IN THE SUPREME COURT OF FLORIDA
Case No. SC09-1181

PUBLIC DEFENDER,
ELEVENTH JUDICIAL CIRCUIT OF FLORIDA,

Petitioner,

v.

THE STATE OF FLORIDA,

Respondent.

BRIEF OF RESPONDENT ON JURISDICTION

On Petition for Review from the Third District Court of Appeal
Case Nos. 3D08-2272 & 3D08-2537

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STATEMENT OF THE CASE AND FACTS

The Third District reversed a trial court order that permitted Petitioner, the Public Defender for Florida's Eleventh Judicial Circuit ("PD -11"), to decline representation in all future third-degree felony cases. State v. Pub. Defender, Eleventh Judicial Circuit, 34 Fla. L. Weekly D963, D965 (Fla. 3d DCA May 13, 2009) [hereinafter Public Defender]. The facts relevant to the question of this Court's jurisdiction are fully set out in the Third District's decision and need not be restated here.

SUMMARY OF ARGUMENT

The Third District's decision does not meet either of the jurisdictional thresholds the Petitioner asserts. First, the decision directly affects only a constitutional officer, PD-11, whose case management structure is unique. The decision merely applies statutory authority and caselaw of this Court to this unique structure to determine whether PD-11 presented a sufficient basis for the massive withdrawal of its attorneys from thousands of felony cases. Although the decision relates to public defenders, it does not clearly and directly affect a "class" of officers, as this Court has defined that term. Second, the decision is wholly consistent with and expressly follows decisions of this Court, such that express and direct conflict does not exist.

Even if this Court determines that one of the constitutional bases for jurisdiction is met, it should not exercise its discretionary review. Although the issues of court funding and the criminal justice system are critical matters, the Third District's decision did not ultimately resolve them. At its core, this case is simply about the failure of PD-11 to carry its burden of showing that it was entitled to the unprecedented court order at issue. PD-11 failed to show prejudice to its clients' constitutional rights as to warrant the massive and disruptive relief at issue. The decision affects only PD-11, and will not have the kind of statewide impact that typically prompts this Court's review. Therefore, review should be denied.

ARGUMENT

I. The Third District's Decision Does Not Create Constitutional Grounds for This Court's Discretionary Jurisdiction.

A. The decision does not affect a class of constitutional officers.

Public defenders are, without a doubt, constitutional officers. *See* art. V, § 18, Fla. Const. Though this case involves a related series of motions by a public defender, PD-11, the decision applied caselaw and statutory authority to determine that PD-11 failed to carry its evidentiary burden to permit the unprecedented relief the trial court ordered: PD-11's withdrawal en masse from 60% of its felony caseload. Given the unique management structure of this one office, *see* Pub. Defender, 34 Fla. L. Weekly at D966 n.6, and the limited application of the decision to the specific facts of this case, the type of effect on a class-wide basis required by this category of jurisdiction is not implicated.

This Court has long interpreted its constitutional officer jurisdiction to mean that the decision for review must directly and exclusively affect the "duties, powers, validity, formation, termination, or regulation of a particular class" of constitutional officers. Spradley v. State, 293 So. 2d 697, 701 (Fla. 1974). Merely modifying, construing, or adding to caselaw on the subjects is not enough. Id.

The Third District's decision does not create jurisdiction in this Court because, as stated above, it merely applied statutory authority and precedent

requiring PD-11 to provide sufficient evidence of prejudice to the constitutional rights of its clients to justify withdrawal. Pub. Defender, 34 Fla. L. Weekly at D964-65. The issue required a factual determination that is case specific: Did the trial court, under the unique circumstances presented, properly permit PD-11 to withdraw? This decision is not the broad determination of the duties, powers, validity, formation, termination, or regulation of public defenders generally as a class that would trigger this Court's jurisdiction.

Petitioner asserts that the decision "precludes Public Defenders from obtaining any relief when faced with excessive caseloads that impair their office's ability to provide constitutional and ethical representation to new clients." [Pet'r Br. 4] That is not an accurate characterization. The Third District held that trial courts *may* consider motions to withdraw where excessive caseloads cause prejudice resulting in ineffective representation, but *only* on a case-by-case basis. Pub. Defender, 34 Fla. L. Weekly at D965. Much of Petitioner's argument goes to the merits of the decision below, rather than to how the decision affects constitutional officers or how it meets threshold jurisdictional requirements.[1]

[1] For instance, the initial brief notes that the opinion "ignores" the ethical obligations of the "Public Defender himself," and of the office. [Pet'r Br. 6-7] These arguments rely on facts outside of the four corners of the decision and question its merits, neither of which are grounds for this Court's jurisdiction. Additionally, several times Petitioner cites to the concurring opinion in Escambia (Continued…)

This type of jurisdiction is implicated only when a *class* of officers is affected; it does not extend to decisions that affect a single entity, even if that entity is composed of a group of officers. Fla. State Bd. of Health v. Lewis, 149 So. 2d 41, 43 (Fla. 1963). Members of a single entity do not "separately and independently exercise identical powers of government" within the meaning of the constitutional term "class." Id. Rather, it "is the existence of two or more members of a given class of separate official entities that supplies the jurisdictional foundation for this Court to proceed." Id. The decision below applied to only PD-11. It specifically left open the possibility that under another set of facts, a public defender in another office or even in PD-11 could withdraw. Pub. Defender, 34 Fla. L. Weekly at D964-65. Moreover, PD-11's unique case management system makes it uncertain that the factors that led to the Third District's decision will have application outside of the Eleventh Circuit.

Petitioner also claims that the decision affects state attorneys, a class of constitutional officers. [Pet'r Br. 9] A finding that the state has standing in a criminal case (by applying settled statutory authority and caselaw), however, does not rise to the level of directly and exclusively affecting the operations of state attorneys. *See* Spradley, 293 So. 2d at 701. The decision was a reflection of the

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County v. Behr, 384 So. 2d 147 (Fla. 1980), [Pet'r Br. 8 n.3, 9 n.4], but concurring opinions are not a basis for conflict.

Third District's understanding of precedent and section 27.02, Florida Statutes. Pub. Defender, 34 Fla. L. Weekly at D964. As such, the decision does not affect a class of constitutional officers and jurisdiction does not exist.

B. The Third District's decision does not expressly and directly conflict with any decision of this Court.

The decision is entirely consistent with the previous decisions of this Court upon which Petitioner relies.[2] First, the cases are all distinguishable because in each the defenders seeking withdrawal presented specific evidence of the prejudice suffered by defendants as a consequence of their excessive workloads. Briefs were being filed only after lengthy delays that prejudiced constitutional rights. 1998 Pub. Defender, 709 So. 2d at 102 (640 briefs were delinquent); 1994 Pub. Defender, 636 So. 2d at 20 (briefs were more than 60 days overdue); 1990 Pub. Defender, 561 So. 2d at 1131 (noting that this office's average filing time was one year later than private defense attorneys' times). These delays resulted in ineffective representation, as in some instances, defendants were finishing their

[2] In re: Pub. Defender's Certification of Conflict & Motion to Withdraw Due to Excessive Caseload & Motion for Writ of Mandamus, 709 So. 2d 101 (Fla. 1998) [hereinafter 1998 Public Defender]; In Re: Certification of Conflict in Motions to Withdraw Filed By Pub. Defender of the Tenth Judicial Circuit, 636 So. 2d 18 (Fla. 1994) [hereinafter 1994 Public Defender]; In re Order on Prosecution of Criminal Appeals by the Tenth Judicial Circuit Pub. Defender, 561 So. 2d 1130, 1131 (Fla. 1990) [hereinafter 1990 Public Defender].

prison terms before an appellate brief was ever filed. 1998 Pub. Defender, 709 So. 2d at 102; 1990 Pub. Defender, 561 So. 2d at 1132.

On this basis, the Third District distinguished this case from 1998 Public Defender, noting that there "relief was granted only after individual assistant public defenders had first been removed from representation and a backlog of cases had caused the delayed filing of appeals for almost all defendants in the Public Defender's Office." Pub. Defender, 34 Fla. L. Weekly at D964. By contrast, "here, there has been no initial attempt at individualized withdrawal … [and] PD11 presented evidence of excessive caseload and no more." Id. This distinction is equally applicable to the 1990 and 1994 decisions.

Also, the 1990 and 1994 cases in this Court involved key issues that are not at play here. The ultimate issue in 1990 Public Defender was who would pay for conflict counsel when the appellate defender offices withdrew. 561 So. 2d at 1137. The 1994 case concerned the procedure employed by the district court to determine the propriety of the appellate defender offices' withdrawal. 1994 Pub. Defender, 636 So. 2d at 22. Therefore the decisions do not conflict.

The initial brief asserted that conflict arises because decisions of this Court held: "When excessive caseload forces the public defender to choose between the rights of the various indigent criminal defendants he represents, a conflict of interest is inevitably created." [Pet'r Br. 4] But the decision below does not conflict

with that sentiment. Rather, it holds that a public defender may move for withdrawal when there is individualized proof of prejudice from an excessive caseload. Pub. Defender, 34 Fla. L. Weekly at D965.

Finally, it should be noted that section 27.5303, Florida Statutes, upon which the Third District relied for its holding that withdrawal could not be granted solely on evidence of an excessive caseload, was not at issue in this Court's previous caselaw because it did not exist then. *See* Pub. Defender, 34 Fla. L. Weekly at D965 (indicating statute was promulgated in 2004). The advent of a new statute is a critical factual distinction in these cases that makes conflict lacking.

II. Should This Court Determine That It Has a Basis for Jurisdiction, It Still Should Not Review the Third District's Decision.

Even if this Court finds that one of the bases for its jurisdiction is met, it still should not review the Third District's decision. While this case is important to the functioning of the criminal justice system in the Eleventh Circuit, it is questionable whether it will have any meaningful effect on the administration of justice in other public defender offices in the state. The decision is limited to the facts presented by PD-11, a point reflected in PD-11's unique two-tiered structure of felony defense. Pub. Defender, 34 Fla. L. Weekly at D966 n.6.

Petitioner asserts that the decision "would prevent Public Defenders from effectively dealing with excessive caseloads and from complying with their ethical

obligations, no matter how serious the excess and no matter how scarce their resources." [Pet'r Br. 10] It claims the decision not only precludes it from seeking relief, it precludes "the judiciary from granting it." [Pet'r Br. 7] These are overstatements, as discussed above. The decision only applies to PD-11, explicitly leaving open the option of seeking withdrawal where evidence of prejudice to constitutional rights exists. Pub. Defender, 34 Fla. L. Weekly at D965.

Additionally, a common aspect of each of this Court's precedent is a sufficient evidentiary showing of prejudice to a criminal defendant's constitutional rights that would warrant a public defender's withdrawal. *See* Pub. Defender, 34 Fla. L. Weekly at D965 ("Only after an assistant public defender proves prejudice or conflict, separate from excessive caseload, may that attorney withdraw from a particular case."). As the Third District held, no such evidence was presented in this case. Id. at D964. Therefore, because the decision is consistent with this Court's jurisprudence, further review is not warranted.

Finally, PD-11 argues that the decision addresses core criminal justice system values, constitutional and ethical requirements for public defenders, and separation of powers. [Pet'r Br. 10] While this case does involve these values and dimensions of our criminal justice system, the decision does not ultimately resolve those issues. Rather, it simply applies a statute and this Court's precedent to hold that PD-11 failed to show conflict or ineffective representation. As the Third

District stated in conclusion: "The office-wide solution to the problem … lies with the legislature or the internal administration of PD11, not with the courts." Id. at D965.

CONCLUSION

For the foregoing reasons, the Court should not review the decision below because jurisdiction is lacking and because this case does not present the type of circumstances necessitating this Court's review.

Respectfully Submitted,

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CERTIFICATE OF SERVICE AND COMPLIANCE

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