

IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. SC01-1013

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**FILED**  
THOMAS D. HALL

JUN 25 2001

CLERK, SUPREME COURT  
BY \_\_\_\_\_

**THOMAS PARKER,**

Petitioner

vs.

**STATE OF FLORIDA,**

Respondent.

RESPONDENT'S BRIEF ON JURISDICTION

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PRELIMINARY STATEMENT

Respondent State of Florida was the Appellee in the Fourth District Court of Appeal and the prosecuting authority in the trial court and will be referred to here as Respondent or the state. Petitioner was the Appellant in the Fourth District Court of Appeal and the defendant in the trial court and will be referred to as Petitioner or by proper name.

A bold typeface will be used to add emphasis. Italics appeared in original quotations, unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

The pertinent history and facts are set out in the decision of the district court, which can be found at Parker v. State, 780 So. 2d 210 (Fla. 4th DCA 2001) (Appendix A).

The district court held that Florida Statute §903.0471 clarified that the legislature had not intended that Florida Statute §907.041 had to be followed after a defendant committed a new crime while on pretrial release. Parker at 211. Further, the district court held section §903.0471 does not violate substantive due process because it authorizes a court to deny a second pretrial release upon finding probable cause that a defendant committed a new crime and does not violate procedural due process because the petitioner is not entitled to more due process than is guaranteed by Article I, section 14 of the Florida Constitution.

SUMMARY OF ARGUMENT

A summary is not given because of the brevity of the argument.

ARGUMENT

SHOULD THIS COURT EXERCISE ITS DISCRETIONARY  
JURISDICTION TO REVIEW THE DECISION OF THE  
DISTRICT COURT WHICH HELD FLORIDA STATUTE  
903.0471(2000) CONSTITUTIONAL AND DOES NOT  
VIOLATE SUBSTANTIVE AND PROCEDURAL DUE  
PROCESS?

Petitioner contends that this Court has discretionary jurisdiction pursuant to Fla. R. App. P. 9.030(a)(2)(A)(i), which parallels Article V, § 3(b)(3), Fla. Const. The constitution provides:

The supreme court ... [m]ay review any decision of a district court of appeal that expressly declares valid a state statute (e.s.).

The opinion can be construed to pass upon the constitutionality of the statute, however, respondent submits that this Court should nonetheless decline to exercise its discretionary jurisdiction. There is no reason why this Court should treat the district courts as mere intermediate courts whose decisions are subject to review by this court any time there is discretionary jurisdiction.

In Ansin v. Thurston, 101 So. 2d 808, 810 (Fla. 1958), this Court explained:

It was never intended that the district courts of appeal should be intermediate courts. The revision and modernization of the Florida judicial system at the appellate level was prompted by the great volume of cases reaching the Supreme Court and the consequent delay in the administration of justice. The new article embodies throughout its terms the idea of a Supreme Court which functions as a supervisory body in the

judicial system for the State, exercising appellate power in certain specified areas essential to the settlement of issues of public importance and the preservation of uniformity of principle and practice, with review by the district courts in most instances being final and absolute.

Also, the decision below thoroughly examines the issue and nothing in it is exceptional or objectionable. Moreover, the statute at issue is a standard bail statute which is in effect statewide and will be subject to review by all five district courts. Should any one of those courts expressly declare it invalid, there will be direct and express conflict and mandatory review pursuant to Art V, sect. 3(b)(1), Fla. Const. Accordingly, this Court should decline to exercise discretionary jurisdiction.

Finally, Respondent adds that if this Court does choose to exercise discretionary jurisdiction on whether Florida Statute §903.0471 is constitutional, that there will be thousands of other discretionary review cases to follow. Accordingly, if discretionary review is exercised, this Court should immediately issue a reported opinion directing all district courts to conduct routine appellate review of all other such challenges but to stay their mandates and extend the time in which rehearing may be sought until this Court issues its decision here. See, Jollie v. State, 405 So.2d 418 (Fla. 1981) (District court decisions grounded on cases which are under review in the Florida Supreme Court should be stayed in the district court pending resolution in the Florida Supreme Court.)



CONCLUSION

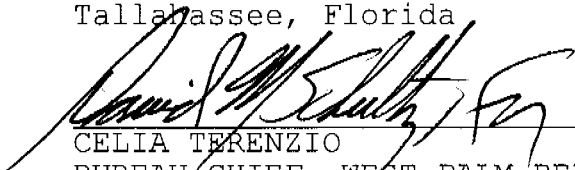
This Court should decline to exercise discretionary jurisdiction.


CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished by U.S. Mail to: Diane M. Cuddihy, Chief Assistant Public Defender, 201 South East 6<sup>th</sup> Street, North Wing - Third Floor, Fort Lauderdale, Florida, 33301, this 27<sup>th</sup> day of June, 2001.

Respectfully submitted,

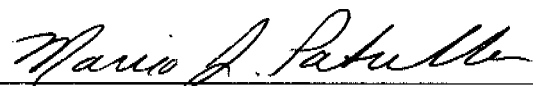
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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the font requirements of Fla. R. App. P. 9.210.

  
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MARIA J. PATULLO  
Of Counsel

IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. SC01-1013

**THOMAS PARKER,**

Petitioner

vs.

**STATE OF FLORIDA,**

Respondent.

RESPONDENT'S APPENDIX

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Attachment A.....Parker v. State, 780 So. 2d 210 (Fla. 4th DCA 2001)

District Court of Appeal of Florida,  
Fourth District.

**Thomas PARKER, Petitioner,**  
v.  
**STATE of Florida, Respondent.**

No. 4D00-3914.

Feb. 7, 2001.  
Rehearing Denied April 5, 2001.

Arrestee's pretrial release was revoked by the Circuit Court, Broward County, Ana I. Gardiner, J., based on a finding that there was probable cause to believe arrestee had committed a new crime while on pretrial release. Arrestee filed a petition for writ of habeas corpus. The District Court of Appeal, Klein, J., held that: (1) statute allowing revocation of pretrial release on finding that defendant committed a new crime did not violate state constitutional provision entitling arrestees to pretrial release; (2) statute allowing revocation of pretrial release did not violate substantive due process; and (3) arrestee's procedural due process rights were not violated.

Petition denied.

West Headnotes

**[1] Bail** ⇨ 73.1(1)  
49k73.1(1)

Statute allowing revocation of pretrial release on probable cause that defendant committed a new crime while on pretrial release did not violate state constitutional provision entitling arrestees to pretrial release on reasonable conditions, as trial court also found that detention was necessary to protect the community from risk of physical harm. West's F.S.A. Const. Art. 1, § 14; F.S.A. § 907.0471.

**[2] Bail** ⇨ 42  
49k42

State constitutional right to bail applies even when defendant has committed a new crime while on pretrial release. West's F.S.A. Const. Art. 1, § 14.

**[3] Bail** ⇨ 73.1(1)  
49k73.1(1)

**[3] Constitutional Law** ⇨ 262  
92k262

Statute allowing revocation of pretrial release when defendant commits a new crime while on pretrial release did not violate substantive due process on ground that it authorized court to deny second pretrial release on finding of probable cause, which was a sufficient basis on which to make an arrest. West's F.S.A. § 907.0471.

**[4] Bail** ⇨ 73.1(2)  
49k73.1(2)

**[4] Constitutional Law** ⇨ 262  
92k262

Procedural due process rights of arrestee, whose pretrial release was revoked after trial court found he had committed a new crime while on pretrial release, were not violated on the ground that he did not receive the procedural safeguards contained in statute applicable to initial pretrial release hearings, as arrestee received the due process that was guaranteed by state constitution. West's F.S.A. Const. Art. 1, § 14; West's F.S.A. § 907.0471.

\*211 Alan H. Schreiber, Public Defender, and Diane M. Cuddihy, Assistant Public Defender, Fort Lauderdale, for petitioner.

Robert A. Butterworth, Attorney General, Tallahassee, and Melanie A. Dale, Assistant Attorney General, West Palm Beach, for respondent.

KLEIN, J.

In this petition for writ of habeas corpus, Thomas Parker challenges the orders revoking his pretrial release and placing him in pretrial detention. The trial court found, after an evidentiary hearing, that there was probable cause to believe Parker had committed a new crime while on pretrial release and ordered his detention pursuant to recently enacted Florida Statute § 903.0471 (2000), which provides:

Violation of condition of pretrial release. Notwithstanding § 907.041, a court may, on its own motion, revoke pretrial release and order pretrial detention if the court finds probable cause to believe that the defendant committed a new crime while on pretrial release.

Section 907.041, entitled "Pretrial detention and

release," contains very specific criteria for trial courts to apply when determining if a defendant can be released prior to trial. Parker argues, relying on the Florida Constitution and section 907.041, that the new statute violates his procedural and substantive due process rights. We hold the statute constitutional.

The constitutional provision on which Parker relies is Article I, section 14 of the Florida Constitution, which provides:

**Pretrial release and detention.**--Unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime or violation of municipal or county ordinance shall be entitled to pretrial release on reasonable conditions. If no conditions of release 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, the accused may be detained.

Before the passage of section 903.0471, the law in this court conflicted with the law in two other district courts of appeal on the issue of whether a trial court must follow section 907.041, after pretrial release was revoked for violation of a condition.

In *Paul v. Jenne*, 728 So.2d 1167 (Fla. 4th DCA), rev. granted, 741 So.2d 1137 (Fla.1999), this court adhered to its prior decisions requiring trial courts to comply with section 907.041 the second time around and certified conflict with *Houser v. Manning*, 719 So.2d 307 (Fla. 3d DCA 1998) and *Gardner v. Murphy*, 402 So.2d 525 (Fla. 5th DCA 1981). The *Houser* and *Gardner* courts had concluded that after the revocation of release for violation of a condition, neither section 907.041, nor Article I, section 14 of the Florida Constitution, applied when the defendant again sought pretrial release.

The same issue was again presented to this court, not long after it was addressed in *Paul*, in *Barns v. State*, 768 So.2d 529 (Fla. 4th DCA 2000). Although newly enacted section 903.0471 was not in effect when release was revoked in *Barns*, this court relied on the new legislation in order to determine whether the legislature had previously intended section 907.041 to apply after a trial court revoked pretrial release. *Gay v. Canada Dry Bottling Co. of Fla.*, 59 So.2d 788 (Fla.1952)(subsequent legislation can be considered in order to arrive at the correct meaning of a prior statute). We concluded that section 903.0471 clarified

that the legislature had not intended that section 907.041 had to be followed after a defendant committed a new crime while on pretrial release. [FN1]

FN1. In *Barns*, the defendant had not actually committed a new crime, but rather had violated a condition of his pretrial release. The same legislature which passed section 903.0471 also amended section 907.041 to authorize pretrial detention if the court finds that: The defendant has violated one or more conditions of pretrial release or bond for the offense currently before the court and the violation, in the discretion of the court, supports a finding that no conditions of release can reasonably protect the community from risk of physical harm to persons or assure the presence of the accused at trial. § 907.041(4)(b)7. [now numbered § 907.041(4)(c)7] The trial court in this case was not applying this amendment, but rather the more specific section 903.0471, which is applicable only when there is reasonable cause to believe the defendant has committed a crime while on pretrial release.

\*212 In the present case, after his pretrial release was revoked Parker was given a hearing at which he asked to again be released on bond and argued that section 903.0471 is unconstitutional. After an evidentiary hearing the trial court denied a second pretrial release, finding that there was probable cause that Parker had committed a new crime while on pretrial release, and that he was a danger to the community.

[1][2] Parker argues that section 903.0471 is unconstitutional as violating Article I, section 14 of the Florida Constitution which allows pretrial detention if "no conditions of release 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." In *Barns*, however, Judge Gross explained in regard to the new legislation:

The statutory changes plainly implement the trial court's discretion to impose pretrial detention within the limits of Article I, Section 14 of the Florida Constitution, which affords the trial judge wide latitude in the decision to deny bond:

If no conditions of release 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, the accused may be detained.

Fla. Const. Art. I, § 14. The legislative intent behind section 907.041 was not to narrow the

breadth of the trial court's discretion under the state constitution, but to be coextensive with it.

*Barns*, 768 So.2d at 532-33. *Barns*, as we said earlier, involved a violation of a condition which was not a new crime, and thus was analyzed under section 907.041, not section 903.0471. Our conclusion, however, that the trial judge's decision to deny pretrial release was still circumscribed by the Florida Constitution, would be equally applicable where the defendant committed a new crime and was being detained under section 903.0471. The statute does not, accordingly, violate the Constitution. As we noted earlier, the trial court not only found probable cause that Parker had committed the new crime while on pretrial release, but also found, consistent with Article I, section 14, that detention was necessary to protect the community from the risk of physical harm. [FN2]

FN2. Our opinions in *Barns* and this case, which conclude that the Florida constitutional right to bail applies under these circumstances, appears to be in conflict with *Houser v. Manning*, 719 So.2d 307 (Fla. 3d DCA 1998), in which the third district held, relying on *Gardner v. Murphy*, 402 So.2d 525 (Fla. 5th DCA 1981), that the Florida constitutional right to bond did not apply after the trial court had revoked bond because the defendant had committed a new crime while on pretrial release. The *Houser* court did, however, state that the trial court had denied a new bond after a hearing because it found a danger to the community, and cited Article I, section 14 of the Florida Constitution. *Id.* at 308.

[3] Parker also argues that section 903.0471 violates substantive due process because it authorizes a court to deny a second pretrial release upon finding probable cause that a defendant committed a new crime, which is less than the burden on the state when pretrial detention is sought under section 907.041. The cases \*213 cited by Parker, however, do not involve pretrial detention, but rather the standard of proof in criminal cases. In light of our conclusion that the statute is to be interpreted consistent with Article I, section 14 of the Florida Constitution, we do not agree with Parker that probable cause, which is a sufficient basis on which to make an arrest, is too low a standard to be constitutional.

[4] Nor do we agree with Parker that his procedural due process rights were violated because he did not receive the procedural safeguards contained in section 907.041, which is applicable to initial pretrial release hearings. Parker cites no authority for the proposition that he is entitled to more due process than is guaranteed by Article I, section 14 of the Florida Constitution. Having received those safeguards, his due process rights were not violated.

We deny the petition.

WARNER, C.J., and DELL, J., concur.

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