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FILED
THOMAS D. HALL

MAR 28 2001

IN THE SUPREME COURT OF FLORIDA

CLERK, SUPREME COURT
BY _____

THOMAS SOLOMOS AND LUCAS
PITERS, ON BEHALF OF THEMSELVES
AND ALL OTHERS SIMILARLY
SITUATED,

Petitioners,

vs.

4th DCA CASE NO. 96-14552 (13)

SHERIFF KEN JENNE,

Respondent.

_____ /

RESPONDENT'S JURISDICTIONAL BRIEF

ON DISCRETIONARY REVIEW FROM THE DISTRICT COURT
OF APPEAL, FOURTH DISTRICT
STATE OF FLORIDA

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TABLE OF CONTENTS

Table of Contents.....i

Table of Citations.....ii

Statement of Case and Facts.....1

Jurisdictional Statement.....3

Summary of the Argument.....3

Argument.....4

I. THE OPINION OF THE COURT OF APPEAL DOES NOT EXPRESSLY DECLARE VALID THE STATE STATUTE AND JURISDICTION UNDER RULE 9.030(a)(2)(A)(i) IS NOT CONFERRED.....4

II. THE OPINION OF THE COURT OF APPEAL DOES NOT EXPRESSLY CONSTRUE A PROVISION OF THE STATE OR FEDERAL CONSTITUTION, AND JURISDICTION UNDER RULE 9.030(a)(2)(A)(ii) IS NOT CONFERRED.....5

III. THE OPINION OF THE COURT OF APPEAL DOES NOT EXPRESSLY AFFECT A CLASS OF CONSTITUTIONAL OR STATE OFFICERS, AND JURISDICTION UNDER RULE 9.030(a)(2)(A)(iii) IS NOT CONFERRED.....7

Conclusion.....10

Certificate of Service.....11

Certificate of Compliance.....12

TABLE OF CITATIONS

Armstrong v. City of Tampa, 106 So.2d 407 (Fla. 1958).....6

Carmazi v Board of County Commissioners of Dade County,
104 So.2d 727 (Fla. 1958).....6

Florida State Board of Health v. Lewis, 149 So.2d 41
(Fla. 1963).....8

Fuentes v. Shevin, 407 U.S. 67 (1972).....5

Hakam v. City of Miami Beach, 108 So.2d 608 (Fla. 1959).....8

Page v. State, 113 So.2d 557 (Fla. 1959).....6

Weintzenfeld v. Dierks, 312 So.2d 194 (Fla. 1975).....7

Constitutional Provisions and Statutes

Section 939.06, Florida Statutes (1999).....3

Section 951.23(1) (a), Florida Statutes (1999).....7

Section 951.23(1) (d), Florida Statutes (1999).....7

Section 951.033, Florida Statutes (1999).....1,3,4,7,10

Section 951.061, Florida Statutes (1999).....7,8

Article V, Section 3(b) (3), Florida Constitution (1980).....3

Article V, Section 3(d) (3), Florida Constitution (1980).....4

Article V, Section 4, Florida Constitution (1956).....6

Article VIII, Section 1(d), Florida Constitution.....7

Court Rules

Fla.R.App.P. 9.030(a) (2) (A) (i).....3,4

Fla.R.App.P. 9.030(a) (2) (A) (ii).....3,5,6

Fla.R.App.P. 9.030(a) (2) (A) (iii).....3,7

STATEMENT OF THE CASE AND FACTS

A. Course of Proceedings and Disposition Below:

Respondent for purposes of this proceeding concurs with Petitioners' recitation of the Course of Proceedings and Disposition Below as contained in Petitioners' Jurisdictional Brief.

B. Statement of the Facts.

Respondent does not concur with Petitioners' recitation of the Statement of the Facts. Petitioners' Statement of the Facts fails to accurately describe the procedure implemented by the Respondent to recover incarceration costs pursuant to Section 951.033, Florida Statutes (1999) as developed before the trial court and as referenced in the Record on Appeal before the Court of Appeal.

Respondent provides actual notice to all inmates that they will be responsible for payment of daily subsistence costs in the amount of \$2.00 per day and a one time uniform charge of \$10.00 by placing notices in the booking area of the jail, throughout the jail, and in the inmate handbook which is issued to each inmate upon admission to the jail. (R: 168.) Additionally, all inmates are on constructive notice of their responsibility for payment of subsistence costs in the Laws of the State of Florida and Florida Statutes. Inmates also are advised of the grievance procedure whereby they may object to the assessment of costs

against them in the inmate handbook. (R: 168.)

Prior to the assessment of costs, Respondent determines the financial status of a prisoner and has implemented safeguards to ensure that any income exempt by state or federal law is excluded from assessment. (R: 168.) If an inmate has funds in an inmate account that is not exempt by state or federal law, is not owed to a victim pursuant to a restitution order, and is not owed to any outstanding child support or other order of court, then Respondent determines that the inmate has an ability to pay the subsistence cost. (R: 168.) Inmates are free to transfer any or all of the balance in their inmate escrow accounts to anyone they choose. (R: 168.)

If the inmate's account has any funds to pay the subsistence costs, then the costs will be assessed and charged at that time. (R: 167.) If the inmate's account has a zero balance, no subsistence fees are assessed against the inmate's account. (R: 167.)

Inmates can object to the assessment of costs and can present reasons in opposition to the assessment through the grievance procedure which is described in the inmate handbook. (R: 167.) All grievances filed by inmates opposing the assessment of costs are reviewed by the Inmate Asset Administrator. (R: 167.) If the Asset Administrator finds that the inmate has other financial obligations which supersede payment of subsistence costs, such as child support, then the

objection may be sustained. (R: 167, 171.) If the objection to the assessment of costs is overruled, the inmate may appeal to the Director of Detention. (R: 167.)

Ability to pay (indigency) is defined by Respondent for purposes of §951.033 as an inmate with a zero balance in his or her account. (R: 170.) If an inmate is acquitted of all charges, or if a conviction is reversed on appeal or otherwise discharged, then Respondent refunds all subsistence costs charged pursuant to Fla. Stat. §939.06 if the inmate presents a copy of the judgment within thirty (30) days. (R: 171.)

JURISDICTIONAL STATEMENT

The decision of the Court of Appeal did not expressly declare Section 951.033, Florida Statutes (1999) to be valid¹, did not expressly construe a provision of the state or federal Constitution², and did not expressly affect a class of constitutional or state officers³

SUMMARY OF ARGUMENT

In its opinion the Court of Appeal decided that Respondent's SOP for implementation of Section 951.033, Florida Statutes (1999), did not violate procedural due process as guaranteed by

¹Article V, Section 3(b)(3), Florida Constitution (1980); FRAP Rule 9.030(a)(2)(A)(i)

²Article V, Section 3(b)(3), Florida Constitution (1980); FRAP Rule 9.030(a)(2)(A)(ii)

³Article V, Section 3(b)(3), Florida Constitution (1980); FRAP Rule 9.030(a)(2)(A)(iii)

the Fourteenth Amendment to the United States Constitution, and further determined that Section 951.033, Florida Statutes (1999), was not overly vague and did not unlawfully delegate legislative power to an executive.

The opinion of the Court of Appeal was limited, and did not expressly declare a statute to be valid, did not expressly construe a provision of either the state or federal Constitution, and did not expressly affect a class of constitutional or state officers.

Assuming that a basis for accepting jurisdiction has been shown under any of the three cited provisions of the appellate rules upon which Petitioners rely, acceptance of jurisdiction, as the appellate rules suggest, remains discretionary. Exercise by this Court of its discretion to deny review is appropriate since the determination by the Court of Appeal of the issues presented to it was proper.

ARGUMENT

I.

THE OPINION OF THE COURT OF APPEAL DOES NOT EXPRESSLY DECLARE VALID THE STATE STATUTE AND JURISDICTION UNDER RULE 9.030(a)(2)(A)(i) IS NOT CONFERRED.

The opinion of the Court of Appeal does not expressly declare valid the state statute. By its decision, the Court of Appeal concluded, not that the statute was valid, but that it was not invalid, at least on the arguments presented to it by Petitioners. However, Article V, Section 3(d)(3), Florida

Constitution, permits the exercise by this Court of its discretionary jurisdiction only where the validity of the state statute is expressly declared. That the decision may imply validity, or that validity might be inherent in the decision, does not longer suffice to permit exercise by this Court of its discretionary jurisdiction to review that decision.

II.

THE OPINION OF THE COURT OF APPEAL DOES NOT EXPRESSLY CONSTRUE A PROVISION OF THE STATE OF FEDERAL CONSTITUTION, AND JURISDICTION UNDER RULE 9.030(a)(2)(A)(ii) IS NOT CONFERRED.

In Petitioners' Jurisdictional Brief, Petitioners never explained the state or constitutional provision which they contend was expressly construed, or how such provision was construed. Instead, Petitioners just presumed this basis for discretionary jurisdiction, focusing instead on its claim that the Court of Appeal erred in its application of principles of procedural due process as enunciated by the United States Supreme Court in Fuentes v. Shevin, 407 U.S. 67 (1972).

In its decision the Court of Appeal determined that Respondent's SOP implementing the statutory scheme for collection of subsistence costs from inmates, applying United States Supreme Court precedent, satisfied procedural due process as contemplated by the Fourteenth Amendment. Respondent concedes that the Fourteenth Amendment was involved in the Court's decision, but only to the extent that the Fourteenth Amendment was the

provision of law that was applicable. The Court of Appeal did not construe any constitutional provision; instead, it applied existing precedent and established principles of law to the facts of the case.

In order to properly invoke the discretionary jurisdiction of the Supreme Court, relying upon Rule 9.030(a)(2)(A)(ii), a Petitioner must show that the Court of Appeal did more than just examine the facts of a particular case, to which existing, recognized, and clear cut provisions of the Constitution are being applied. Armstrong v. Tampa, 106 So.2d 407 (Fla. 1958).⁴ In its decision the Court of Appeal made no effort to "explain, define, or otherwise eliminate existing doubts arising from the language or terms of the constitutional provision."⁵ The question in this instance which the Court of Appeal resolved did not require construction of any constitutional provision.

Discretionary jurisdiction under Rule 9.030(a)(2)(A)(ii) to review the decision of the Court of Appeal is not proper.

⁴At issue in Armstrong was Section 4, Article V, Florida Constitution (1956). That section of the Constitution involved the circumstances under which it was appropriate for a direct appeal to be taken from a trial court to the Florida Supreme Court. The operative language, however, is virtually the same, with the same effect in how the Supreme Court's jurisdiction is limited. See also Carmazi v. Board of County Commissioners of Dade County, 104 So.2d 727 (Fla. 1958); and Page v. Florida, 113 So.2d 557 (Fla. 1959).

⁵Page at 557.

III.
THE OPINION OF THE COURT OF APPEAL DOES NOT EXPRESSLY AFFECT A CLASS OF CONSTITUTIONAL OR STATE OFFICERS, AND JURISDICTION UNDER RULE 9.030(a)(2)(A)(iii) IS NOT CONFERRED.

Although in this instance Respondent is the Sheriff, that is only because he, as the Chief Correctional Officer for Broward County, so designated pursuant to Section 951.061, Florida Statutes (1999), operates jail facilities within Broward County. While conceding that Respondent, as the Broward County Sheriff, is a constitutional officer⁶, the decision of the Court of Appeal is limited to the fact pattern which was presented to it, and should not be more broadly interpreted as expressly affecting a class of constitutional or state officers.

Section 951.033, Florida Statutes (1999), applies to chief correctional officers permitting collection of subsistence costs from inmates housed in "county detention facilities"⁷ and "municipal detention facilities."⁸ In this case it was this Respondent's SOP implementing the statutory scheme for collection of subsistence costs that was being challenged. There was no evidence of record before the Court of Appeal that any other sheriff is a designated chief correctional officer, operating any

⁶Article VIII, Section 1(d), Florida Constitution; Weitzenfeld v. Dierks, 312 So.2d 194 (Fla. 1975).

⁷Section 951.23(1)(a), Florida Statutes (1999).

⁸Section 951.23(1)(d), Florida Statutes (1999).

other county detention facility, or that any other sheriff had instituted a program implementing Section 951.033, Florida Statutes (1999). Section 951.061, Florida Statutes (1999), while permitting appointment of a sheriff as a chief correctional officer, does not mandate that appointment, and it is obvious that a county commission may hire someone other than a sheriff as a chief correctional officer.⁹ A chief correctional officer other than a sheriff, designated by a county commission, or a chief correctional officer of a municipal detention facility are not constitutional or state officers¹⁰, and the Court of Appeal decision here affects Respondent only.¹¹

Additionally, implicit in the constitutional provision and applicable appellate rule defining the jurisdictional limits of this court is the requirement that the Court of Appeal decision for which review is being sought "expressly affects a class of constitutional officers." (emphasis supplied) That terminology plainly requires that the decision of the Court of Appeal explain how it impacts the class of officers who are being affected. In the absence of a clear expression of intention to affect the requisite class, that a decision may inherently affect that class will not suffice to permit exercise by this court of its

Section 951.061 (1), Florida Statutes (1999).

¹⁰Hakam v. City of Miami Beach, 108 So.2d 608 (Fla. 1959).

¹¹Florida State Board of Health v. Lewis, 149 So.2d 41 (Fla. 1963).

discretionary jurisdiction.

Discretionary Jurisdiction, even if technically existing, should not be accepted.

Petitioners' Jurisdictional Brief glosses over the jurisdictional issues, focusing instead on what Petitioners perceive as the erroneous conclusions of the Court of Appeal and the importance of reversing that Court's decision.

Discretionary jurisdiction, even if technically proper, should not be exercised. The suggestion by Petitioners that the decision of the Court of Appeal upholding the Respondent's SOP in this instance has far reaching implications is erroneous and not supported by the record. There is no evidentiary basis for concluding what other, if any, detention facilities have implemented the statute, or demonstrating commonality in procedure for implementation. Correspondingly, there is therefore no basis to conclude, as Petitioners suggest, that the decision of this Court of Appeal will somehow evoke conflicting decisions from other Courts of Appeal, and that this Court should issue a preemptive determination preventing such a conflict. Respondent does admit that the statutory authorization for the collection of inmate subsistence costs is a matter of statewide concern. However, rather than providing a basis for review, it is that fact that is the recited basis for the passage of the statute authorizing collection of subsistence costs from

inmates.¹²

Petitioners have cited no legal basis for overturning the decision of the Court of Appeal, and there is therefore no valid reason for the Supreme Court to exercise its discretion to accept jurisdiction of this matter. The Court of Appeal properly applied concepts of procedural due process in determining that the Respondent's SOP for collection of inmate subsistence costs was proper, and in determining that the SOP properly balanced inmate rights against important governmental interests. The Respondent's SOP was a practical and legal method of implementing actions which the state legislature has authorized. The determination by the Court of Appeal recognized Petitioners contentions as a contrivance to create practical road blocks not rooted in law which would impair implementation of the legislative intent.

CONCLUSION

This court does not have discretionary jurisdiction to review the decision of the Court of Appeal on any of the three cited grounds. Whether discretionary jurisdiction exists, on any one of the three grounds, this court should nonetheless exercise that discretion by not accepting jurisdiction.

¹²"The Legislature finds that there is an urgent need to alleviate the increasing financial burdens of local subdivisions of the state caused by the expenses of incarcerating prisoners..." Section 951.033(1), Florida Statutes (1999).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed to: GARY KOLLIN, ESQ., 8211 West Broward Boulevard, Suite 420, Fort Lauderdale, Florida 33324 and STEVEN WISOTSKY, ESQ., 3050 Jefferson Street, Miami, Florida 33133, this 26th day of March, 2001.

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CERTIFICATE OF COMPLIANCE WITH RULE 9.210(a)(2)

I HEREBY CERTIFY that the type styled utilized in this Brief
is Courier New 12 point.

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