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TOPICAL INDEX TO BRIEF

	<u>PAGE NO.</u>
STATEMENT OF THE CASE AND FACTS	1
SUMMARY OF THE ARGUMENT	4
ARGUMENT	5
ISSUE	
WHEN THE STATE UNLAWFULLY DETAINS A PERSON BEYOND THE EXPIRATION OF HIS OR HER SENTENCE IN ORDER TO SEEK CIVIL COMMITMENT PURSUANT TO THE JIMMY RYCE ACT, SHOULD THAT COMMIT- MENT PETITION BE DISMISSED WITH PREJUDICE?	5
CONCLUSION	13
CERTIFICATE OF SERVICE	13
APPENDIX	

TABLE OF CITATIONS

<u>CASES</u>	<u>PAGE NO.</u>
<u>English v. McCrary,</u> 348 So. 2d 293 (Fla. 1977)	2, 4
<u>Johnson v. Department of Children and Family Services,</u> 747 So. 2d 402 (Fla. 4th DCA 1999)	11
<u>State v. Brewer,</u> 767 So. 2d 1249 (Fla. 5th DCA 2000)	5, 6, 14
<u>Valdez v. Moore,</u> 745 So. 2d 1009 (Fla. 4th DCA 1999)	10
 <u>OTHER AUTHORITIES</u>	
Fla. R. App. P. 9.030(b)(3)	2

STATEMENT OF THE CASE AND FACTS

On March 12, 1999, the State Attorney for the Tenth Judicial Circuit filed a Petition for Commitment of Mr. Tanguay pursuant to the Jimmy Ryce Act (Supp.V1/R1,2). On August 26, 1999, Mr. Tanguay filed a Motion to Dismiss Proceedings Because of the Lack of Jurisdiction Over Subject Matter (Supp.V1/R48-51). At the hearing on the motion the following facts were uncontroverted:

1. On April 25, 1996, Mr. Tanguay was sentenced to an indeterminate period as a juvenile not to exceed his 19th birthday.
2. Mr. Tanguay turned 19 on February 24, 1999.
3. Mr. Tanguay was held at the Polk Youth Development Center past the date his sentence expired.
4. The doctors who conducted assessments of Mr. Tanguay for purposes of the Jimmy Ryce Act met with Mr. Tanguay on March 4, 5, and 8, 1999.
5. The Petition for Commitment was filed on March 12, 1999.

(Supp.V1/R105,106) Thus, Mr. Tanguay was held in custody 16 days past his release date so that he could be evaluated for and proceeded against under the Jimmy Ryce Act. Mr. Tanguay states that this detention was illegal, and the State lost the ability to proceed against Mr. Tanguay under the Jimmy Ryce Act when he was no longer in lawful custody. The trial court, therefore, has no jurisdiction over the subject matter in this case.

The trial court denied the motion to dismiss on September 10, 1999; and Mr. Tanguay filed a Notice of Appeal on September 24, 1999, in the Second District Court of Appeal (Supp.V1/R94-95). The relief

sought in the Second District, however, was a petition for writ of prohibition. The Second District has the power to issue a writ of prohibition pursuant to Art. V, Sec. 4(b)(3), Florida Constitution, and Fla.R.App.P. 9.030(b)(3). The petition for writ of prohibition sought to command Circuit Court Judge Cecelia M. Moore from taking further action in this case inasmuch as this trial court judge has no jurisdiction over the subject matter. See English v. McCrary, 348 So. 2d 293 (Fla. 1977). The order that was the subject of the petition denied Petitioner's Motion to Dismiss Proceedings Because of the Lack of Jurisdiction Over Subject Matter. (Supp.VI/R48-51,93,94) Petitioner suffered present injury and had no adequate legal remedy because Petitioner was in custody pending a Jimmy Ryce Act proceeding.

Mr. Tanguay asked the Second District to issue a writ of prohibition commanding the trial court to refrain from further proceedings under the Jimmy Ryce Act and order Mr. Tanguay's immediate release from custody.

In its substituted opinion issued on 2-16-01 (App.E;VI/R175-179) the Second District agreed the State had denied Mr. Tanguay due process and violated his Fourth Amendment right to be free from unlawful seizure by not releasing him upon the lawful expiration of his sentence. The Act in effect at the time of Mr. Tanguay's detention made no provision for holding a person after the expiration of

their sentence, and the State continued to hold him without legal authority to do so. The Second District, however, only ordered his release from confinement pending the commitment hearing¹ turning the petition for writ of prohibition into a petition for writ of mandamus. The Second District did not dismiss the commitment petition, because it said Mr. Tanguay did not allege any prejudice from the State's unlawful detention other than the deprivation of his liberty. Because of the need for a uniform approach on this issue, the Second District certified to this Court the following question as one of great public importance:

WHEN THE STATE UNLAWFULLY DETAINS A PERSON BEYOND THE EXPIRATION OF HIS OR HER SENTENCE IN ORDER TO SEEK CIVIL COMMITMENT PURSUANT TO THE JIMMY RYCE ACT, SHOULD THAT COMMITMENT PETITION BE DISMISSED WITH PREJUDICE?

Mr. Tanguay timely filed his notice to invoke this Court's jurisdiction.

¹ Which has not yet taken place.

SUMMARY OF THE ARGUMENT

The State's unlawful seizure of Mr. Tanguay for 16 days after he completed his sentence violated his Fourth Amendment and due process constitutional rights. The prejudice from such violations are inherent in the unlawful incarceration of Mr. Tanguay and require the commitment proceedings be dismissed with prejudice. There was, however, actual prejudice suffered by Mr. Tanguay as a result of the unlawful incarceration. As a result of this unlawful detention, the State was able to obtain information from Mr. Tanguay that it used to file the commitment papers and obtain a probable cause order from the trial court resulting in Mr. Tanguay's detention. That same illegally obtained information will be used by the State at a commitment trial. The commitment proceedings in this case should be dismissed with prejudice. Mr. Tanguay's petition for writ of prohibition should have been granted. The trial court has no jurisdiction in this case. Every day Mr. Tanguay remains subject to the Act, he is being irreparably harmed. He has no other appropriate and adequate legal remedy. To continue to proceed under the Jimmy Ryce Act in this case constitutes the trial court acting in excess of its jurisdiction. English.

ARGUMENT

ISSUE

WHEN THE STATE UNLAWFULLY DETAINS A PERSON BEYOND THE EXPIRATION OF HIS OR HER SENTENCE IN ORDER TO SEEK CIVIL COMMITMENT PURSUANT TO THE JIMMY RYCE ACT, SHOULD THAT COMMITMENT PETITION BE DISMISSED WITH PREJUDICE?

The first aspect of this issue is to address why the Second District noted a need for uniformity. The reasoning is not set forth in the opinion, but the issue was addressed in Mr. Tanguay's motion for rehearing. There it was pointed out that someone almost identically situated in Hernando County and the Fifth District would have their civil commitment proceedings under the Act dismissed with prejudice.

In State v. Brewer, 767 So. 2d 1249 (Fla. 5th DCA 2000), the Fifth District affirmed without opinion the decision of the lower court to dismiss the State's petition for involuntary civil commitment pursuant to the Jimmy Ryce Act. (App.A) In that lower court's opinion² it is clear the lower court dismissed the State's petition for involuntary civil commitment pursuant to the Jimmy Ryce Act with prejudice. By holding Mr. Brewer for 15 days beyond when he should

² In Re the Commitment of: Charles Brewer, Respondent, Case No. 99-555-CP-03-JF (Fla. 5th Cir. Dec. 6, 1999). (App.B)

have been released from incarceration after completing his sentence in order to pursue civil commitment proceedings, the lower court found Mr. Brewer was denied due process and the State had violated the ex post facto provisions of the Florida and United States Constitutions (see Art. I, sec. 10 Fla. Const.; Art. I, sec. 10 U.S. Const.). When the State tried to argue it still had the ability to pursue civil commitment proceedings, the lower court rejected that argument. Thus, it is clear from the lower court's opinion in Mr. Brewer's case that the State's failure to seek civil commitment proceedings before Mr. Brewer's sentence had expired resulting in the unlawful detention of Mr. Brewer for 15 days caused the civil commitment proceedings to be dismissed with prejudice and the petition for involuntary civil commitment to be dismissed.

Mr. Tanguay would like the same result in his case. The Fifth District's PCA did not allow Mr. Tanguay to seek relief in this Court based on conflict, so he asked the Second District to certify the question as being one of great public importance in order to resolve the conflict that does exist.

As for the Second District's opinion denying dismissal of the commitment proceedings because of no apparent prejudice, the courts in Brewer apparently believed prejudice to be inherent in the unlawful incarceration of Mr. Brewer for 15 days, denying and violating Mr. Brewer's substantial state and federal constitutional rights. If

this Court does not agree with the Brewer courts, Mr. Tanguay can demonstrate an extremely prejudicial consequence of his illegal incarceration. While Mr. Tanguay was illegally incarcerated and prior to the commitment petition being filed, the State's doctors were interviewing Mr. Tanguay and obtaining statements that resulted in his detention and possible incarceration after trial. One psychiatrist and one psychologist constituting the multidisciplinary team of the Department of Children and Family Services made contact with Mr. Tanguay while he was being illegally detained and conducted a total of three (3) interviews with him. Information obtained from Mr. Tanguay during the time of his illegal detention was used by the multidisciplinary team in assessing whether Mr. Tanguay met the definition of a sexually violent offender. This same illegally obtained information was used by the State Attorney to decide whether to file a petition seeking the involuntary commitment of Mr. Tanguay. And, this same illegally obtained information was relied upon by the trial court to make a finding of probable cause to believe that Mr. Tanguay is a sexually violent predator. It can only be assumed that the State intends to also use this same illegally obtained information during the course of the commitment trial.

The obtaining and use of these statements has been highly prejudicial to Mr. Tanguay, and they would not have been obtained

except for the illegal incarceration of Mr. Tanguay. This prejudice requires the dismissal of the commitment proceedings with prejudice.

As to why Mr. Tanguay is entitled to relief, the State's unlawful detention of Mr. Tanguay after he should have been released from custody when he completed his sentence resulted in an unlawful seizure in violation of the Fourth Amendment and the constitutional right to due process. When the State failed to proceed against Mr. Tanguay while he was still in lawful custody with Jimmy Ryce Act procedures, the State lost the right to use the Jimmy Ryce Act in this case. Thus, the trial court has no jurisdiction over the subject matter in this case and must be prohibited from continuing these commitment proceedings.

Sec. 916.45, Fla. Stat. (Supp. 1998), states that the Jimmy Ryce Act procedures "apply to all persons currently in custody who have been convicted of a sexually violent offense...as well as to all persons convicted of a sexually violent offense in the future." Mr. Tanguay was not "currently" in lawful custody when the State started Jimmy Ryce Act proceedings--having waited several days after his period of confinement was up in which to start the examinations, and he has not recently been convicted of a sexually violent offense so as to kick in the "in the future" provision.

As the State has been so fond of arguing in cases involving the demand for adversarial probable cause hearings, this Act was meant to

start way before a defendant was supposed to be released from custody for a prison sentence. See Sec. 916.33, Fla.Stat. (Supp. 1998). Hence, §916.45 applied to people currently in custody and to all who commit and are convicted of sexually violent offenses in the future. The State was not counting on its inability to act fast enough, so it resulted to simply detaining people who had completed their prison terms because it could not get to them fast enough. Mr. Tanguay is one of those people. Because the State left a gap in its statute when it failed to foresee its inability to act while the person was still in lawful custody, it cannot now try to correct that oversight by simply ignoring it or stretching the meaning of the statute.

The 1999 version of the Jimmy Ryce Act acknowledged the problem of people getting released before they have been assessed and created a procedure for handling that situation. Sec. 394.9135, Fla.Stat. (1999), allows the State to hold a person who has been released for 72 hours in order to be assessed by the multi-disciplinary team. If the team recommends further proceedings under the Act, then the State has 48 hours to file a petition. If the petition is not filed within 48 hours, "the person shall be immediately released." Sec. 394.9135(3), Fla.Stat. (1999). If these deadlines are not met, sec. 394.9135(4), Fla.Stat. (1999), states the State can still proceed against the person under the Act; but the section does not provide for arresting the person and placing the person back in custody

pending the procedures. Sec. 394.915, Fla.Stat. (1999), does not address this issue inasmuch as it only addresses those who are still in custody when the petition is filed:

(1) When the state attorney files a petition seeking to have a person declared a sexually violent predator, the judge shall determine whether probable cause exists to believe that the person named in the petition is a sexually violent predator. If the judge determines that there is probable cause to believe that the person is a sexually violent predator, the judge shall order that the person remain in custody and be immediately transferred to an appropriate secure facility if the person's incarcerative sentence expires.

§394.915(1), Fla.Stat. (1999)(emphasis added). So it appears from a strict reading of the statutes that the State's failure to promptly proceed against a person under the Act before he is released -- allowing for the 72 + 48 hours extension -- results in the immediate release of the person and the person remains free even if the State decides to proceed under the Act after the person has been released.

This reading of the Act is not only clear under the statutes but it complies with constitutional protections under due process. The State is given a short period of time in which to continue to detain the person; and if it cannot proceed under the Act during that time period, the person must be released. The State should not be able to detain someone indefinitely -- as it did in Mr. Tanguay's case by waiting 16 days -- until it could get around to proceeding under the Act. To allow such a practice would be to deny such

persons their constitutional right to due process.³ Mr. Tanguay was denied such a right in his case, and the remedy for him is dismissal of all proceedings under the Act.

The State may try to argue that the 1999 provisions should apply that would allow them to proceed under the Act, but that would also require the immediate release of Mr. Tanguay from custody. When Mr. Tanguay tried to obtain habeas corpus relief from the Fourth District Court, that relief was denied (App. C and D). Thus, the 1999 provisions were denied to Mr. Tanguay; so the State cannot utilize the 1999 provisions only as it benefits the State.

In Johnson v. Department of Children and Family Services, 747 So. 2d 402 (Fla. 4th DCA 1999), the court ordered in a Jimmy Ryce Act case that the report filed by the multidisciplinary team be signed by all members within 72 hours or the petitioner would be released. In so holding the court stated, "the continued confinement of a person after he has served his full sentence for conviction of a crime is serious enough to warrant scrupulous compliance with the statute permitting such confinement, not to mention the applicable constitutional provisions." Id. at 403 (emphasis added). The court was ready to order the petitioner released from custody even though the evaluation by the team was not jurisdictional -- the report was so

³ Just because this is a civil proceeding, that does not mean the petitioner is not entitled to due process. Valdez v. Moore, 745 So. 2d 1009 at 1011 (Fla. 4th DCA 1999).

significant under the Act that failure to do it properly would result in the petitioner's release even if the State still went forward with the proceedings.

If failure to have all signatures of the team on the report is so significant as to result in the release of a person being held under the Act, then not doing the report at all while the person is in lawful custody should be jurisdictional. The statutes do not allow for unlimited continued detention until the State gets around to assessing someone, and any attempt to do so must be shut down as being unconstitutional as a denial of due process. Compliance with the Act must be strict and scrupulous. If there is any doubt as to how the statute is to be read, then it should be read in a light most favorable to the person sought to be committed. See sec. 775.021(1), Fla.Stat. (1999). Constitutional rights must also be upheld.

CONCLUSION

The State's petition for involuntary civil commitment under the Ryce Act should be dismissed with prejudice.

CERTIFICATE OF SERVICE

I certify that a copy has been mailed to Richard L. Polin, Assistant Attorney General, 444 Brickell Avenue, Suite 950, Miami, FL 33131; the Honorable Cecelia M. Moore, Circuit Judge, Polk County Courthouse, Bartow, FL 33831, on this _____ day of August, 2002.

CERTIFICATION OF FONT SIZE

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Respectfully submitted,

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APPENDIX

PAGE NO.

- | | | |
|----|--|---|
| 1. | <u>State v. Brewer</u> , 767 So. 2d 1249
(Fla. 5th DCA 2000) | A |
| 2. | In Re the Commitment of: Charles Brewer,
Case No. 99-555-CP-03-JF (Fla. 5th Cir.
Dec. 6, 1999) | B |
| 3. | Petition for Writ of Habeas Corpus | C |
| 4. | Order on Petition for Writ of Habeas Corpus | D |
| 5. | Second District Court of Appeal 2-16-01 opinion | E |