

IN THE SUPREME COURT OF FLORIDA

FRANK MITCHELL, :

Petitioner, :

v. :

CASE NO. SC03-1210

STATE OF FLORIDA, :

Respondent. :

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PETITIONER'S BRIEF ON THE MERITS

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PETITIONER'S BRIEF ON THE MERITS

PRELIMINARY STATEMENT

Petitioner was the respondent in the Civil Division of the Circuit Court of the Second Judicial Circuit, in and for Leon County, Florida, and the appellee in the District Court of Appeal, First District. Respondent was the prosecution and appellant in the lower courts. The parties will be referred to as they appear before this Court.

Reference to the record on appeal shall be by the letter "R" followed by the page number. References to the supplemental record shall be by the letters "SR" followed by the page number.

References to the Appendix shall be by the letter "A" followed by the page number.

**STATEMENT OF THE CASE AND FACTS**

On December 10, 2001, an amended petition for commitment as a sexually violent predator was filed against Petitioner. (SR 1-11)

Petitioner filed a motion to dismiss the petition and vacate the order determining probable cause because the trial court was without subject matter jurisdiction to try him under the Jimmy Ryce Act, in that his most recent prior term of prison commitment was not for a sexually violent offense. (R 1-18) After a hearing, the trial court granted the motion and entered an order dismissing the petition for lack of jurisdiction. (A1)

Respondent filed a notice of appeal and its reliance on the automatic stay pending appeal provision of Florida Rule of Appellate Procedure 9.310(b)(2). Petitioner filed a motion in the trial court to vacate the Respondent's reliance on the automatic stay pending appeal provision. Without a hearing, the trial court denied Petitioner's motion to vacate the automatic stay. (A2)

Petitioner then filed a motion for review of the order denying the motion to vacate the automatic stay in the First District Court of Appeal contending that the trial court erred in denying his motion to vacate the stay because, while the commitment of sexually violent predators under the Jimmy Ryce

Act has been deemed to be civil in nature, such commitment during the pendency of the state's appeal constitutes a serious deprivation of liberty interests. In State v. Mitchell, 848 So.2d 1209 (Fla. 1<sup>st</sup> DCA 2003) (A3), the First District held that the automatic stay provision is applicable to civil commitment proceedings under the Jimmy Ryce Act because they are civil proceedings. Judge Padovano dissented in a written opinion. Because the majority shared the serious concerns for due process expressed by Judge Padovano's written dissent, the following question was certified to this Court as one of great public importance: Whether the state is entitled to the benefit of the automatic stay provision of Rule 9.310(b)(2) on appeal in a civil commitment proceeding brought pursuant to Part V of Chapter 394, Florida Statutes, when the trial court has dismissed the petition seeking commitment.

Petitioner filed a notice to invoke this Court's discretionary jurisdiction. On May 3, 2004, this Court postponed its decision on jurisdiction and ordered briefs on the merits. This brief follows<sup>1</sup>.

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<sup>1</sup>On May 6, 2004 this Court stayed the proceedings in Mitchell v. State, Case No. SC04-368 pending disposition of Hale v. State, Case No. SC03-166 which is now pending in this Court. Petitioner is seeking review of the First District's decision on the merits in State v. Mitchell, 866 So.2d 776 (Fla. 1<sup>st</sup> DCA 2004) wherein the First District reversed the trial court's order dismissing the petition for lack of jurisdiction but certified the following question to this



**SUMMARY OF THE ARGUMENT**

While the civil commitment of sexually violent predators under the Jimmy Ryce Act has been deemed to be civil in nature and that the rules of civil procedure apply, it is apparent that no one, including the Appellate Rules Committee, could contemplate the serious deprivation of liberty that would ensue by the state's mere filing of a notice of reliance upon the stay pending review provision of Florida Rule of Appellate Procedure 9.310(b)(2). Historically, an appeal by a public agency that stays the performance of the order being appealed was adopted to protect the public treasury from payment of an appeal bond premium. In the cases that the automatic stay was meant to apply, liberty interests were not at stake. Here, they are. This Court has stated that civil commitment proceedings involve a serious deprivation of liberty and such proceedings must comply with the due process clauses of the Florida and United States Constitutions. In determining whether to impose a stay, courts looked to determine whether the parties seeking the stay are likely to ultimately prevail on the merits and whether there is a likelihood of irreparable

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Court as one of great public importance: Does the Ryce Act require that the current incarceration be for sexually violent offense.

harm to the party seeking the stay and virtually no harm to accrue to the responding party.

In the instant case, there is no reason to believe that the state is likely to prevail on the merits. Vacating the stay would have caused no harm to the state, let alone, irreparable harm. The effect of the continuing stay would cause harm to the petitioner, because he would continue to remain in custody, deprived of his liberty, even though no proceeding was pending against him.

As to the merits, because the criminal conviction for which Petitioner was under sentence at the time the Jimmy Ryce petition was filed was not for a sexually motivated offense, Petitioner did not meet the statutory criteria for prosecution under the Jimmy Ryce Act and the trial court lacked subject matter jurisdiction to try Petitioner. Since civil commitments under the Jimmy Ryce Act effect liberty interests, the law must be narrowly construed and construed in a light most favorable to Petitioner. In so doing, the applicability clause of the statute, Section 394.925, Florida Statutes (2001), requires a commitment action to proceed following imprisonment for an enumerated sexually violent offense. In the instant case against Petitioner, the action proceeded from his prison commitment from convictions for non-sexual crimes. Therefore, the Jimmy Ryce Act does not apply to him.



ARGUMENT

ISSUE I

THE FIRST DISTRICT COURT OF APPEAL WAS INCORRECT IN HOLDING THAT THE AUTOMATIC STAY PROVISION OF FLORIDA RULE OF APPELLATE PROCEDURE 9.310(b)(2) IS APPLICABLE TO CIVIL COMMITMENT PROCEEDINGS UNDER THE JIMMY RYCE ACT.

Because the issue presented by the certified question is strictly a legal one, the standard of review is de novo.

On December 10, 2001, an amended petition for commitment as a sexually violent predator was filed against Petitioner. (SR 1-11)

Petitioner filed a motion to dismiss the petition and vacate the order determining probable cause because the trial court was without subject matter jurisdiction to try him under the Jimmy Ryce Act, in that his most recent prior term of prison commitment was not for a sexually violent offense. (R 1-18) After a hearing, the trial court granted the motion and entered an order dismissing the petition for lack of jurisdiction. (A1)

Respondent filed a notice of appeal and its reliance on the automatic stay pending appeal provision of Florida Rule of Appellate Procedure 9.310(b)(2). Petitioner filed a motion in the trial court to vacate the Respondent's reliance on the automatic stay pending appeal provision. Without a hearing,

the trial court denied Petitioner's motion to vacate the automatic stay. (A2)

Petitioner then filed a motion for review of the order denying the motion to vacate the automatic stay in the First District Court of Appeal contending that the trial court erred in denying his motion to vacate the stay because, while the commitment of sexually violent predators under the Jimmy Ryce Act has been deemed to be civil in nature, such commitment during the pendency of the state's appeal constitutes a serious deprivation of liberty interests. In State v. Mitchell, 848 So.2d 1209 (Fla. 1<sup>st</sup> DCA 2003) (A3), the First District held that the automatic stay provision is applicable to civil commitment proceedings under the Jimmy Ryce Act because they are civil proceedings. Judge Padovano dissented in a written opinion. Because the majority shared the serious concerns for due process expressed by Judge Padovano's written dissent, the following question was certified to this Court as one of great public importance: Whether the state is entitled to the benefit of the automatic stay provision of Rule 9.310(b)(2) on appeal in a civil commitment proceeding brought pursuant to Part V of Chapter 394, Florida Statutes, when the trial court has dismissed the petition seeking commitment.

While the civil commitment of sexually violent predators under the Jimmy Ryce Act has been deemed to be civil in nature and that the rules of civil procedure apply, it is apparent that no one, including the Appellate Rules Committee, could contemplate the serious deprivation of liberty that would ensue by the state's mere filing of a notice of reliance upon the state pending review provision of Florida Rule of Appellate Procedure 9.310(b)(2). Historically, an appeal by a public agency that stays the performance of the order being appealed was adopted to protect the public treasury from payment of an appeal bond premium. Wait v. Florida Power and Light Company, 353 So.2d 1265, approved in part, quashed in part, 372 So.2d 420 (Fla. 1979). In the cases that the automatic stay was meant to apply to, liberty interests were not at stake. Here, they are. This Court has stated that civil commitment proceedings involve a serious deprivation of liberty and, thus such proceedings must comply with the due process clauses of the Florida and United States Constitutions. State v. Goode, 837 So.2d 817, 825-826 (Fla. 2002).

In determining whether to impose a stay, courts look to determine whether the party seeking the stay are likely to ultimately prevail on the merits and whether there is a likelihood of irreparable harm to the party seeking the stay

and virtually no harm to accrue to the responding party. See, Oliveria v. State, 765 So.2d 90 (Fla. 4<sup>th</sup> DCA 2000); State v. Miyasato, 805 So.2d 818, 824 (Fla. 2<sup>nd</sup> DCA 2001); See also, Committee Notes to Rule 9.120 (Florida Rules of Appellate Procedure). In the instant case, there is no reason to believe that the state is likely to prevail on the merits. Vacating the stay would have caused no harm to the state, let alone, irreparable harm. This is true because neither the State Attorney, the Department of Children and Families, nor the trial court would be deprived of jurisdiction to proceed against respondent should this Court affirm the First District Court of Appeal's reversal of the trial court's order dismissing the petition for lack of jurisdiction. The effect, however, of the continuing stay will cause harm to the petitioner, because he will continue to remain in custody, deprived of his liberty, even though no proceeding was pending against him at the time the trial court dismissed the petition.

As to the merits, due to the significant and substantial liberty interest involved with the involuntary and indefinite detention provided for under the Jimmy Ryce Act<sup>2</sup> with such an impact on liberty interest being tantamount to incarceration,

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<sup>2</sup> Chapter 394, Part V, Florida Statutes (2001)

due process requires that the Jimmy Ryce Act's own limitation of its application or in other words, its jurisdiction prerequisites, be strictly construed.

Petitioner moved to dismiss the petition and vacate the order determining probable cause because the trial court was without subject matter jurisdiction to try him under the Jimmy Ryce Act, in that his most recent prior term of prison commitment was not for sexually violent offenses. (R 1-18) In its response, Respondent merely argued that when Sections 394.913(1) and 394.925, Florida Statutes (2001) are read in pari materia, the legislature intended that the Jimmy Ryce Act apply to anyone that was in custody on or after the effective date of the Act, January 1, 1999, and had been at some time convicted of a sexually violent offense, as defined by Section 394.912(9), Florida Statutes (2001). (R 19-21) After a hearing, the trial court correctly entered an order dismissing the petition for lack of subject matter jurisdiction. (R 22-25)

The First District reversed the trial court's order. State v. Mitchell, 866 So.2d 776 (Fla. 1<sup>st</sup> DCA 2004). (A4)

In the instant case, Petitioner's last prior conviction for a sexually motivated offense was in 1983 in Leon County Circuit Court Case No. 83-915. The sentence on this offense expired in November, 1991. In 2001, at the time the state attorney of the Second Judicial Circuit filed a Jimmy Ryce Act



petition against Petitioner, Petitioner was under a Florida Department of Corrections sentence for possession of cocaine and felonious possession of a concealed weapon from Pinellas County. (R 1-18)

Because the criminal conviction for which Petitioner was under sentence at the time the Jimmy Ryce petition was filed was not for a sexually motivated offense, Petitioner does not meet the statutory criteria for prosecution under the Jimmy Ryce Act and the trial court was without jurisdiction to try Petitioner.

Section 394.925, Florida Statutes (2001), entitled "applicability of act" provides that "this part applies to all persons currently in custody who have been convicted of a sexually violent offense, as that term is defined in Section 394.912(9), as well as to all persons convicted of a sexually violent offense and sentenced to total confinement in the future". Thus, the language contained within Section 394.925, the "applicability" provisions, indicate that a Jimmy Ryce Act petition can only be filed against persons in the custody of the Department of Corrections and serving a sentence for a sexually violent offense. The phrase, "all persons currently in custody who have been convicted of a sexually violent offense is clarified by the second phrase "all persons convicted of a sexually violent offense and sentenced to total

confinement in the future". In essence, the Legislature provided a limiting language regarding the purview of the Jimmy Ryce Act. For Petitioner to fall within the Jimmy Ryce Act's subject matter jurisdiction, this Court would have to interpose the word "previously" within the body of the section. Such a provision does not exist nor can this Court create it.

The non-jurisdictional notice provision of Section 394.913(1) concerns itself with three distinct situations. First, it requires that notice be given by the institution which maintains jurisdiction over the individual during the period of time the person is under total confinement to the multi-disciplinary team and the state attorney of a person who has committed a sexually violent offense. This is the part of the statute directly applicable to Petitioner and when read in para materia with Section 394.925, Florida Statutes, a combined reading of these two statutory provisions establishes that it is the legislature's intent that those subject to Jimmy Ryce Act commitment proceedings are currently incarcerated and serving a sentence for a sexually violent offense at the time the petition is filed. If they are not, the petition is subject to dismissal on the ground that a trial court is without subject matter jurisdiction over the matter or for failing to state a cause of action.

The second part of subsection 394.913(1) concerns the alternative situation where a person is under total confinement in Florida, yet has been convicted of a sexually violent offense elsewhere. The third part deals with non-Florida convicts serving their out of state sentences in Florida under the interstate compact. Strictly construing the second part of the notice provision in Section 394.913(1) in Petitioner's favor, it does not authorize a Jimmy Ryce Act proceeding against persons who have a sexually violent conviction in their past but a current sentence for a non-sexually violent offense. Rather, this part of the subsection refers to those individuals who are in prison in Florida on a conviction and sentence for a non-sexually violent crime while, perhaps simultaneously serving a concurrent term of imprisonment for a sexually violent crime convicted in another state or from a federal prosecution.

The third part of subsection 394.913(1) concerns itself with persons confined in Florida under interstate compact. Under the interstate corrections compact, an inmate from another member state, the sending state, would be sent to serve a prison sentence imposed by the sending state to Florida, the receiving state. Section 941.56(Article II), Florida Statutes (2001). At all times, the sending state, not the State of Florida, retains jurisdiction over that inmate.

Section 941.56(Article IV)(c), Florida Statutes (2001) and Florida, as a receiving state, acts only as the sending state's agent and has no rights to make any final determination regarding the sending state's inmate. Section 941.56(Article IV)(e), Florida Statutes (2001). This interstate compact requires that the sending state's prisoner must be returned to the sending state at the end of the prison term served in Florida unless the sending state, Florida, as a receiving state, and the inmate, himself, agree that the inmate should be released in some location other than the sending state. Section 941.56(Article IV)(g), Florida Statutes (2001).

The Jimmy Ryce Act's notice provision, 394.913(1) cannot apply to a sending state's inmate in Florida under the interstate corrections compact. By the compact's terms, such an inmate cannot be under total confinement in Florida because no Florida institution or court has any jurisdiction over that inmate's prison term. Meyer v. Moore, 826 So. 2d 330 (Fla. 2d DCA 2002). The only way such an inmate can be subject to the Jimmy Ryce Act is if he voluntarily elects to remain in Florida at the conclusion of his prison term and both the sending state and Florida also agree. Section 941.56(Article IV)(g), Florida Statutes (2001). To be eligible for Jimmy

Ryce Act commitment such an inmate would have to be currently serving his out of state sentence in Florida for a sexually violent crime. Section 394.925, Florida Statutes (2001).

Therefore, the state attorney in the circuit where Petitioner was last convicted of a sexually violent offense i.e. the Second Judicial Circuit, had no legal authority to proceed against him under Section 394.913(1) of the Jimmy Ryce Act. Petitioner's preceding criminal conviction for which he had been imprisoned was not for a sexually violent offense and his term of imprisonment on his conviction for the sexual battery he had committed in the Second Judicial Circuit had expired long before the Jimmy Ryce Act was enacted.

The primary goal of the Jimmy Ryce Act is to involuntarily commit "a small but extremely dangerous number of sexually violent predators" who are "likely to engage in criminal, sexually violent behavior" in the future. Section 394.910, Florida Statutes (2001). As the trial court concluded, the issue to be resolved may be framed as follows:

Does Part V, Chapter 394, Florida Statutes, (the Jimmy Ryce Act) apply to persons who have previously been convicted of a sexual offense, completed their sentence, and subsequently are incarcerated for a non-sexual offense?

This Court, as did the trial court, must answer the question in the negative. This Court has addressed the purpose of the Jimmy Ryce Act:

.....On its face, the Florida Statute was clearly intended "to create a civil commitment scheme to address the risks these sexually violent predator pose to society" and to provide "long term care and treatment" for those individuals. Section 394.10, Florida Statutes, (2001). While only individuals convicted of a sexually violent offense [footnote omitted] are *eligible* for commitment under the Ryce Act, the previous conviction must be coupled with a current "mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for long term control, care and treatment" in order to meet the statutory definition of a sexually violent predator. Section 394.912(10), Florida Statutes, (2001).....The State's purposes for the Ryce Act - - long term mental health treatment for sexual predators and protection of the public from them - - are both compelling and proper. Westerheide v. State, 831 So. 2d 93, 100-104, (Fla. 2002).

Petitioner in this case completed his sentence for the 1983 sexual battery conviction in 1991 and was released into society. In fact, his sentence for the sexual battery conviction had been served and completed before the passage of the Jimmy Ryce Act. If this court were to rule that the Jimmy Ryce Act applied to Petitioner, it would not be consistent with the intent of the legislature that sexually violent

predators receive treatment in a proper setting before being released from custody. This would result in a particularly unreasonable or harsh construction of the legislative enactment, and such a result should be avoided by the court. State v. Atkinson, 831 So. 2d 172, 174 (Fla. 2002) The vehicle provided by the Florida Legislature authorized the involuntary commitment of persons who were currently committed to a prison term for having been convicted of an enumerated, sexually violent offense or other crimes of violence that could be construed as sexually motivated. Section 394.912 and 394.913, Florida Statutes (2001). Within this scheme, the validity of an involuntary commitment requires both the sentence imposed and the conviction for the sexually violent offense be valid on or after the date the law came into effect as such is the jurisdictional prerequisite for prosecution under the Jimmy Ryce Act. State v. Atkinson, 831 So. 2d. 172 (Fla. 2002).

The Fourth District's interpretation of the Ryce Act in Tabor v. State, 864 So.2d 1171 (Fla. 4<sup>th</sup> DCA 2004) makes it unconstitutional as applied to Petitioner under a substantive due process analysis. Based on the legislative purpose of the Act, one can not differentiate between Petitioner who is in total confinement for non-sexually violent crime convictions

as of the effective date of the act and any other person who had a prior sexually violent crime conviction yet at large in Florida and not in total confinement as of the effective date of the Act. In Atkinson, this Court, interpreting Section 394.925 held that the Ryce Act subject matter jurisdiction is limited to those persons who had been convicted of sexually violent offenses and were both lawfully convicted and serving a lawful sentence as of January 1, 1999, the effective date of the Act. To extend this holding to include persons such as Petitioner who, while having a sexually violent crime conviction in their past, while serving active prison sentences for non-sexually violent crimes after the Act's effective date is not rationally related to a legitimate governmental purpose served by this legislation.

The legislature's purpose when it enacted the Ryce Act was upon its recognition that, "the likelihood of sexually violent predators engaging in repeat acts of predatory sexual violence is high," and the "prognosis for rehabilitating sexually violent predators in prison is poor." Section 394.910, Florida Statutes (2001). Yet, the legislature did not authorize the commitment of any alleged sexually violent predator within the state. Its statutory scheme requires as a prerequisite for involuntary commitment that a Ryce Act



individual be incarcerated and held in "total confinement" at the time commitment proceedings commence.

The Tabor court's interpretation of the Act's subject matter jurisdiction limitations bears no rational relationship between the purpose of the legislation and Petitioner's involuntary commitment since his last term of imprisonment for a sexually violent offense expired in 1991, 8 years prior to the Act's effective date. There is no rational relationship between the law and its legitimate governmental purpose if any person with convictions for sexually violent crimes prior to the effective date of the Act who avails himself within Florida's territorial boundaries cannot be subject to commitment, while Petitioner who just happened to be in prison for crimes not sexually violent in nature can. The fact that non-sexually violent crime convictions cause Petitioner to be a haplessly captive subject for psychological evaluation, detention, and involuntary commitment proceedings, while others with sexually violent crime convictions who have been at large since the effective date of the Act are not subject to involuntary commitment does not rationally relate to a legitimate purpose of the law. In order for the law to comport with the constitutional requirement of substantive due process as applied to Petitioner it is necessary to interpret

the Ryce Act in a manner as to limit its subject matter jurisdiction to person actively serving sentences for sexually violent crimes as of the statute's effective date.

The question presented, in the instant case, is more clear than the situation addressed in Atkinson. There, this Court was faced with a situation of a person in actual custody but unlawful for a sexual offense. This Court, in holding that lawful custody is a jurisdictional prerequisite for the filing of a petition for commitment under the Jimmy Ryce Act stated:

A basic tenet of statutory construction compels the court to interpret a statute so as to avoid a construction that would result in unreasonable, harsh, or absurd consequences. (citations omitted) It would be contrary to the basic tenets of fairness and due process if we were to interpret Section 394.925 as requiring only actual custody. State v. Atkinson, 831 So. 2d 172, 174 (Fla. 2002).

In the instant case, Petitioner was convicted for a 1983 sexual battery, an enumerated offense under the Jimmy Ryce Act, Section 394.912(9), Florida Statutes (2001), in 1983. He has no other convictions for any sexual violent offense as defined by the statute. His term of imprisonment for the 1983 sexual battery conviction expired in 1991. While he has been convicted of other crimes after 1991, none of these crimes were qualifying offenses of a sexual nature nor is there any

evidence showing beyond a reasonable doubt, that any were sexually motivated<sup>3</sup>.

At the time the State filed its Jimmy Ryce petition against Petitioner, he was in the custody of the Department of Corrections serving sentences for possession of cocaine and felonious possession of a concealed weapon, non-enumerated and non-sexually motivated offenses. Because he was not in custody serving a sentence for a sexually violent offense, the Jimmy Ryce Act does not apply to him and the trial court had no subject matter jurisdiction to try him. The last period of time Petitioner had been convicted and serving a prison sentence in Florida for a sexually violent crime ended in 1991. As such, Petitioner's circumstances fail to meet the statutory jurisdictional prerequisite to be civilly committed under the Jimmy Ryce Act.

A Florida circuit court has no jurisdiction to enter orders adversely affecting an individual to a petition where the prosecution fails to allege facts within the body of the petition that bring its action within the jurisdictional statutory criteria and fails to comport with the

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<sup>3</sup> It was uncontroverted below that Respondent had no qualifying felony convictions enumerated under the Act from November 1, 1991 until November 5, 1998. (R 34-48)

jurisdictional allegation. State ex rel. Department of General Services v. Willis, 344 So.2d. 580 (Fla. 1977). The State's petition fails to allege the Jimmy Ryce Act's statutory jurisdictional criteria within the body of the petition, i.e., that Petitioner was in the custody of the Department of Corrections, the agency having jurisdiction over him and that he was in the agency's custody and serving a sentence for a sexually violent offense. The failure to allege such facts is not a technical omission but rather as has been shown, is an impossibility, because such facts did not exist. As such, the trial court lacked subject matter jurisdiction over Petitioner.

The ultimate, negative consequence for a person under the Jimmy Ryce Act is indeterminate, involuntary commitment. This result entails such a significant deprivation of liberty that the law's statutory limitation of the jurisdictional purview must be strictly construed. Rice v. Mercy Hospital Corp, 318 So. 2d. 436 (Fla. 3d DCA 1975). As previously noted, due to the significant and substantial liberty interest involved with the involuntary and indefinite detention provided for under the Jimmy Ryce Act with such an impact on liberty interest being tantamount to incarceration, due process requires that the Jimmy Ryce Act's own limitation of its application, or in

other words, its jurisdictional prerequisites, be strictly construed.

A strict construction of Section 394.925, Florida Statutes (2001), restricts the state in its ability to prosecute persons under the Jimmy Ryce Act to those individuals who are in the custody of the Department of Corrections and serving a sentence for a sexually violent offense at the time the petition is filed. The primary goal of the Jimmy Ryce Act's statutory scheme was to deal with persons actively committing sexually violent crimes; not persons who had convictions for sexually violent offenses in their past, while their recent criminal conduct was non-sexual in nature. A strict construction of the applicability of the Jimmy Ryce Act requires that nothing that is not clearly and intelligently described in this statute's explicit wording is to be excluded within its terms; and, where the wording may be ambiguous as to leave reasonable doubt concerning its meaning, the meaning which would operate in the favor of liberty much be taken. State v. Wershow, 343 So. 2d. 605, 608 (Fla. 1977).

Assuming arguendo that the wording of the Jimmy Ryce Act is ambiguous, a construction of the Act's statutory scheme which limits its jurisdictional purview to the those persons currently serving sentences in the custody of the Department

of Corrections for a sexually violent offense is not unreasonable. Because Petitioner was serving sentences for convictions for non-sexually violent offenses at the time the Jimmy Ryce Act petition was filed against him, he was outside the statute's jurisdictional purview and the trial court had no subject matter jurisdiction.

Thus, a review of Section 394.913(1), Florida Statutes (2001), strictly construed to Petitioner's benefit, provides a reading of the Jimmy Ryce Act in harmony with the statute's subject matter jurisdictional limitation contained within Section 394.925 that does not render meaningless any part of the act. Section 394.925 provides that the Jimmy Ryce Act "applies to all persons currently in custody and who have been convicted of a sexually violent offense.....as well as to all persons convicted of a sexually violent offense and sentenced to total confinement in the future." For Petitioner to fall within the Jimmy Ryce Act's subject matter jurisdiction this Court would have to interpose the word "previously" within the body of the section. As previously noted, such a provision does not exist nor can this Court create it.

The only states with similar statutory schemes that have addressed this issue are Massachusetts and Iowa. The supreme court in each of those states have ruled that the courts do

not have jurisdiction to entertain civil commitment proceedings in similar situations. In Commonwealth v. McLeod, 771 N.E. 2d 142 (Mass. 2002), the Massachusetts Supreme Court held that McLeod was not eligible for civil commitment as a sexually dangerous person where the offense for which he was serving a sentence at the time the commitment petition was filed was not a statutorily enumerated sexual offense even though he had completed and had been released from a sentence previously imposed for a sexual offense. Similarly, the Iowa Supreme Court concluded that the current term of commitment must be for a sexually violent crime holding that a contrary "result would not be a reasonable application of the statute because it allows the state to reach back in time, seize on a sexually violent offense for which the defendant was discharged and couple this with a present confinement for a totally different or perhaps trivial offense and use [the sexually violent offender statute] to confine the person." State v. Gonzales, 658 NW 2d 102, 105 (Iowa 2003).

Both the statutory language of the Jimmy Ryce Act and the Legislature's intent in its enactment show that its subject matter jurisdiction was not designed to extend to persons whose current term of imprisonment, at the time of the State's petitioning, was for a non-sexually violent criminal

conviction. Petitioner's prison term for a sexually violent offense expired prior to the enactment of the Jimmy Ryce Act. At the time the State petitioned for his involuntary commitment, he was serving a sentence for a non-sexually violent crime and therefore the trial court was without subject matter jurisdiction to try him.

Accordingly, the opinion of the First District Court of Appeal must be reversed.



**CONCLUSION**

Based on the foregoing arguments and authorities cited therein, Petitioner respectfully requests this Court to reverse the opinion of the First District Court of Appeal.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Thomas H. Duffy, Assistant Attorney General, at The Capitol, PL-01, Tallahassee, FL 32399-1050, on this date, May 13, 2004.

**CERTIFICATE OF FONT SIZE**

I HEREBY CERTIFY that, pursuant to Florida Rule of Appellate Procedure 9.210, this brief was typed in Courier New 12 Point.

Respectfully submitted,

NANCY A. DANIELS  
PUBLIC DEFENDER  
SECOND JUDICIAL CIRCUIT

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IN THE SUPREME COURT OF FLORIDA

FRANK MITCHELL, :

Petitioner, :

v. :

CASE NO. SC03-1210

STATE OF FLORIDA, :

Respondent. :

\_\_\_\_\_/

APPENDIX

NANCY A. DANIELS  
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SECOND JUDICIAL CIRCUIT

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INDEX TO APPENDIX

1. Order Dismissing Petition for Lack of Jurisdiction
2. Order Denying Motion to Vacate Automatic Stay
3. State v. Mitchell, 848 So.2d 1209 (Fla. 1<sup>st</sup> DCA 2003)
4. State v. Mitchell, 866 So.2d 776 (Fla. 1<sup>st</sup> DCA 2004)