IN THE
SUPREME COURT OF FLORIDA

RAYVON L. BOATMAN,

Petitioner,

v. **Case Number: SC10-1630**

STATE OF FLORIDA,

Respondent.
_____/

ON DISCRETIONARY REVIEW OF A CERTIFIED QUESTION

PETITIONER'S REPLY BRIEF

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ARGUMENT IN REPLY

WHEN A RESPONDENT IN A JIMMY RYCE PROCEEDING WHO HAS COMPLETED HIS PRISON SENTENCE IS NOT BROUGHT TO TRIAL WITHIN THIRTY DAYS OF THE FINDING OF PROBABLE CAUSE AND THUS IS CONFINED IN VIOLATION OF HIS LIBERTY INTEREST, THE REMEDY IS THE RESPONDENT'S RELEASE FROM CUSTODY AND DISMISSAL OF THE STATE'S PETITION, REGARDLESS OF WHETHER THE RESPONDENT IMMEDIATELY SEEKS HABEAS CORPUS RELIEF OR RAISES THE ISSUE ON DIRECT APPEAL.

A. STANDARD OF REVIEW

The State argues that the standard of review is abuse of discretion because "this case has no constitutional dimension nor does it involve construction of a statute" (Answer Brief at 12) ("AB"). Nevertheless, in the Answer Brief, the State acknowledges that Mr. Boatman's liberty interest is at issue (AB at 17, 18, 19) and discusses the definition of "substantial prejudice" at length (AB at 26-33). Mr. Boatman's liberty interest is a constitutional right: "Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action." Foucha v. Louisiana, 504 U.S. 71, 80 (1992). "Substantial prejudice" is a term contained in the Ryce Act. § 394.916(2), Fla. Stat. (2006). Issues involving constitutional rights and statutory interpretation are reviewed *de novo*. Connor v. State,

03 So. 2nd 598, 605 (Fla. 2001); J.A.B. v. State, 25 So. 3d 554, 557 (Fla. 2010).

B. ARGUMENT

The State first argues that raising a challenge to an unlawful detention in a petition for a writ of habeas corpus is appropriate because it is "good policy" and "makes sense" (AB at 15-19). This argument does not address whether habeas is the *only* procedure for raising such a challenge or waiving it, which is what the First District held. *See* Initial Brief of Petitioner at 34-35.

The State contends that a habeas proceeding would prevent a Ryce Act respondent from obtaining a "tactical advantage" or a "second bite of the apple" while providing the respondent with that to which he was entitled, i.e., "release from secure detention and dismissal of the petition without prejudice" (AB at 16-19). Mr. Boatman asked the trial court to enforce the Ryce Act's mandatory requirement that his trial be held within 30 days of the finding of probable cause. The court denied that request, and Mr. Boatman was obliged to abide by the court's ruling. Although the State would like to focus on its view that Mr. Boatman was seeking a "tactical advantage" or a "second bite of the apple," Mr. Boatman was simply seeking to enforce his statutory right and protect his liberty interest, as trial

counsel argued at length ((Supp.R. 255-57, 260-61). The trial court and the prosecutor brought up the idea that Mr. Boatman had the State "on the ropes" (Supp.R. 257-60), but that was not Mr. Boatman's position or purpose.

The State contends that the holding of Osborne v. State, 907 So. 2d 505 (Fla. 2005), is "unequivocal" (AB at 20). However, the definition and effect of Osborne's holding is the issue here. The State acknowledges as much by noting that the Court "has not clarified" the meaning of footnote 4 in Osborne (AB at 21). The State argues that footnote 4 appears to address a statute of limitations rather than the time deadline for trial, but then points out that there is no statute of limitations for Ryce Act commitment proceedings (AB at 21-22). Thus, footnote 4 must be referring to the time deadlines contained in the Ryce Act.

The State argues that In re Commitment of Goode, 22 So. 3d 750 (Fla. 2nd DCA 2009), "should not be read as holding that the State could not refile an SVP petition that has been dismissed without prejudice" (AB at 21-22 n. 1). Whether or not this was a "holding," In re Commitment of Goode supports Mr. Boatman's interpretation that "without prejudice" means dismissal of the State's petition is not an adjudication on the merits which

forever forecloses the State from filing another commitment petition.

The State misunderstands Mr. Boatman's arguments regarding the definition of "without prejudice" (AB at 23-26). Mr. Boatman contends that "release from detention and a dismissal without prejudice of the pending proceedings" means the respondent is released from custody, the State's petition is dismissed, and the State may refile the commitment petition if the respondent is returned to "total confinement" in the future. According to the State, Mr. Boatman's argument is "that because he would no longer be in 'total confinement,' the jurisdictional basis for filing against him would have vanished" and thus "that there effectively is no dismissal without prejudice when an SVP respondent is not brought to trial within 30 days" (AB at 23). Mr. Boatman is not arguing that the circuit court would forever lack jurisdiction but that the court's jurisdiction could not be invoked until the respondent was again in "total confinement."

In discussing the definition of "without prejudice," the State also says that Mr. Boatman "appears to assert that the Petition was invalid because he actually had been released from prison at the time the SVP proceedings were instituted" (AB at 23). This is not Mr. Boatman's position. Mr. Boatman's discussion of Madison v. State, 27 So. 3d 61 (Fla. 1st DCA), *rev.*

denied, 24 So. 3d 559 (Fla. 2009), and Larimore v. State, 2 So. 3d 101 (Fla. 2008), addresses the First District's reliance upon Madison to support its conclusion that the State could simply refile the petition after the respondent was released (Initial Brief at 23-30). This is not an argument that Mr. Boatman had been released from prison before the commitment petition was filed.

As an alternative basis for approving the First District's decision, the State argues that Mr. Boatman did not establish substantial prejudice (AB at 26-33). The State attempts to analogize the definition of "substantial prejudice" to the federal balancing test for evaluating the speedy trial right under the Sixth Amendment, arguing that prejudice is a factor in this test, but is not determinative (AB at 26-29). This argument fails because the Ryce Act itself states that "substantial prejudice" is determinative: "although section 394.916, Florida Statutes (1999), allows for the thirty-day period to be continued, it also provides that such continuance *may only be granted when the detainee will not be substantially prejudiced by it*." State v. Kinder, 830 So. 2d 832, 833 (Fla. 2002) (emphasis added).

The State claims that "Petitioner's sole ground for opposing the continuance" was that "[h]e wanted a trial before

he had to participate in discovery" (AB at 29). This is false. Mr. Boatman opposed the continuance because the State had delayed filing the commitment petition for three months and Mr. Boatman's prison sentence had expired (Supp.R. 255-57; 260-61), but the Answer Brief simply omits these defense arguments. One basis for the State's request for a continuance was the need for discovery (Supp.R. 281), and thus defense counsel also discussed that issue: "[I]n the motion to continue, . . . They spend three or four paragraphs explaining why discovery has not been completed and why the defense is not ready for trial" (Supp.R. 256). Defense counsel never said anything about "put[ting] the State on the ropes" or "[g]aining a competitive advantage" (AB at 30). Any limits on the time for discovery are inherent in the 30-day limit and could have been avoided had the State filed the petition in July of 2008.

The State faults Mr. Boatman for "not request[ing] the earliest possible date," "agree[ing] to a one-week postponement," and "not press[ing]" for an adversarial probable cause hearing after the court granted the continuance (AB at 30-31). Of course, after the court granted the continuance, ruling that the infringement on Mr. Boatman's liberty interest was not substantial prejudice and thus continuing Mr. Boatman's detention, Mr. Boatman had lost the argument.

The State complains, "in the First DCA's view, whenever an SVP trial is scheduled for more than 30 days past the finding of probable cause, which must [be made] contemporaneously with the petition being filed, the respondent will be substantially prejudiced by a continuance if he is no longer in Department of Corrections custody" (AB at 31-32) (footnote omitted). The Ryce Act contemplates that the multidisciplinary team's evaluation and the State's filing of a commitment petition will occur long before a respondent's release date just so this situation does not occur. *See* §394.913(1)(a), Fla. Stat. (2006) (Department of Corrections to give notice to multidisciplinary team at least 545 days prior to anticipated release date); §394.913(3)(e), Fla. Stat. (2006) (within 180 days after receiving notice, Department of Children and Family Services required to provide the state attorney with written assessment and recommendation). In Mr. Boatman's case, the Department of Children and Families (DCF) received records from the Department of Corrections sometime in 2007 (T1. 155). DCF conducted its initial review of those records in May of 2008 and determined that Mr. Boatman required an evaluation (T1. 155).

The State "also takes exception to the First DCA's suggestion that the State was dilatory in filing its petition" (AB at 32). Mr. Boatman raised this issue in arguing against

the continuance, and at that time, the State provided no explanation for the delay in filing the petition. The State's current discussion of the possible reasons for the delay (AB at 32-33) is pure speculation not based on the record.

The State lastly contends that applying the waiver rule to Mr. Boatman was proper, arguing, "If there is no effective remedy once a jury has determined the ultimate outcome of the case, then obviously, the issue must be raised prior to that event" (AB at 33). This argument assumes that there is no effective post-trial remedy, which is the issue the Court must decide.

CONCLUSION

Based upon the arguments presented here and in the initial brief, this Court should answer the certified question in the negative, direct that Mr. Boatman be released from custody, and direct that the State's petition be dismissed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing brief was furnished by U.S. mail to **Thomas H. Duffy**, Assistant Attorney General, The Capitol PL01, Tallahassee, Florida 32399-1050, and to **Mr. Rayvon L. Boatman**, SVP# 991180, Florida Civil Commitment Center, 13613 Southeast Highway 70, Arcadia, Florida 34266, on this 10th day of December, 2010.

CERTIFICATE OF FONT AND TYPE SIZE

I hereby certify that this brief was typed using Courier New, 12 point.

Respectfully submitted,

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