

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC05-1996

DAVID EVERETTE,

Petitioner,

-vs-

**THE STATE OF FLORIDA,
DEPARTMENT OF CHILDREN AND FAMILY SERVICES,**

Respondent.

ON PETITION FOR DISCRETIONARY REVIEW

AMENDED BRIEF OF PETITIONER ON JURISDICTION

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STATEMENT OF THE CASE AND FACTS

David Everette contracted meningitis shortly after his birth (A. 1).¹ Probably as the result of that disease, he suffers from moderate mental retardation, cerebral palsy, epilepsy and schizoaffective disorder (A. 1, 3). David Everette lived with his grandmother until she passed away, and then with an aunt until he was 16 (A. 1). His parents had seven other children and could not care for him because of his illness (A. 1). At age 16, he was placed in the care of the state (A. 1). Several years later, while living in a group home, David was involved in a fight over allowance money owed to him, during which he stabbed someone with a kitchen knife (A. 4-5).

Given David Everette's mental condition, the criminal case never progressed to trial. He was found not competent to stand trial and was committed under Chapter 916 to the department (A. 6-7). After the statutorily required two-year wait, the trial court dismissed the criminal charges pursuant to then-section 916.145² and committed Mr. Everette to the department under section 393.11 (A. 8-9). The court ordered that he be held in a secure facility (A. 9). He was placed in the Pathways facility in Miami.

Years later, in June 2004, the department filed its notice of intent to transfer Mr. Everett to a nonforensic residential setting (A. 11-12). The trial court notified the

¹The abbreviation AA.@ followed by a numeral indicates the page number in the appendix filed with Mr. Everette's response in the court below.

²Subsequently, the statute was amended. Section 916.145, Florida Statutes, now applies only to defendants with mental illness and requires a five-year wait. *See* ' 916.145, Fla. Stat. (2003). Section 916.303, Florida Statutes applies to defendants such as Mr. Everette with mental retardation and it retains the two-year waiting period. *See* ' 916.303(1), Fla. Stat. (2003).

department of its objection and ordered evaluations (A. 13-14).³ The Third District

Court of Appeals opinion explains what happened when Pathways moved:

In August 2004, Pathways was relocated from Miami, Florida to Marianna, Florida. . . . At the hearing, the trial court appointed two expert witnesses to evaluate Mr. Everette and directed the Department to transport Mr. Everette for the evaluations. The Department objected, arguing that pursuant to section 916.107(10), Florida Statutes, the County Sheriff is responsible for transporting Mr. Everette. The Court denied the Department's Motion to Order the County Sheriff to transport Mr. Everette for the evaluations, and ordered the Department to coordinate the evaluations, including scheduling and transporting Mr. Everette (Case No. 3D04-2324). The Court subsequently entered an Order to Comply with the Order to Transport (Case No. 3D04-2366). The Department seeks a writ of certiorari from both Orders.@

State v. Everette, 911 So. 2d 119, 119-20 (Fla. 3d DCA 2004).

The department named as respondents Mr. Everette and the State of Florida.⁴ The

³The Third DCA's opinion inaccurately reports that the evaluations were for an annual review. See *State v. Everette*, 911 So. 2d at 119. The purpose of the evaluations has no material impact on the legal analysis in this case.

⁴The State of Florida was presumably named because it was a party to the long-ago dismissed criminal case pursuant to the rule requiring all parties to the proceeding in the lower tribunal who are not named as petitioners shall be named as respondents.@ Fla. R.

Third DCA's opinion names the parties to that action and lists the attorneys appearing on behalf of those parties. *See id.* at 119. The department never served

or named as a respondent any entity in Miami-Dade County that functions as the sheriff's office in that county, and none appeared in this litigation. *See generally, Masson v. Miami-Dade County*, 738 So. 2d 431, 432 (Fla. 3d DCA 1999).

The Third DCA's opinion notes that section 916.107(10), Florida Statutes, makes the sheriff responsible for determining the most cost-effective means of transporting forensic clients. *See State v. Everette*, 911 So. 2d at 120. The Third DCA's opinion also quotes section 916.106(7), Florida Statutes, defining a forensic client as someone who is committed to the department pursuant to this chapter, that is, Chapter 916. *See id.* at 121. The court's opinion also notes that: Currently, section 916.303, Florida Statutes (2003), provides that if charges against an incompetent individual are dismissed, the department, the state attorney, or the defendant's attorney may ask the trial court to involuntarily commit the defendant pursuant to section 393.11, Florida Statutes. *Id.* at 120-21 (emphasis supplied).

Judge Ramirez, in dissent, saw the problem:

The basic problem with the majority's reliance on section

App. P. 100(b). The State of Florida made no appearance until specifically ordered to respond to the motion for rehearing.

916.107(10) is that this statute does not apply to Everette and has not applied to him since 1996, when the state dismissed the criminal charges pending against him. Chapter 916 applies to criminal *defendants*. Everette is no longer a criminal defendant. He is a person who is mentally retarded who was involuntarily committed pursuant to section 393.11, Florida Statutes (1996).@

Id. at 123 (emphasis in original). Judge Ramirez noted that nothing in chapter 393 dictates who pays transportation costs for persons involuntarily admitted to residential services. Nevertheless, the majority held that:

At the trial court departed from the essential requirements of law in placing the responsibility to transport Mr. David Everette from Marianna, Florida to Miami, Florida, for court-appointed expert evaluations on the Department of Children & Families. Section 916.107(10), Florida Statutes (2004), which governs transporting forensic clients, places the transportation responsibility on the Sheriff.@

Id. at 121. Judge Ramirez notes that, pursuant to this holding, a nonparty would be ordered to transport Everette without notice, a hearing, or opportunity to be heard.@

Id. at 123.

Undersigned counsel filed a timely motion for hearing in this case. That motion remained pending in the Third DCA for almost a year before being denied on September 22, 2005. Mr. Everette timely filed his notice to invoke this Court's discretionary jurisdiction to review this case.⁵

⁵The notice would have been due October 22, 2005, 30 days following rendition of the order denying the motion for rehearing. *See* Fla. R. App. P. 9.020(h) & 9.120(b). That date, however, was a Saturday, so the notice ordinarily would have been filed the next Monday, October 24, which was delayed by hurricane Wilma, until Thursday, October 27, 2005. *See In re Emergency Request to Extend Time Periods*, AOSC05-78.

SUMMARY OF ARGUMENT

The Third DCA's opinion in this case places the burden of transporting persons who are no longer criminal defendants on the sheriff's office without any notice or opportunity for sheriff's office to be heard. This decision both affects a class of constitutional officers (sheriffs) and directly conflicts with opinions from this Court and other District Courts of Appeal that parties affected by a decision are necessary parties, and that litigation cannot proceed without these necessary parties. Additionally, this Court should review this decision because it deprives mentally retarded persons committed to care of the state of many of their rights if they have been charged with a crime, even if those charges were dismissed years ago.

ARGUMENT

THE LOWER COURT'S DECISION EXPRESSLY AND DIRECTLY AFFECTS COUNTY SHERIFFS, A CLASS OF CONSTITUTIONAL OFFICERS. BECAUSE THE SHERIFF WAS DIRECTLY AFFECTED, THE SHERIFF WAS A NECESSARY PARTY. THE LOWER COURT'S DECISION EXPRESSLY AND DIRECTLY CONFLICTS WITH PRECEDENT FROM THIS COURT AND OTHER DISTRICT COURTS OF APPEAL REQUIRING NOTICE AND AN OPPORTUNITY TO BE HEARD BY NECESSARY PARTIES.

This Court has jurisdiction to exercise review over this case because the Third District Court of Appeal placed the responsibility of transporting persons such as David Everette on the county sheriffs. *See State v. Everette*, 911 So. 2d 119, 121 (Fla. 3d DCA 2004). Sheriffs are a class of constitutional officers. *See Ramer v.*

State, 530 So. 2d 915, 915-16 (Fla. 1988). Therefore, this Court has discretionary jurisdiction over this case.

This Court should exercise that discretion because the Third DCA's decision was made without the sheriff ever being made a party to the case. The Department of Children and Family Services (Adepartment@) brought this original proceeding for certiorari, naming Mr. Everette and the State of Florida as respondents, because they were the parties in the proceedings before the trial court. The department never served the sheriff or any entity performing that role in Miami-Dade County.

The Attorney General, when it responded to the motion for rehearing, represented the State of Florida, not the sheriff, and supported the department's position. Mr. Everette also did not represent the sheriff's interests. Mr. Everette's interest was in not being housed in the jail, which would likely result in him a deterioration of his mental capabilities. Such housing would also result in a violation of section 916.107(1)(a), Florida Statutes, which prohibits housing a person in jail more than fifteen days after signing of commitment order.

The sheriff, however, undoubtedly has financial and practical problems transporting persons all over the state from wherever the department has chosen to house them. This problem is especially acute because this under the Third DCA's opinion, this duty can last in perpetuity for the life of the person, even if that person is not, and has not been, a criminal defendant for many years. The sheriff's office never had an opportunity to be heard by the court before it handed down this opinion.

All persons materially interested in the subject matter of a suit and who would be directly affected by an adjudication of the controversy are necessary parties.[@] *W.F.S. Co. v. Anniston Nat'l Bank*, 190 So. 2d 300, 301 (Fla. 1939); *see also Amerada Hess Corp. v. Morgan*, 426 So. 2d 1122, 1125 (Fla. 1st DCA 1983). The sheriff's office was directly affected by the Third DCA's adjudication of this original proceeding and therefore was a necessary party. Nevertheless, the sheriff's office was never served nor represented in the District Court. This lack of notice and an opportunity to be heard directly and expressly conflicts with a long line of precedent from this Court and other District Courts of Appeal. A[T]his court has repeatedly held that persons whose interests will necessarily be affected by any decree that can be rendered in a cause are necessary and indispensable parties and that the court will not proceed without them.[@] *Cline v. Cline*, 134 So. 546, 548-49 (Fla. 1931); *see also Heisler v. Florida Mortgage Title & Bonding Co.*, 142 So. 2d 242, 247 (Fla. 1932). A person whose rights and interests are to be affected by a decree and whose actions with reference to the subject matter of litigation are to be controlled by a decree is a necessary party to the action and the trial court cannot proceed without that person.[@] *Blue Dolphin Fiberglass Pools, Inc. v. Swim Indus. Corp.*, 597 So. 2d 808, 809 (Fla. 2d DCA 1992); *see also Tobin v. Vasey*, 843 So. 2d 376, 377 (Fla. 2d DCA 2003).

This Court should review this case, not only because of the impact on sheriffs, but because of the importance of the treatment of mentally retarded persons. Specifically, the question this case raises is whether mentally retarded persons who

were once accused of a crime and placed in a secured facility are forever to be treated like criminals. Persons committed under chapter 916, the forensic mental health chapter, have significantly curtailed rights as compared to those committed under the civil mental health statutes, chapter 393 and 394. A civil mental health commitment requires that the person be held in the least restrictive conditions possible; a forensic commitment does not. *Compare* ' ' 393.13(3)(c) & 394.459(2)(b), Fla. Stat. (2004) *with* ' 916.107(2), Fla. Stat. (2004) (virtually identical to provision in chapter 394, except omitting the subsection on least restrictive treatment). Civil mental health patients have much greater protection against the use of restraints or isolation than forensic clients who are, after all, detained pending a criminal trial. *Compare* ' ' 393.13(4)(i) & 394.459(4)(b), Fla. Stat. (2004) *with* ' 916.107(4), Fla. Stat. (2004) (same language, but omitting the subsection on use of restraints and isolation).

Liberties within the institutions are also quite different. Civil mental health patients have much greater rights to their own property than forensic clients. *Compare* ' ' 393.13(4)(b) & 394.459(6), Fla. Stat. (2004) *with* ' 916.107(6), Fla. Stat. (2004). Civil mental health patients also have greater visitation rights than forensic clients. *Compare* ' ' 393.13(4)(a)3. & 394.459(5)(c), Fla. Stat. (2004) *with* ' 916.107(5), Fla. Stat. (2004) (again copying language from chapter 394 but omitting right of immediate access to family, guardians and attorneys).

Additionally, the confidentiality of clinical records is different. Civil mental health patients have a right to access to their own records that forensic clients do not

have. *Compare* ' ' 393.13(4)(j)4., 394.4615(10), Fla. Stat. (2004) *with* ' 916.107(8), Fla. Stat. (2004). Conversely, forensic clients=records may be provided to many agencies and persons without court order where no similar exception to confidentiality applies to civil mental health patients=records. *Compare* ' 916.107(8)(b), Fla. Stat. (2004) *with* ' ' 393.13(4)(j), 394.4615, Fla. Stat. (2004).

Section 916.107 is a long, comprehensive section entitled: **Rights of forensic clients.** ' 916.107, Fla. Stat. (2004). Subsection (10) covering transportation is but one small part of that statute. If David Everette is a **forensic client** for transportation issues, he is a **forensic client** for all other issues and may be forever treated as a criminal awaiting trial, regardless that all criminal charges were dismissed years ago. The Third DCA's holding cannot be limited to transportation. Because **forensic clients** have fewer rights than civil mental health patients, the Third DCA relegated David Everette and other persons with now-dismissed criminal charges who are placed in a secured facility to a second-class status within the mental health system.

CONCLUSION

This Court should grant review in this case both to give the sheriff an opportunity to be heard in this case and to avoid depriving Mr. Everette and other persons with dismissed criminal charges of the rights of all other civilly committed persons.

CERTIFICATES

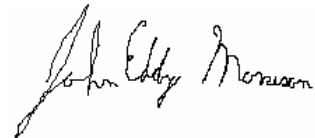
I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered by mail to Amy McKeever Toman, Senior Attorney, Sunland Center, 3700 Williams Drive, Marianna, Florida 32446, and by courier to Annette M. Lizardo, Assistant Attorney General, 444 Brickell Avenue, Suite 650, Miami, Florida 33131 this 29th day of November 2005.

I HEREBY CERTIFY that this brief is printed in 14 point Times New Roman.

Respectfully submitted,

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BY: _____
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A handwritten signature in black ink that reads "John Eddy Morrison". The signature is written in a cursive style with a large initial "J" and "M".

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APPENDIX

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