

ORIGINAL

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THOMAS D. HALL

MAY 10 2001

IN THE SUPREME COURT OF THE STATE OF FLORIDA

CLERK, SUPREME COURT

Thomas Parker,
Petitioner,

vs.

Case No. SC01-1013

State of Florida
and State of Florida,
Respondents.

4th DCA No. 4D00-3914

_____)

PETITIONER'S BRIEF ON JURISDICTION

Alan H. Schreiber
Public Defender
17th Judicial Circuit

Diane M. Cuddihy
Chief Assistant Public Defender
Florida Bar No. 434760
201 S.E. 6th Street
North Wing - Third Floor
Ft. Lauderdale, Fl. 33301

Attorney for Petitioner

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Statement of the Case

Petitioner was the petitioner in the Fourth District Court of Appeal and the defendant in the Circuit Court of the 17th Judicial Circuit in and for Broward County, Florida. Respondent, State of Florida, was the respondent in the Fourth District Court of Appeal and the prosecution in the circuit court. The district court denied petitioner's writ of habeas corpus and petitioner's motion for rehearing. A Notice to Invoke Discretionary Jurisdiction was timely filed.

The Petitioner, Thomas Parker, shall be referred to as "petitioner." The Respondent shall be referred to as "respondent." References to the Petitioner's Appendix shall be designated by the symbol "A."

Statement of the Facts

The Petitioner, Thomas Parker, was arrested on June 27, 2000, and charged with fleeing and eluding, resisting arrest without violence and driving while license suspended. He was released from jail after posting a \$2,700 bond. The petitioner was subsequently arrested on August 24, 2000, for possession of cocaine with intent to sell and possession of marijuana. The petitioner was released from custody after posting a \$2,500 bond.

On September 29, 2000, the petitioner appeared in court for a scheduled status conference in his first case. The state advised the court that the defendant had a second pending charge and made an ore tenus motion to revoke petitioner's bond in the first case. Defense counsel objected that she was not given any notice of the state's request.

The court stated:

Reading the statute the Court can do it on its own based on reading it in chambers. I don't have to receive any motion; I don't have to receive any offer, just finding there is probable cause. I'm finding there is probable cause for the new arrest. I have read the probable cause affidavit. The Court finds there is probable cause. The Court is revoking bond. He can file any motions to set bond.

The petitioner was remanded into custody without bond.

The petitioner filed a motion entitled "Motion to Reconsider Revocation of Bond Based on the Unconstitutionality of Florida Statute 903.0471." The state filed

a response and the court heard testimony regarding the petitioner's ties to the community and argument of counsel. The petitioner testified that he is a 21 year resident of Broward County and resides with his grandmother. He stated that he had never failed to appear for a court appearance. Counsel for petitioner argued that Florida Statute 903.0471, which provides for pretrial detention upon a finding that a defendant committed a new offense while on bond, is unconstitutional. The trial court denied petitioner's bond and ruled the statute constitutional.

Petitioner filed a petition for writ of habeas corpus in the Fourth District Court of Appeal. The district court denied the writ and issued an opinion finding constitutional Florida Statute 903.0471. Parker v. State, 26 Fla.L.Weekly D 396 (Fla. 4th DCA 2001) (a copy of which is contained in Petitioner's Appendix) Specifically, the district court held that the statute did not violate substantive or procedural due process and did not violate the Florida Constitution's guarantee to bail. The court denied rehearing. The petitioner filed a Notice to Invoke Discretionary Jurisdiction.

Summary of Argument

This Honorable Court has jurisdiction over the instant case pursuant to Article V, Section 3(b)(3) of the Florida Constitution. This section empowers the Court to review any decision of a district court which expressly declares valid a state statute. *Sub judice*, the Fourth District Court of Appeal reversed the trial court and expressly declared valid Florida Statute 903.0471(2000).

Argument

Article V, Section 3(b)(3) of the Constitution of the State of Florida empowers this Honorable Court to review any decision of a district court which expressly declares valid a state statute. This Court has repeatedly accepted discretionary jurisdiction to review such decisions. Cuda v. State, 639 So. 2d 22 (Fla. 1994); Gilbreath v. State, 650 So. 2d 10 (Fla. 1995); Bouters v. State, 659 So. 2d 235 (Fla. 1995).

It is important that Florida Statute 903.0471 be reviewed by this Court. The statute provides for pretrial detention of a criminal defendant upon a finding of probable cause for the commission of a crime while on pretrial release. The statute does not provide for a hearing in violation of procedural due process and utilizes a probable cause standard in violation of substantive due process. More importantly, section 903.0471 does not require a finding that no condition of bond can reasonably

protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process. Article 1, section 14 of the Florida Constitution commands such a finding before bond can be denied. The statute is invoked on a daily basis in courtrooms throughout the state resulting in the detention without bond of many defendants.

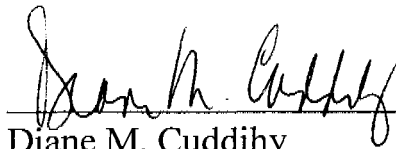
This Court recently acknowledged in Paul v. State, 26 Fla.L. Weekly S185 (Fla. March 30, 2001) that the Florida Constitution guarantees bail with limited exceptions. Id. at S187. This Court further noted that bond statutes and rules enacted pursuant to bond statutes must “incorporate the considerations required to balance the court’s need to enforce its orders, the need for society to be protected from those posing a danger to the community, and the defendant’s constitutional rights to bail based on the time-honored presumption of innocence.” Id. at S188. Florida Statute 903.0471 violates a defendant’s constitutional right to bail.

CONCLUSION

This Honorable Court has jurisdiction pursuant to Article V, Section 3(b)(3) of the Florida Constitution. Petitioner respectfully requests this Court to exercise its discretionary jurisdiction and accept this case for review.

Respectfully submitted,

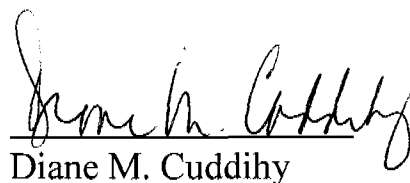
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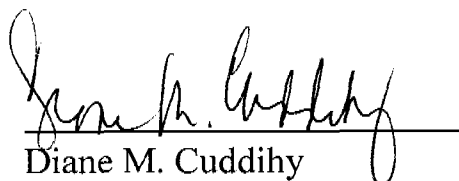
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief was delivered by U.S. Mail to Melanie A. Dale, Assistant Attorney General, Department of Legal Affairs, 1655 Palm Beach Lakes Blvd, Suite 300, West Palm Beach, Fl., 33401, this 9th day of May, 2001.


Diane M. Cuddihy

CERTIFICATE OF TYPE SIZE AND STYLE

In accordance with the Rule 9.100(1) Fla.R.App.P., counsel for the Petitioner hereby certifies that the instant brief has been prepared with 14 point in Times New Roman font.


Diane M. Cuddihy