas jurisdiction. In addition to petitions challenging conditions of confinement or treatment, the circuit court's habeas corpus jurisdiction is also proper to review detention orders by county courts under their appellate jurisdiction.

CONCLUSION

For the foregoing reasons, this Court should reconsider and recede from the rationale in *Alachua Regional* and hold that the Third District Court of Appeal has jurisdiction and is the proper court to hear Mr. Murray's petition for habeas corpus.

Respectfully submitted,

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CERTIFICATES

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered by mail to the Office of the Attorney General, Criminal Division, Post Office Box 013241, Miami, Florida 33101, this 17th day of July 2001.

I HEREBY CERTIFY that this brief is set in 14-point Times New Roman.

_____
JOHN E. MORRISON