IN THE SUPREME COURT OF FLORIDA

CASE NO. SC06-1764

MICHAEL WARD,

Appellant,

-vs-

STATE OF FLORIDA,

Appellee.

ON PETITION FOR DISCRETIONARY REVIEW
FROM THE DISTRICT COURT OF APPEAL OF
FLORIDA, THIRD DISTRICT

REPLY BRIEF OF PETITIONER ON THE MERITS

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INTRODUCTION

This cause is before the Court on petition for discretionary review. The parties will be referred to as they stood in the District Court. References to AA@ refer to the Appendices submitted with Petitioner=s Initial Brief.

SUMMARY OF ARGUMENT

As originally enacted, the Ryce Act applied to past offenders in custody and to persons Aconvicted of a sexually violent offense in the future.@ Less than six months after it became effective, the applicability provision of the statute was amended, by inserting the words Aand sentenced to total confinement,@ so that it applied to persons Aconvicted of a sexually violent offense and sentenced to total confinement in the future.@

Notwithstanding the amendment, the words Ain the future@ continued to modify Aconvicted of a sexually violent offense@ in the amended statute as in the original. Nothing indicates a legislative intent to reverse the meaning of the original statutory language and now have the statute apply to all persons convicted of a sexually violent offense in the past, regardless of whether or not they were in custody with the meaning of the original scope provision. The intent was to contract the statute by adding an additional requirement, not

to expand it, as is apparent from the lack of inquiry as to the cost of the supposed expansion.

ARGUMENT

I

THE ACT APPLIES ONLY TO THOSE WHO COMMIT A SEXUALLY VIOLENT OFFENSE AFTER JANUARY 1, 1999, OR WHO WERE IN CUSTODY ON JANUARY 1, 1999

The State declines to address appellant=s argument that the meaning of the current scope provision of the Jimmy Ryce Act, Section 394.925, Florida Statutes (2000), is to be determined by examining the prior scope provision (Section 916.45, Florida Statutes (1998 Supp.), the changes made by the 1999 amendment, and the historical efforts to limit the cost of the civil commitment program for sexually violent predators by limiting its scope.

Instead, the State argues that, looking at the present scope provision as if it had been written on a blank slate, by someone who was in the dark about the prior scope provision and the prior efforts to control the cost of the Jimmy Ryce program by limiting its scope, and by someone who was indifferent to the cost of the program, one might think that anyone sentenced to total confinement could be civilly committed if they had previously committed a sexually violent offense.

As is indicated by Petitioner=s Initial Brief and amply demonstrated by the able dissenting opinion of Chief Judge Cope below, the present scope provision was not written on a blank slate, and is to be construed as it would have been understood by legislators who had just adopted the original scope provision the year before, who would have been looking to see what changes were being proposed. It suffices to say that, if the legislature wanted to enlarge the scope of the Act, the legislature well knew how to rewrite the scope provision, and it is not to be assumed that the legislature intended to do that by adding the phase Aand sentenced to total confinement,@ thus adding a new requirement and narrowing the scope of the Act.

The State purports to find support for its argument in cases that addressed the applicability of the Act to persons who were in custody on January 1, 1999, and who had previously been convicted of sexually violent offenses, but who were confined on January 1, 1999 for offenses that were not sexually violent offenses. *See Hale v. State*, 891 So. 2d 517 (Fla. 2004) (confinement on January 1, 1999 for any offense is sufficient). Mr. Ward was not in any custody at all on January 1, 1999, and has not since then been convicted of any sexually violent offense; the issue here is whether the Act

applies to him, not whether it would be applicable if he had been in custody on January 1, 1999. Contrary to the State=s Brief (at 6), there is no claim here that the Act applies only to persons confined for a sexually violent offense; *Hale* holds to the contrary. Instead, the claim is that, where petitioner was not in any custody at all on January 1, 1999, the Act applies to him only if he is convicted of a sexual violent offense after that date. The provision for civil commitment evaluations of persons in about to be released from custody for any offense apply to persons who were in custody on January 1, 1999, not to persons like Mr. Ward who were not in any custody on January 1, 1999 and who were thereafter convicted and placed in custody for offenses that are not sexually violent offenses, but not convicted of any sexually violent offense.

The State also relies on various provisions of the statute that it believes would apply to Mr. Ward, and to others like him, if the Act were applicable, but that the State claims are meaningless if the Act does not apply to persons like Mr. Ward. These claims are mistaken.

Thus, a person who has committed a sexually violent offense in another state can be civilly committed in Florida if he was in custody in Florida on January 1, 1999, but not

otherwise, unless he is thereafter convicted of a sexually violent offense.

If a person was in custody on January 1, 1999 for a sexually violent offense, or was convicted of a sexually violent offense after January 1, 1999 and placed in custody, and was thereafter conditionally released under supervision, and then returned to custody, he could be civilly committed prior to any further release, and information as to his supervision while on conditional release would have to be provided.

The context in which the present scope provision was enacted is controlling. The statute originally provided:

> Sections 916.31-916.49 apply to all persons currently in custody who have been convicted of a sexually violent offense . . . as well as to all persons convicted of a sexually violent offense in the future.

Section 916.45, Florida Statutes (1998 Supp.). In the original statute Aconvicted of a sexually violent offense@ was the only antecedent of Ain the future@ and was undoubtedly modified by that phrase.

The legislature thereafter inserted the words Aand sentenced to total confinement.@ Nothing indicates that the legislature intended to change the meaning of the phrase in the original statute Aconvicted of a sexually violent offense

in the future.@ Nothing indicates the legislature intended to turn the statute on its head by now making it applicable to all persons **convicted of a sexually violent offense in the PAST**!

The legislature did not intend to reverse the meaning of the statute. Plainly the legislature meant Aconvicted of a sexually violent offense in the future@ and Asentenced to total confinement in the future.@ To avoid repetition, the draftsman inserted the Atotal confinement@ language before the phrase Ain the future.@ As amended, the statute referred to Aall persons convicted of a sexually violent offense and sentenced to total confinement in the future.@ The claim that Ain the future@ now modifies only Asentenced to total confinement@ and no longer modifies Aconvicted of a sexually violent offense,@ because the Atotal confinement@ language has been squeezed into the original phrase (Aconvicted of a sexually violent offense in the future@) would make a supposed grammatical rule trump the intent of the legislature and the constitutional provisions as to how new laws are enacted.

Nothing suggests that, less than six months after the statute became effective, the legislature decided to vastly increase the scope of the recently approved Jimmy Ryce Act program, by including those who had just been just excluded

for budgetary reasons, those who had committed a sexually violent offense in the past but who were not in custody, and without appropriating any additional funds. Only the clearest indiction of legislative intent would suffice to support the conclusion that the legislature narrowed a very broad and costly bill to manageable scope and then, less than six months later, while carrying forward the original language, broadened it again by changing the meaning of the original language, but without appropriating any additional funds or even assessing the increased cost. The legislature may have power to act in such an irrational fashion, but the legislature must manifest its intent to do so. It is impossible to believe that the legislature intended to broaden the scope of the statute but did not order or obtain a new Economic Impact Statement.

The purpose of the new language, and the intent of the legislature in adding it, was to exclude from the operation of the involuntary civil commitment program under the Ryce Act persons who been convicted of new sexual offenses for which they received non-state prison sentences, *i.e.*, sentences of 364 days in jail or less, requiring confinement in the county jail. The Atotal confinement@ language was intended to contract the commitment program, not to expand it. The statute applies only to those who were in custody on January

1, 1999, and to those thereafter convicted of sexually violent offenses. Mr. Ward is not among them.

CONCLUSION

The Court should quash the District Court=s ruling and grant the writ of prohibition.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing brief was delivered by mail to Sue-Ellen Kenny, Assistant Attorney General, Office of the Attorney General, 1515 North Flagler Drive, Suite 900, West Palm Beach, FL 33401 on February 13, 2007.

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ROY A. HEIMLICH
Assistant Public Defender

CERTIFICATE OF COMPLIANCE

I hereby certify that the type font in this brief is Courier New 12 point, except that the headings are set in Times New Roman 14 point.

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