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IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,
Petitioner,

v. **CASE NO. SC14-1801**

VICTOR REED,
Respondent.
_____/

On Discretionary Review from the First District Court of Appeal (Certified Question)

RESPONDENT'S RESPONSE BRIEF

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SUMMARY OF ARGUMENT

The State initiated proceedings against Respondent under the Jimmy Ryce Act after Respondent's period of lawful incarceration had ended. Following the holdings of this Court, the First District Court of Appeal properly held that the government was without jurisdiction to do so. The First District Court of Appeal ruled that the commitment proceedings against Respondent should be dismissed with prejudice, and that ruling should be upheld.

ARGUMENT

Respondent agrees with the State of Florida on the standard of review: it is de novo.

In Larimore v. State, 2 So.3d 101 (Fla.2008) and State v. Phillips, 119 So.3d 1233, 1242 (Fla.2013), this Court analyzed and explicated the Jimmy Ryce Act ("the Act"). The Court found that the Act, viewed in its entirety, requires that a prisoner be in "lawful custody" when the State initiates proceedings against that prisoner under the Act. The State now urges the Court to ignore or depart from those rulings.

In the instant case, Respondent was not in lawful custody when the State initiated proceedings under the Act. Respondent was sentenced on May 23, 2013, to 481 days with 481 days of credit for time served. More than 24 hours later, on May 24, 2013, the State initiated proceedings against Respondent under the Act.

Plainly, as found by the court below, Respondent was not in lawful custody on May 24, because his lawful sentence expired on May 23, and therefore the State was without jurisdiction to initiate action against Respondent under the Act.

The State attempts to distinguish these facts from those in Larimore and Phillips, in part by arguing that unlike in those cases, Respondent here was not imprisoned "well beyond" the proper end of his lawful sentence. Regarding sentencing, there should be no distinction between an individual being held "well beyond" and merely "beyond" his end-of-sentence date; once an individual is held beyond his end-of-sentence date, that incarceration is unlawful.

The State justifies its distinction by arguing that it filed its commitment petition within the five working days required by §394.9135. This distinction should be rejected, as it is part of the same argument advanced and rejected in Larimore: that §394.9135 should be viewed on its own, and not as a part of the Act as a whole.

The State notes that Respondent, on May 23, was committed to the custody of the Department of Corrections (DOC), and thus had to be "processed out" of the state prison system before release (Petitioner's Initial Brief at 5-6). Respondent respectfully argues that such a processing-out in his case would have been lawful only to the extent that it was concluded prior to, or contemporaneous with, his ordered release date of May 23, 2013. The State has cited no authority for the

proposition that DOC or any other State agency is entitled to keep a prisoner past his end-of-sentence date.

According to the State, Respondent was also properly held past his end-of-sentence date because the Department of Children and Families (DCF)'s 72-hour hold should be treated as a detainer (Petitioner's Initial Brief at 10). This reading of the facts, however, glosses over Reed's central point: that the hold or detainer itself was not lodged until after his sentence had lawfully ended on May 23.

In its brief to this Court, the State argues repeatedly that the First DCA's reading of the Act would render §394.9135 meaningless, or surplus (see, e.g., Petitioner's Initial Brief at 8-9). Actually, the State's conclusion on this point itself depends on a willful ignoring of certain terms of §394.913. That provision instructs the State, among other things, to begin proceedings under the Act 545 days before the prisoner's release. The State's analysis on this point seems to be that since Larimore held that §394.913's deadlines were not jurisdictional, those deadlines should be ignored as surplus, and the State should use the slow track provisions of §394.913 any time an appropriate prisoner is still in custody. Therefore, the argument goes, if §394.9135 cannot be used on the instant fact pattern, it would never apply. The State here is in the odd position of arguing on the one hand that the First DCA's reading of the law should be overturned because it renders a part of the Act (§394.9135) meaningless, while its very argument relies

on ignoring explicit provisions of another part of the Act (the deadlines of §394.913). Respondent argues that the First DCA's reading of the Act under this Court's holdings in Larimore and Phillips is more consistent and that, when possible, the State should still abide by the deadlines of §394.913.

The State would have this Court believe that Respondent obtained a highly beneficial plea agreement (Petitioner's Initial Brief, at 11) and implies that Respondent further seeks to evade consequences under the Act because of the timing of said plea agreement. This argument is without merit. Plea negotiations are two-party affairs, and if anyone has the upper hand, it is typically the government. If the facts of this case "[extend] this court's decisions in Larimore and Phillips to their factual extreme," (Petitioner's Initial Brief, at 2-3) it was through no action of Reed, but the actions of the State itself.

The government in Respondent's cases below entered into plea agreements with Reed knowingly. They agreed to drop certain charges and gave Reed time served on the remaining charges. As the State points out in its brief, Respondent was advised that his case dispositions could possibly have subjected him to the Act. Certainly, on May 23 the State of Florida was also aware that Respondent's pleas potentially subjected him to the Act. The events in this case took place after Larimore was decided, in the same judicial circuit from whence Larimore emerged. The State in this case could have preserved its interests under the Act by working

the case out for, say, 488 days with 481 days credit, and could have therefore properly initiated proceedings under the Act while Reed was in lawful custody. The government could have prevented the situation it complains of today, and this Court should not be persuaded to recede from its prior caselaw.

CONCLUSION

The decision of the First District Court of Appeal should be affirmed.

Respectfully submitted

/s/ C. Michael Williams

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to the Office of Attorney General via email at crimapptlh@myfloridalegal.com and charlie.mccoy@myfloridalegal.com this 13th day of November, 2014. I also certify this brief complies with Fla.R.App.P. 9.210.

/s/ C. Michael Williams

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