

IN THE SUPREME COURT OF FLORIDA

FRANK MITCHELL, :

Petitioner, :

v. :

CASE NO. SC03-1210

STATE OF FLORIDA, :

Respondent. :

_____ /

PETITIONER'S REPLY BRIEF ON THE MERITS

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PETITIONER'S REPLY BRIEF ON THE MERITS

PRELIMINARY STATEMENT

Petitioner, FRANK MITCHELL, relies upon his preliminary statement as found in his initial brief on the merits. The symbol "AB" will denote Respondent's Answer Brief.

STATEMENT OF THE CASE AND FACTS

Petitioner relies on the Statement of the Case and Facts as contained in his initial brief on the merits.

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.

Contrary to Respondent's assertions otherwise, this Court should adopt, as its own, the well-reasoned dissenting opinion of Judge Padovano in State v. Mitchell, 848 So.2d 1209 (Fla. 1st DCA 2003) as did the Court in State v. Ducharme, 881 So.2d 70 (Fla. 5th DCA 2004). In Ducharme, the Court held that Florida Rule of Appellate Procedure 9.310(b)(2) under which the timely filing of a notice of appeal operates as a stay pending review when a public body or public officers seeks review does not apply to cases involving involuntary civil commitments. As Judge Padovano observed in his dissent in State v. Mitchell, 848 So.2d 1209, 1213 (Fla. 1st DCA 2003):

The original purpose of the rule was to enable the state to maintain the status quo while avoiding the unnecessary expense of providing a supersedeas bond. A litigant who obtains a money judgement against the state should have no fear that the judgement will be uncollectible if the state loses the appeal. The state will always be subject to the jurisdiction of the court and a bond is not required because the state is a solvent litigant. These considerations, which prompted the adoption of the automatic stay provision in Rule 9.310(b)(2), are not even remotely

applicable to an involuntary civil
commitment proceeding.

In response to Respondent's merits arguments, due to the significant and substantial liberty interest involved with the involuntary and indefinite detention provided for under the Jimmy Ryce Act, Chapter 394, Part V, Florida Statutes (2001) 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 jurisdiction prerequisites, be strictly construed (R 3, 39-40). Thus, Respondent's arguments that Petitioner's Motion to Dismiss the Petition for lack of subject matter jurisdiction in that Petitioner's most recent prior term of prison commitment was not for sexually violent offenses appeared to be a defense of want of personal jurisdiction and that Petitioner did not argue a violation of substantive due process below are both without merit¹ (AB 13-14).

Petitioner relies on his argument under this issue as stated in his initial brief on the merits for further argument.

¹ Nowhere in the trial court did Respondent make its frivolous, personal jurisdiction argument. Notwithstanding, it is well settled that an objection or motion to dismiss for lack of jurisdiction of the subject matter may be raised at any time. Florida Rules of Civil Procedure 1.140(h)(2).

CONCLUSION

Based on the foregoing arguments and authority 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, November 23, 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,

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