IN THE SUPREME COURT OF FLORIDA

CASE NO. SC05-1996

Lower Tribunal Case Nos. 3D04-2324, 3D04-2366

DAVID EVERETTE,

Petitioner,

-vs-

THE FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES (n/k/a AGENCY FOR PERSONS WITH DISABILITIES), AND THE STATE OF FLORIDA,

Respondent(s).

ON PETITION FOR DISCRETIONARY REVIEW

BRIEF OF RESPONDENT ON JURISDICTION

CHARLES J. CRIST, JR.
Attorney General

RICHARD L. POLIN
Criminal Appeals Bureau Chief, Miami
Florida Bar Number 0230987

ANNETTE M. LIZARDO
Assistant Attorney General
Florida Bar Number 0351600

Office of the Attorney General
Department of Legal Affairs
444 Brickell Avenue, Suite 650
Miami, Florida 33131
Tel.: (305) 377-5441
Fax.: (305) 377-5655

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STATEMENT OF THE CASE AND FACTS

On September 13, 2004, the Department of Children and Family Services ("DCF") filed a Petition for Writ of Certiorari and Stay of lower court proceedings with the Third District Court of Appeal ("Third District"), seeking to quash the trial court's orders directing the DCF to transport David Everette ("Petitioner") from Marianna to Miami, Florida, and denying its motion to order the county sheriff to transport Petitioner. The claims arose after the DCF had notified the court of its intent to transfer Petitioner from his secure residential placement to a non-secure placement,[1] the court's objection thereto, denial of the DCF's motion to transfer jurisdiction to the Fourteenth Judicial Circuit, and its subsequent court-ordered evaluations. Meanwhile, Petitioner had been moved to Marianna due to the relocation of his secure residential placement. In its response to the petition, counsel for Petitioner argued that neither the sheriff nor the Miami-Dade County Department of Corrections had an obligation to transport him.

On October 27, 2004, the Third District granted certiorari, quashed the trial court's orders, and remanded the matter, instructing the trial court to order the county sheriff to arrange for Petitioner's transportation, if the court deemed the transport necessary. *Florida Dep't of Children and Families v. Everette*, 911 So.

[1] A defendant may not be transported from a designated secure (forensic) facility to a non-secure (civil) facility without first notifying the court and all parties, thirty days before the proposed transfer. *See* § 916.302(2)(d), Fla. Stat.

2d 119 (Fla. 3d DCA 2005). The court noted that Chapter 393, Florida Statutes (Developmental Disabilities), does not address the issue of transportation. However, relying in part on *Palm Beach County Sheriff v. State*, 854 So. 2d 278 (Fla. 4th DCA 2003), it found that chapter 916, Florida Statutes, was applicable to the instant matter. The dissent did not find the statute applicable to Petitioner, and took issue with the fact that the sheriff was not made a party to the litigation.

Petitioner then filed a motion for rehearing and to certify question, based on the issues raised in the dissenting opinion. The Office of the Attorney General ("Respondent") was ordered to respond as to why the relief sought by Petitioner on rehearing should not be granted. In sum, Respondent argued in response that the record demonstrated Petitioner was committed from the Florida State Hospital into the DCF's custody for secure residential placement at the time his criminal charges were dismissed. The dismissal of the charges did not automatically result in a change of placement; in other words, when the charges were dropped, Petitioner did not automatically become entitled to a non-secure placement.

Respondent further argued that chapter 394 (Mental Health/ "Baker Act"), Florida Statutes, is instructive on the issue of transportation of the civilly committed. Chapter 394, Florida Statutes, provides for the transportation of the (civil) mentally ill by the designated law enforcement agency for the county, or any medical transport service or private transport company that the county may

have contracted with for these services.[2] Therefore, whether a forensic client or a civilly committed person, whether in Marianna or Miami, the responsibility for Petitioner's transportation lies with the designated law enforcement agency within the county having jurisdiction, or any private provider with which the county may have contracted.[3]

On September 22, 2005, after considering the responses of the parties thereto, the Third District denied the motion for rehearing. The court's mandate issued October 10, 2005. Petitioner then filed the instant petition for discretionary review.

SUMMARY OF THE ARGUMENT

While this Court has discretionary review jurisdiction to review conflicts which affect a class of constitutional officers, the Court should decline to exercise such review because the Third District's opinion does not affect the county sheriff by adding to, or otherwise changing, any already-existing duty. The decision merely reaffirms the sheriff's statutory obligation, pursuant to chapter 916, Fla. Stat., to arrange for the transportation of forensic clients. This Court's review

[2] Respondent relied on section 394.462 (Transportation), Fla. Stat., and, for guidance, on the following opinions of the Attorney General: Op. Att'y Gen. Fla. 74-108 (1974); 85-39 (1985); 85-81 (1985); and 2001-73 (2001).

[3] *Id*. The issue of temporary housing and transportation to alternate receiving facilities in other counties is addressed in the Attorney General's Opinion No. 85-81 (1985). Therein, the responsibility for transporting an individual for involuntary examination is found to remain with the county-designated, law enforcement agency, or other party with which it has contracted.

would merely serve to reiterate that the Legislature did not expressly provide for the transportation of those committed under chapter 393, Fla. Stat., in said statute.

In the alternative, there is no express or direct conflict on the same question of law between the Third District's decision and any of the cases cited by Petitioner. The cases cited by Petitioner, discussed *infra*, support the general premise that a party in interest is a necessary party. The issue of the sheriff's standing in interest as a necessary party to the lower court proceedings was raised for the first time by the dissent. As such, the argument has been waived, and the claim cannot be said to confer jurisdiction on this Court.

ARGUMENT

THE DECISION OF THE THIRD DISTRICT DOES NOT AFFECT THE ALREADY-EXISTING OBLIGATION OF THE SHERIFF TO TRANSPORT FORENSIC CLIENTS AND THOSE CIVILLY COMMITTED; NOR DOES IT EXPRESSLY AND DIRECTLY CONFLICT WITH ANY CASES CITED BY PETITIONER ON THE SAME QUESTION OF LAW.

Petitioner seeks the discretionary jurisdiction of this Court on a two-fold basis. First, that the Third District's opinion expressly affects a class of constitutional or state officers, namely, county sheriffs; and, second, the opinion expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law. Fla. R. App. P. 9.030(a)(2)(A)(iii)-(iv). *See also* Art. V, § 3(b)(3)-(4), Fla. Const. Respondent respectfully submits that this Court should decline to exercise its discretionary

jurisdiction to review the Third District's decision because it affects the county sheriffs, as the opinion merely interprets and applies an already-existing, statutory obligation of the sheriffs. Furthermore, the Court does not have discretionary review jurisdiction on the second ground raised by Petitioner, as the opinion itself does not expressly or directly conflict with a decision of another district court of appeal or of the supreme court on the same question of law.

Foremost, Article V, section 3(b)(3), of the Florida Constitution allows this Court to take jurisdiction of a cause in which the district court opinion "expressly affects a class of constitutional officers." The term "expressly," in this context, means within the written district court opinion. *Jenkins v. State*, 385 So. 2d 1356 (Fla. 1980). The majority opinion merely interprets and applies the sheriffs' already-existing, statutory obligation to transport forensic clients pursuant to chapter 916, Fla. Stat. *See Palm Beach County Sheriff, supra*; *Facyson v. Jenne*, 821 So. 2d 1169 (Fla. 4th DCA 2002); *cf. Dep't of Corrections v. Grubbs*, 884 So. 2d 1147 (Fla. 2d DCA 2004). Furthermore, the same obligation to transport is imposed on the sheriffs for those civilly committed pursuant to chapter 394, Fla. Stat. The sheriff(s) are, therefore, not affected in any way by the imposition of a new or changed duty. Their statutory duty to transport is merely recognized by the Third District's decision. *See Spradley v. State*, 293 So. 2d 697 (Fla. 1974). Customarily, upon motion by one of the parties to the litigation, the sheriff's office

is served with an order to transport a committed person for a court appearance or evaluation, and does not thereby become a party to the underlying action, or make a court appearance itself, unless objecting thereto. *See In re Kreppo*, 573 So. 2d 140, 141 (Fla. 1st DCA 1991). In the case *sub judice*, the sheriff did not appeal or move for joinder as an appellee. *See Premier Indus. v. Mead*, 595 So. 2d 122, 123-24 (Fla. 1st DCA 1992).

Nevertheless, the Public Defender did not, and does not, have the authority to represent the sheriff. See § 27.51, Fla. Stat. (2004). In essence, counsel for Petitioner would have the sheriff appear as a party merely to align itself with Petitioner's position in support of the trial court's denial of the motion to have law enforcement transport him back to Miami. However, it is unclear how the order to have law enforcement, rather than the DCF, arrange for Petitioner's transportation negatively affects Petitioner.

In conclusion, the claim that the sheriff was a necessary party was not previously raised by Petitioner before the Third District ruled on the DCF's petition, but only alluded to in the motion for rehearing based on the dissenting opinion. As such, the claim cannot be the basis to invoke this Court's discretionary review jurisdiction.

As for Petitioner's claim that the Third District's decision expressly and directly conflicts with that of another district court of appeal or of this Court,

within the four-corners of the opinion, there is no such conflict on the same question of law, nor has Petitioner alleged as much. This Court's discretionary review is limited to the facts contained within the four-corners of the lower court decision. *See Reaves v. State*, 485 So. 2d 829 (Fla. 1986). "Conflict between decisions must be express and direct, *i.e.*, it must appear within the four corners of the majority decision. Neither a dissenting opinion nor the record itself can be used to establish jurisdiction." *Id.* at 830 (citing to *Jenkins*, 385 So. 2d at 1359). *Accord Dept. of Health and Rehabilitative Services v. National Adoption Counseling Service, Inc.*, 498 So. 2d 888, 889 (Fla. 1986) (the court rejected "inherent" or "implied" conflicts).

In the instant case, Petitioner solely relies, as he did on rehearing before the Third District, on issues first raised by the dissent. Consistent with the above guidelines of discretionary review, this Court cannot establish jurisdiction based on a dissenting opinion. Specifically, Petitioner alleges that the Third District's opinion conflicts with "precedent from this court and other district courts of appeal requiring notice and an opportunity to be heard by necessary parties." (Brief, p. 5). Petitioner now argues that the sheriff was a necessary party to the lower court proceedings and should have been served and represented before the trial court. Such argument is considered waived at this juncture. *Gold, Vann & White, P.A. v.*

Friedenstab, M.D., 831 So. 2d 692 (Fla. 4th DCA 2002), *rev. denied*, 874 So. 2d 1191 (Fla. 2004).

Petitioner relies on *Masson v. Miami-Dade County*, 738 So. 2d 431, 432 (Fla. 3d DCA 1999), for the proposition that the sheriff was not served or named as a respondent. (Brief, p. 3). However, the court in *Masson* merely found that the county sheriff may appoint special deputies to perform certain functions, and not all officers or deputies so appointed are entitled to the same grade of benefits. *See also* § 30.24, Fla. Stat. There is no express or direct conflict between the Third District's opinion and *Masson*. All other cases cited by Petitioner in support of this argument merely stand for the general premise that a party who is affected by a decree is indispensable and the litigation should not proceed without them. However, none are in express or direct conflict with the Third District's opinion on the same question of law – whether law enforcement has the responsibility to transport a person committed pursuant to chapters 916 and 393, Florida Statutes.

The cases cited by Petitioner resolve different legal issues, distinguishable from the matter before the Third District. Of the cases cited by Petitioner, *Anniston*, *Amerada, Cline*, and *Heisler*, are factually distinguishable as each of those cases involved parties with real property interests. *See generally, W.F.S. Co. v. Anniston Nat'l Bank*, 191 So. 2d 300, 301 (Fla. 1939) [corrected cite] (order granting appellee corporation's motion to impound any proceeds from foreclosure

sale on property pending resolution of related fraud suit was affirmed because parties in the fraud suit were considered necessary but unnamed parties in the foreclosure action); *cf. Amerada Hess Corp. v. Morgan*, 426 So. 2d 1122, 1125 (Fla. 1st DCA 1983) (court affirmed judgment that quieted title in appellees and awarded them money damages; held judgment was not void for failure to join an indispensable party); *Cline v. Cline*, 134 So. 546, 548-49 (Fla. 1931) (court reversed order that denied claimants' petition to intervene, and directed claimants be made parties to the real estate partition action); *cf. Heisler v. Florida Mortgage Title and Bonding Co.*, 142 So. 242, 247 (Fla. 1932) [corrected cite] (The record did not reveal that complainants in injunction suits had interest in the subject matter of the litigation; they had no interest adverse to those of appellant, and therefore, were not necessary parties to the suit). The decisions of *Blue Dolphin* and *Tobin* are also legally distinguishable. *Blue Dolphin Fiberglass Pools, Inc. v. Swim Indus. Corp*., 597 So. 2d 808, 809 (Fla. 2d DCA 1992) (since trial court did not have personal jurisdiction over appellant corporation when injunction order was entered, the trial court had no power to enjoin it from any act; injunction and order declaring stock transfer void were reversed because neither appellant was a party to the original action, thus trial court lacked jurisdiction); *Tobin v. Vasey*, 843 So. 2d 376, 377 (Fla. 2d DCA 2003) (Appellant, a named defendant in the suit, against whom an injunction was entered, was a necessary party to action; because

he objected to entry of injunction, the court was required to make required findings supporting injunctive relief, and it erred in failing to do so). Unlike the present case, where the trial court could have ordered the sheriff to transport Petitioner pursuant to statute, the court in *Blue Dolphin* had no jurisdiction to enjoin an act of the appellant corporation. Petitioner has cited no decisions which expressly or directly conflict with the Third District's reasoning and holding that the sheriff, or other county-designated transportation service, rather than the DCF, is responsible for transporting committed persons.

CONCLUSION

Based upon the arguments and authorities cited herein, this Court should decline to accept the instant case for review.

Respectfully submitted,

CHARLES J. CRIST, JR.
Attorney General

RICHARD L. POLIN
Criminal Appeals Bureau Chief, Miami
Florida Bar Number 0230987

ANNETTE M. LIZARDO
Assistant Attorney General
Florida Bar Number 0351600

Office of the Attorney General
Department of Legal Affairs
444 Brickell Ave., Suite 650
Miami, Florida 33131
Tel.: (305) 377-5441

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief of Respondent on Jurisdiction was mailed this ____ day of January 2006, to counsel for Petitioner, John E. Morrison, Assistant Public Defender, Eleventh Judicial Circuit of Florida, 1320 N.W. 14th Street, Miami, Florida 33125, and counsel for co-Respondent, Amy McKeever Toman, Senior Attorney, Agency for Persons with Disabilities, 3700 Williams Drive, Marianna, Florida 32446.

_____
ANNETTE M. LIZARDO
Assistant Attorney General

CERTIFICATION OF COMPLIANCE WITH FONT AND TYPE SIZE

I HEREBY CERTIFY that the font and type size in this Brief of Respondent on Jurisdiction comply with the requirements of rule 9.210, Florida Rules of Appellate Procedure, in that Times New Roman 14-point font was utilized.

_____
ANNETTE M. LIZARDO
Assistant Attorney General