

IN THE SUPREME COURT OF THE STATE OF FLORIDA

SC CASE NO. 09-1407

DCA CASE NO. 4D09-2335

LT. NO. 08CF002566AMB

**STATE OF FLORIDA AND RIC BRADSHAW,
Palm Beach County Sheriff,**

Petitioner,

vs.

ARTHUR BLAIR,

Respondent.

PETITIONER'S BRIEF ON JURISDICTION

BILL McCOLLUM
Attorney General
Tallahassee, Florida

CELIA TERENCE
Assistant Attorney General
Bureau Chief, West Palm Beach
Florida Bar No. 656879

MYRA J. FRIED
Assistant Attorney General
Florida Bar No. 0879487
1515 N. Flagler Drive
Suite 900
West Palm Beach, Florida 33401

Telephone: (561) 837-5000
Fax: (561) 837-5099
Myra.Fried@myfloridalegal.com

Counsel for Petitioner

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PRELIMINARY STATEMENT

Respondent was the defendant and Petitioner was the prosecution in the Criminal Division of the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida. Respondent was the Appellant and Petitioner was the Appellee in the Fourth District Court of Appeal.

STATEMENT OF THE CASE AND FACTS

Respondent was arrested for misdemeanor DUI and released on his own recognizance. The State entered a nolle prosequere on the misdemeanor case. The State then filed a felony information. The court clerk mailed Respondent a notice indicating that Respondent was required to appear in court for the felony case on March 10, 2008. However, the notice sent to Respondent the week before was returned to the clerk as being undeliverable. Respondent later appeared at the courthouse on Gun Club Road. Apparently, it was at this time that the Respondent was told that the court date had been cancelled and that the misdemeanor case had been nolle prossed. Respondent alleged that he was not told that his misdemeanor case was re-filed as a felony.

The court clerk mailed Respondent a notice that a "status-check" hearing on Respondent's felony case was scheduled for September 16, 2008. That notice was returned to the court clerk as being undeliverable. On September 16, 2008, the felony status-check hearing was held, and Respondent failed to appear.

On April 13, 2009, Respondent was arrested on a capias warrant. On June 10, 2009, Respondent appeared before the Honorable John J. Hoy. Counsel moved for bond or for the release of Respondent on his own recognizance.

During the bond hearing, Respondent testified that: he did not know the nolle-prossed misdemeanor case had been re-filed as a felony; because of the itinerant nature of his life, he did not have a regular mailing address; the address Respondent gave to the police upon his arrest was his ex-wife's home address; Respondent later learned that his ex-wife had directed the Post Office to return mail sent to Respondent at her address from the courts; Respondent believed the case against him had been nolle prossed; Respondent had appeared in court, as instructed on February 28, 2008, and was told that the hearing had been cancelled; and at some point, Respondent had a police officer check for open warrants and was told there were none outstanding.

Ultimately, the trial court denied Respondent bond. The trial court endorsed the State's argument that the notice was sufficient because the notices of hearing were mailed to the address Respondent had provided to the police upon arrest.

On July 15, 2009, the Fourth District Court of Appeal issued an opinion in this matter. The Court discussed the

decision in Ricks v. State, 961 So. 2d 1093, 1093-94 (Fla. 5th DCA 2007), indicating:

The court in Ricks v. State, 961 So.2d 1093, 1093-94 (Fla. 5th DCA 2007), appears to have relied on pre-Paul cases to reach the same conclusion as Bradshaw, that a court may order pretrial detention based solely on a finding of a willful failure to appear 'without determining whether conditions of release are appropriate.' Id. (citing Wilson v. State, 669 So. 2d 312, 313 (Fla. 5th DCA 1996)). We certify conflict with this aspect of Ricks.

Blair v. State, 2009 Fla. App. LEXIS 9600 (Fla. 4th DCA July 15, 2009). The Fourth District Court of Appeal specifically certified conflict with another district court of appeal. Accordingly, jurisdiction is invoked under Art. V, § 3(b)(3), Fla. Const., and Fla. R. App. P. 9.030(a)(2)(A)(iv).

Petitioner now seeks this Court's discretionary jurisdiction to review the lower court's decision in this case.

SUMMARY OF THE ARGUMENT

This Court should accept jurisdiction to review this case because the order of the Fourth District Court of Appeal expressly conflicts with a decision of another district court of appeal on the same question of law.

ARGUMENT

THE FOURTH DISTRICT COURT OF APPEAL'S DECISION EXPRESSLY AND DIRECTLY CONFLICTS WITH THE FIFTH DISTRICT COURT OF APPEAL'S DECISION IN RICKS V. STATE, 961 SO. 2D 1093 (FLA. 5TH DCA 2007).

The order of the Fourth DCA in this case, Blair v. State, 2009 Fla. App. LEXIS 9600 (Fla. 4th DCA July 15, 2009), (a copy of the Fourth District's order is attached hereto as Appendix "A"), expressly and directly conflicts with a decision of another district court of appeal on the same question of law [pursuant to Rule 9.030(a)(2)(A)(iv), Fla. R. App. P.].

On July 15, 2009, the Fourth District Court of Appeal issued an opinion in this matter. The Fourth DCA discussed the decision in Ricks v. State, 961 So. 2d 1093, 1093-94 (Fla. 5th DCA 2007), indicating:

The court in Ricks v. State, 961 So.2d 1093, 1093-94 (Fla. 5th DCA 2007), appears to have relied on pre-Paul cases to reach the same conclusion as Bradshaw, that a court may order pretrial detention based solely on a finding of a willful failure to appear 'without determining whether conditions of release are appropriate.' Id. (citing Wilson v. State, 669 So. 2d 312, 313 (Fla. 5th DCA 1996)). **We certify conflict with this aspect of Ricks.**

(Emphasis added.). (Appendix A). As such, the Fourth District Court of Appeal has specifically certified conflict with another district court of appeal. Accordingly, jurisdiction is invoked under Art. V, § 3(b)(3), Fla. Const., and Fla. R. App. P. 9.030(a)(2)(A)(iv).

It is well settled that in order to establish conflict jurisdiction, the decision sought to be reviewed must expressly and directly create a conflict with a decision of another District Court of Appeal or of the Supreme Court on the same

question of law. Article 5, Section 3(b)(3) Fla. Const.; Jenkins v. State, 385 So. 2d 1356 (Fla. 1980). Since the Fourth DCA's decision specifically stated that it was certifying conflict with the Fifth DCA's decision, this Honorable Court has discretionary jurisdiction to review the instant case, pursuant to Florida Rule of Appellate Procedure 9.030(a)(2)(A)(iv).

CONCLUSION

Wherefore, Petitioner respectfully requests this Court to **ACCEPT** jurisdiction to review the instant case.

Respectfully submitted,

BILL McCOLLUM
Attorney General
Tallahassee, Florida

CELIA TERENCE
Assistant Attorney General
Bureau Chief, West Palm Beach
Florida Bar No. 656879

MYRA J. FRIED
Assistant Attorney General
Florida Bar No. 0879487
1515 N. Flagler Drive
Suite 900
West Palm Beach, FL 33401
Telephone: (561) 837-5000
Counsel for Respondent
Fax: (561) 837-5099

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing "Petitioner's Brief on Jurisdiction" has been

furnished by U.S. Mail to: DANIEL COHEN, Assistant Public Defender, counsel for Respondent, 15th Judicial Trial, 421 Third Street, West Palm Beach, FL 33401, on July 29th, 2009.

Of Counsel

CERTIFICATE OF TYPE SIZE AND STYLE

The undersigned hereby certifies that the instant brief has been prepared with 12 point Courier New type, a font that is not proportionately spaced, on July 29th, 2009.

MYRA J. FRIED

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PETITIONER'S APPENDIX

BILL McCOLLUM

Attorney General
Tallahassee, Florida

CELIA TERENCE

Assistant Attorney General
Bureau Chief, West Palm Beach
Florida Bar No. 656879

MYRA J. FRIED

Assistant Attorney General
Florida Bar No. 879487
1515 N. Flagler Drive
Suite 900
West Palm Beach, Florida 33401
Telephone: (561) 837-5000
Fax: (561) 837-5099
Myra.Fried@myfloridalegal.com

Counsel for Petitioner

App. A.....Blair v. State, 2009 Fla. App. LEXIS 9600 (Fla. 4th
DCA July 15, 2009).

APPENDIX A