IN THE SUPREME COURT OF FLORIDA

CASE NO. 04-1461

STATE OF FLORIDA,

Appellant,

vs.

SEAN E. CREGAN,

Appellee.

****
**
ON APPEAL FROM THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT, IN AND FOR BROWARD COUNTY, FLORIDA
(Criminal Division)
****
***

REPLY BRIEF OF APPELLANT

CHARLES J. CRIST, JR.
Attorney General
Tallahassee, Florida

CELIA TERENZIO
Assistant Attorney General
Bureau Chief, West Palm Beach
Florida Bar No. 656879

Melanie Dale Surber
Assistant Attorney General
Florida Bar No. 0168556
1515 N. Flagler Drive
9th Floor
West Palm Beach, Fl. 33401

Phone: 561-837-5000
Fax: 561-837-5099

Counsel for Appellee

TABLE OF CONTENTS

PRELIMINARY STATEMENT

The Petitioner was the Prosecution and Respondent was the Defendant in the Criminal Division of the Circuit Court of the Seventeenth Judicial Circuit, in and for Broward County, Florida. In this brief, the parties shall be referred to as they appear before this Honorable Court of Appeal except that Petitioner may also be referred to as the State.

All emphasis in this brief is supplied by Petitioner unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

Appellant relies on the facts as set forth in it’s initial merits brief.

SUMMARY OF THE ARGUMENT

The Fourth District Court of Appeals improperly reversed and remanded this case for an evidentiary hearing, or for record attachments conclusively showing no entitlement to relief. The Defendant is not entitled to credit for the time he served in rehabilitation because as a matter of law the Turning Point Bridge rehabilitation program is not the functional equivalent of jail.

ARGUMENT

THE FOURTH DISTRICT COURT OF APPEALS IMPROPERLY REVERSED AND REMANDED THIS CASE WHERE THE TRIAL COURT PROPERLY FOUND THAT THE DEFENDANT WAS NOT ENTITLED TO CREDIT FOR TIME SERVED IN A DRUG TREATMENT FACILITY WHILE ON COMMUNITY CONTROL.

In this case, the District Court certified conflict with Toney v. State as well as with Molina v. State, because the Third District Court of Appeals adopted Toney. In this case, the Fourth District Court of Appeals found that the decision to award credit for the time served at the Turning Point Bridge program is discretionary, yet the Court cites to no precedent to support this reasoning. The Appellee is not entitled to credit for the time he served in rehabilitation, because as a matter of law the Turning Point Bridge rehabilitation program is not the functional equivalent of jail. Pennington v. State, 398 So.2d 815, 817 (Fla.1981)(finding that [h]alfway houses, rehabilitative centers, and state hospitals are not jails. Their purpose is structured rehabilitation and treatment, not incarceration).

Appellee claims that because, in Tal-Mason v. State, 515 So. 2d 738 (Fla. 1987) this Court broadened the language of F.S. § 921.161 (1), to include time spent in the Florida State Hospital, this court should further broaden the statute to include time spent in a drug rehabilitation center. Rather, this Court's

decision in Tal-Mason is distinguishable and provides no basis to further broaden F.S. § 921.161 (1). Tal-Mason was found incompetent to proceed to trial and pursuant to the trial court's order was placed in Florida State Hospital. Tal-Mason, 515 So. 2d at 738. Tal-Mason was subsequently found competent to proceed and he pled guilty to second degree murder and given a life sentence. Id. Tal-Mason filed a 3.850 motion alleging two grounds: (1) that he had spent one year and thirteen days in a county jail prior to trial, but had received credit only for one year; and (2) that the five years and twenty-seven days he spent in state mental institutions should be credited against his sentence. Id. at 739. The court granted Tal-Mason credit for the additional thirteen days of jail time, but denied credit for time in state institutions. Id. On appeal the Fourth District followed this Court's finding in Pennington and found that Tal-Mason was not entitled for the time served while in the State Hospital. This Court reversed and made the following findings:

> Turning now to the facts of this case, we find that commitment for incompetence, unlike probationary rehabilitation, infringes upon significant liberty interests in a particularly coercive manner. Probationary conditions are more in the nature of a contract between the probationer and the state. The defendant clearly has a choice to reject those conditions, albeit at the risk of continued detention in jail or prison. Thus, rather than restricting liberty,

> probationary rehabilitation usually serves to increase it by allowing the probationer an escape from involuntary confinement already lawfully imposed, in favor of a freer environment such as a community-based halfway house. For this reason, participation in such a rehabilitation program does not constitute a coercive deprivation of liberty, and a probationer is not entitled to credit for time spent there after a court finds that he has violated the terms of his probation.
>
> Tal-Mason, on the other hand, clearly had no choice when he was confined in a state mental institution. He entered into no agreement with the state to obtain an early release from confinement or from any other punishment less restrictive than jail time. Rather than increasing his liberty, Tal- Mason's confinement was in the strictest sense a complete deprivation of liberty. He was in the total custody and control of the state at all times. And while his confinement involved psychological treatment, the primary purpose of both the treatment and the detention was to hold Tal-Mason until such time as he became competent to stand trial, if ever. Thus, his coercive commitment to a state institution was indistinguishable from pretrial detention in a "jail," as that term is understood in common and legal usage.

Id. at 739.

Although in Tal-Mason this Court logically extended the meaning of "county jail" to include court-mandated pretrial confinement in a state mental institution due to pre trial incompetence, this Court properly declined to further stretch the interpretation of the statute. Hence, other than misplaced reliance on Tal-Mason, the Appellee has given this Court no

viable reason to broaden F.S. § 921.161 (1).

Moreover, Appellee cites to five (5) Fourth District Court of Appellee decisions, which are clearly in conflict with the decision in Toney, and claims that the Fourth District properly requires evidentiary hearings to determine if defendants are entitled to credit for time served in rehabilitation facilities. The Appellee also cites to Columbro v. State, 777 So. 2d 1208 (Fla. 5th DCA 2001), where the Fifth district also found that an evidentiary hearing was required to determine if a defendant is entitled to credit for time served in a drug treatment program.[1] However, that decision was issued prior to Toney. Again, Appellee has provide no viable reason to require an evidentiary hearing in such situations other than to argue that F.S. § 921.161 (1) should be expanded to allow discretion to award credit for time served in drug rehabilitation programs.

---

[1]Although the Fifth District has not specifically issued an opinion adopting the Second Districts opinion in Toney, the State would note that in Lownsbery v. State, 830 So. 2d 199 (Fla. 5th DCA 2002), and Snavely v. State, 884 So. 2d 416 (Fla. 5th DCA 2004) the Fifth District issued per curiam affirmances citing to Toney. In Lownsbery, the court cited to Dewitt v. State 818 So. 2d 692(Fla. 5th DCA 2002)(finding that a court has discretion to award credit for time served when the defendant is incarcerated in another state solely because of the Florida offense for which he or she is being sentenced), as well as Toney. Moreover, in Snavely, the Court issued a per curiam affirmance citing to Fisher v. State, 852 so. 2d 424 (Fla. 5th DCA 2003)(finding that Snavely was not entitled to credit for time served while on Community Control), and also cited to Toney.

In this case, the Fourth District Court of Appeals improperly found that the decision to award credit for time served in a drug rehabilitation program is discretionary. This Court must reverse the decision of the Fourth District Court of Appeals and approve of the Second District's decision in Toney as it is clearly in line with this Court's prior opinions in Pennington and Tal-Mason.

CONCLUSION

Based on the foregoing arguments and authorities cited therein, the State of Florida respectfully requests this Honorable Court to REVERSE the opinion of the Fourth District Court of Appeals and APPROVE the decision of the Second District Court of Appeals in Toney.

Respectfully Submitted,

CHARLES J. CRIST JR.,
Attorney General

CELIA TERENZIO
Assistant Attorney General
Bureau Chief, West Palm Beach
Florida Bar No. 656879

Melanie Dale Surber
Assistant Attorney General
Florida Bar Number 0168556
Office of the Attorney General
Department of Legal Affairs
1515 Flagler Avenue, Suite 900
West Palm Beach, Florida 33401
(561) 837-5000

CERTIFICATE OF SERVICE

I, Melanie Dale Surber, certify that a true and correct copy of the foregoing has been furnished by Courier to:, Bianca Liston, Esq., Clark, Robb, Mason, & Coulombe, 19 West Flagler Street, Suite 920, Biscayne Building, Miami Florida 33130, this ___ day of _____, 2004.

_____
Melanie Dale Surber

CERTIFICATE OF TYPE SIZE AND STYLE

In accordance with Fla. R. App. P. 9.210, the undersigned hereby certifies that the instant brief has been prepared with 12 point Courier New type, a font that is not proportionately spaced.

_____
Melanie Dale Surber
Assistant Attorney General