

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,)
)
 Petitioner,)
)
 vs.) FSC CASE NO. _____
)
 RAMON ALVAREZ, ET AL.,) FIFTH DCA CASE NO. 5D01-3560
)
 Respondent.)
 _____)

**ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL**

RESPONDENT’S BRIEF ON JURISDICTION

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

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STATEMENT OF THE CASE AND FACTS

Respondents accept the State’s presentation of the facts and case, with only the following additions. First, the State does not present the forms of relief requested by either these Respondents or the petitioners in the other pending, consolidated cases. Here, as in Melvin v. State, 804 So. 2d 460 (Fla. 2DCA 2001), and Kephart v. Kearney, 826 So. 2d 517 (Fla. 4DCA 2002), the petitioners originally sought the relief of discharge and release from unlawful confinement pending their commitment trials. The warrants or orders pursuant to which they were detained were not supported by sworn evidence in support of probable cause, and therefore, their detention at that time, and continuing detention was unlawful.

While the Murray court granted this relief, the defects were corrected before individual petitioners were actually released from physical custody. The Kephart court went further, allowing the State an additional period of seven days of unlawful detention in which to correct the defect.

Second, the District Court herein, while agreeing with the Kephart court as to procedural requirements, went beyond the latter court's determination that, in the interests of petitioners' rights against unlawful detention, such corrections should be effected within seven days. The opinion of the Fifth District in the instant matter went further to say that the State could "apply to the trial court for more time in any case where justice requires." (P. 5). Thus, there is discord between these cases with respect to the appropriate remedy and the time frame, if any, during which an individual may be unlawfully detained pending a "re-determination" of probable cause based on sworn information.

SUMMARY OF ARGUMENT

The issue presented by the State's brief in support of discretionary jurisdiction is the same issue presently pending before this Honorable Court in Reiger v. Kephart, Case Number SC02-2280. The Court's website information shows that case as having been briefed, and oral argument being scheduled for June 5, 2003. Respondents herein acknowledge that the decision resulting from that case will be dispositive of the issue herein.

ARGUMENT

RESPONDENTS LEAVE TO THIS COURT'S DISCRETION WHETHER TO ACCEPT OR DECLINE JURISDICTION, OR WHETHER INSTEAD, TO DEFER A DECISION ON JURISDICTION UNTIL THE RESOLUTION OF THE IDENTICAL QUESTION IN A CASE NOW PENDING BEFORE THIS COURT.

The principal issue in this case is whether a State Attorney's verified petition in a sexually violent predator civil commitment action is sufficient to support an initial, ex parte finding of probable cause, or whether due process requires some affidavit or other sworn information as evidence of probable cause. While the Second District Court allowed for either, the Fourth District, and now the Fifth District in this case, have disagreed with the former verified petition, calling instead for the latter requirement of sworn information. This usually comes in the form of an attestation by one or more of the examining mental health professionals that it is their true opinion that the person qualifies for commitment.

The State seeks jurisdiction in order to resolve this question in favor of permitting merely the verified petition. As noted in the Jurisdictional Brief (p. 5), this is the identical issue being argued on June 5, 2003, in Reiger v. Kephart, Case Number SC02-2280. There, the Fourth District did certify direct conflict with the Second District. Here, the Fifth District did not certify conflict, but noted the

dissonance between those cases, and followed the Fourth District, with modification.

Respondents' counsel has read the briefs submitted in Kephart, and believes the issues to be sufficiently identical that the Court's decision in that case will be controlling in this case. Therefore, Respondents leave it to the discretion of this Court whether or not to exercise jurisdiction in this action, or whether to defer a decision on jurisdiction until such time as Kephart is decided. However, should jurisdiction be granted herein, Respondents respectfully request to reserve the right to address all matters arising in the controversy, and particularly the difference in the relief granted by the three Districts. Specifically, the Second District granted petitioners relief, whereas the Fourth and Fifth did not, but chose to allow the State varying time periods in which to present additional, valid evidence in support of a new finding of probable cause.

CONCLUSION

For the reasons set forth herein, Respondents respectfully leave to this Court's discretion whether to accept or decline jurisdiction in this matter, or whether to defer any decision on jurisdiction until such time as a decision is rendered in Reiger v. Kephart, Case Number SC02-2280.

Respectfully submitted,

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COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been hand-delivered to the Honorable Charles J. Crist, Jr., Attorney General, 444 Seabreeze Boulevard, 5th Floor, Daytona Beach, Florida 32118, via his basket at the Fifth District Court of Appeal; and mailed to: Mr. Ramon Alvarez, DOC # 097760, Florida Civil Commitment Center, 13613 S.E. Highway 70, Arcadia, Florida 34266, this ____ day of April 2003.

CERTIFICATE OF FONT

I HEREBY CERTIFY that the font used in this brief is 14 point proportionally spaced Times New Roman.

JOHN M. SELDEN
ASSISTANT PUBLIC DEFENDER

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JURISDICTIONAL BRIEF OF RESPONDENT

APPENDIX A