

IN THE SUPREME COURT OF FLORIDA

ROBERT LEE ROWLES,)	
)	
Petitioner,)	Florida Supreme Court Case No.
)	
vs.)	Fifth DCA Case No. 5D06-2622
)	
STATE OF FLORIDA,)	
)	
Respondent.)	
_____)	

ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

PETITIONER’S BRIEF ON JURISDICTION

JAMES S. PURDY
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

ROSE M. LEVERING
ASSISTANT PUBLIC DEFENDER
FLORIDA BAR NO. 480665
444 Seabreeze Blvd., , Suite210
Daytona Beach, FL 32118
Phone (386) 252-3367
COUNSEL FOR PETITIONER

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STATEMENT OF CASE AND FACTS

On January 31, 1996, the Appellant was sentenced to 97 months in the Department of Corrections (DOC) for the offense of committing a lewd and lascivious act upon a child. The Appellant subsequently filed for re-sentencing, claiming his sentence was illegal under *Heggs v. State*, 759 So.2d 620 (Fla.2000). As a result, on May 26, 2000, the Appellant was resentedenced to 46.6 months DOC, followed by five years probation with 113 days of jail credit. (R 138-139, Vol. I)

Following this resentencing hearing, the Appellant was held in the Brevard County Jail until June 8, 2000. He was then transferred to the Martin Treatment Center under the custody of the Department of Children and Families (DCF) to be

evaluated under the Jimmy Ryce Act (or, “Sexually Violent Predators Act,” or “SVP Act,” Sections 394.910, et. seq., Florida Statutes). (R 139, Vol. I) On June 13, 2000, the State filed a “Petition for Civil Commitment as a Sexually Violent Predator” against the Respondent. (R 61-83; 139, Vol. 1)

During the course of the proceedings which culminated in a civil commitment trial in 2006, the Petitioner twice moved to dismiss the petition, and also renewed the last motion to dismiss at trial. Each time he argued that the circuit court lacked jurisdiction because he was not in “lawful custody” when the petition was filed, because his legal sentence expired long before the resentencing date. (R 112-125, Vol. I; 236-241, Vol. II; 4-17, Vol. III) The motions were denied. (R 138-142, Vol. I; 244, Vol. II; T16-17, Vol. III; T 106-107, Vol. III) The court acknowledged that, per the calculations of the Department of Corrections, which were made after the resentencing hearing, the Petitioner’s earliest release date would have been March 9, 1999, over a year before the resentencing hearing. (R 140, Vol. I)

After a jury trial, the Petitioner was adjudicated a sexually violent predator and committed to the custody of the Department of Children and Families. (T 423, Vol. V; R 288, Vol. I)

The Petitioner appealed, raising two points. Petitioner argued that the court erred by refusing to dismiss the civil commitment petition because the Petitioner was not in legal custody when it was filed. He also raised the issue that certain evidence (i.e., the psychological evaluations) used at trial should have been excluded because it had been obtained during his unlawful detention.

On May 4, 2006, the Fifth District Court of Appeal issued a per curiam decision affirming the decision below. *Rowles v. State*, __So.2d__, 32 Fla. L. Weekly D1174 (Fla. 5th DCA May 6, 2006). In doing so, the court cited, *inter alia*, *Moore v. State*, 909 So. 2d 500 (Fla. 5th DCA 2005), as controlling authority. *Moore* is currently pending review in the Florida Supreme Court. Proceedings therein have been stayed pending this Court's disposition of *Larimore v. State*, 917 So. 2d 354 (Fla. 1st DCA 2005), *rev. gr.* 935 So. 2d 1220 (Fla. 2006) (SC06-139). *Larimore* is before the Court based on certified conflict with *Gordon v. Regier*, 839 So.2d 715 (Fla. 2d DCA 2003) *rev. den.* 890 So. 2d 1115 (Fla. 2004). *Moore* expressly and directly conflicts with *Gordon*.

Petitioner filed his notice of intent to invoke this Court's jurisdiction on June 4, 2006.

SUMMARY OF ARGUMENT

The decision in this case cited *Moore v. State*, 909 So. 2d 500 (Fla. 5th DCA 2005) as controlling authority. That case is now pending in this Court. (Case No. SC05-1779)

This Court has stayed proceedings in *Moore*, pending this Court's disposition of *Larimore v. State*, 917 So. 2d 354 (Fla. 1st DCA 2005), *rev. gr.* 935 So. 2d 1220 (Fla. 2006) (SC06-139). *Larimore* is before the Court based on certified conflict with *Gordon v. Regier*, 839 So.2d 715 (Fla. 2d DCA 2003) *rev. den.* 890 So. 2d 1115 (Fla. 2004). *Moore* expressly and directly conflicts with *Gordon*.

ARGUMENT

THE DECISION IN THIS CASE CITES **MOORE V. STATE**, 909 So. 2500 (FLA. 5th DCA 2005), WHICH IS CURRENTLY PENDING BEFORE THIS COURT, AS CONTROLLING AUTHORITY.

In *Jollie v. State*, 405 So. 2d 418 (Fla. 1981), this Court held that similarly situated litigants should have similar avenues of review in the Florida court system. The authority relied on by the Fifth District Court of Appeal is currently pending before this Court. The decision in this case cited *Moore v. State*, 909 So. 2d 500 (Fla. 5th DCA 2005), as controlling authority. That case is now pending in this Court in Case No. SC05-1779. The court in *Moore* found, in essence, that the “in custody” requirement of the Sexually Violent Predator Act (SVP Act) was not jurisdictional. The court held that the SVP Act applied to a person who had been released from custody, disagreeing with the Second District’s opinion in *Gordon v. Regier*, 839 So.2d 715 (Fla. 2d DCA 2003), *rev. den.* 890 So. 2d 1115 (Fla. 2004). Petitioner raised a similar issue, arguing that the trial court was without jurisdiction to hear the SVP petition filed against him because he was not in “lawful” custody.

This Court has stayed proceedings in *Moore*, pending this Court’s disposition of *Larimore v. State*, 917 So. 2d 354 (Fla. 1st DCA 2005), *rev. gr.* 935

So. 2d 1220 (Fla. 2006) (SC06-139). *Larimore* is before the Court based on certified conflict with *Gordon*, 839 So.2d 715. As stated, *Moore* expressly and directly conflicts with *Gordon*.

Pursuant to the procedure outlined in *Jollie*, this Court should take jurisdiction.

CONCLUSION

This Court has discretionary jurisdiction to review the decision below and should exercise that jurisdiction to consider the merits of Petitioner's argument.

Respectfully submitted,

JAMES S. PURDY
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

ROSE M. LEVERING
ASSISTANT PUBLIC DEFENDER
FLORIDA BAR NO. 480665
444 Seabreeze Blvd., , Suite210
Daytona Beach, FL 32118
Phone (386) 252-3367
COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of the foregoing has been served upon The Honorable Bill McCollum, Attorney General, 444 Seabreeze Boulevard, 5th Floor, Daytona Beach, FL 32118, via his basket at the Fifth District Court of Appeal; and mailed to Robert Lee Rowles, Inmate No. 042076, Florida Civil Commitment Center, 13613 S. E. Highway # 70, Arcadia, Florida 34266, on this _____ day of June, 2007.

ROSE M. LEVERING
ASSISTANT PUBLIC DEFENDER

CERTIFICATE OF FONT COMPLIANCE

I CERTIFY that the size type and font used in the foregoing document is 14 Point Times New Roman.

ROSE M. LEVERING
Assistant Public Defender

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Appendix to Petitioner’s Brief on Jurisdiction