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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)

PETITIONER'S REPLY BRIEF

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SUMMARY OF ARGUMENT

Larimore was decided in 2008. Until the 2014 legislature amended the definition of "total confinement" (not at issue here), the legislature accepted the Larimore court's "lawful custody" interpretation of the statutory process for committing someone as a sexually violent predator (SVP). Inferentially, the legislature, also aware of the highly expedited process in §394.9135, considered that process to be the equivalent of "lawful custody."

Reed's commitment was initiated just one day after his time-served sentence was imposed. The field of operation for §394.9135, if not available to sustain the action to commit him, is superfluous to that for §394.913. Statutes must not be interpreted in a way rendering their language surplus.

ARGUMENT

ISSUE

DID THE DECISION BELOW ERR BY REQUIRING DISMISSAL OF AN ACTION TO COMMIT REED AS A SEXUALLY VIOLENT PREDATOR, WHEN COMMITMENT WAS INITIATED ONE DAY AFTER HIS SENTENCE OF TIME SERVED WAS PRONOUNCED? (Restated from Certified Question).

Reed first asserts that "[t]he 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." (answer brief, p.6). The State's authority to hold someone beyond the end of sentence is under the narrow conditions of §394.9135, Fla.Stat. That statute gives the State up to 5 working days after someone

obtains immediate release to initiate commitment, thus transferring custody; obtain the recommendation of the multi-disciplinary team (MDT); and file the petition for commitment, if so recommended by the MDT.

The legislature is presumed to know this court's interpretation of statutes when those statutes are later amended. *See* Zommer v. State, 31 So.3d 733, 754 (Fla.2010), *cert.den.*, 131 S.Ct. 192 (2010) ("The Legislature is presumed to know the judicial constructions of a law when amending that law, and *the Legislature is presumed to have adopted prior judicial constructions of a law unless a contrary intention is expressed.*" [emphasis original; cite omitted]). In Larimore v. State, 2 So.3d 101 (Fla.2008), this court concluded the legislature intended for a person to be in "lawful custody" when commitment was initiated. *See id.* at 110-111 ("[T]he legislative intent of the Jimmy Ryce Act is that the person is in lawful custody at the time any initial steps are taken in the commitment process ....").

Larimore was decided in 2008. Not until 2014 did the legislature amend the definition of "total confinement,"[1] to

[1]Eff. July 1,2014 the definition of "total confinement" reads:

> (11) "Total confinement" means .... A person shall also be deemed to be in total confinement for applicability of provisions under this part if:
>
> * * *
>
> (c) A court or the agency with jurisdiction determines that the person who is being held should have been lawfully released at an earlier date and that the provisions of this part would have been applicable to the person on the date that he or she should have been

include someone in actual custody who "should have been lawfully released at an earlier date." *See* fn.1 herein. Until it made the 2014 changes (not at issue here), the legislature accepted the Larimore court's "lawful custody" interpretation of the statutory commitment process. The fair inference is that the legislature, also aware of the highly expedited process in §394.9135, considered that process to be the equivalent of "lawful custody."

Reed next contends the State is the entity rendering a portion of the sexually violent predator (SVP) act meaningless. (answer brief, p.6-7). He is mistaken. Citing Larimore, the State noted this court's acknowledgment that the time limits in §394.913 are not jurisdictional. *See id.* at 111 (quoting the "jurisdictional disclaimer[s]" in §394.913(4) & §394.9135(4)). Strictly speaking, the "lawful custody" requirement in Larimore can always be satisfied by initiating commitment under the "slow track" method in §394.913; so long as the State initiates commitment no later than the last day of the defendant's prison sentence.[2]

The State is not advocating the abandonment of the "fast

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lawfully released.
§1, ch.2014-2, Laws of Fla.[underlining original]. This statute is NOT at issue here.

[2]Suppose the Dept. of Corrections realized it mis-calculated a release date, and determined a prisoner should be released in 60 days. Then, it initiated the commitment process by notifying DCF. Rather than invoke §394.9135 and its very short deadlines, it would be proper under Larimore for the State to use §394.913; while expediting commitment to reduce the amount of post-prison time the defendant is held until brought to trial. Nothing in Larimore, §394.913 or §394.9135 requires the State to invoke the expedited deadlines in §394.9135 if release is imminent but not "immediate."

track" method of commitment in §394.9135. To the contrary, the State is obligated to act promptly when the potential for restraint of liberty is significant.[3] The State's point is that the field of operation for §394.9135, if not available to sustain Reed's commitment, is superfluous to that for §394.913; because the time limits in the latter statute are not jurisdictional. Statutes must not be interpreted in a way rendering their language surplus.

Again, §394.9135 evinces legislative intent that "lawful custody" is satisfied if commitment is initiated and the petition filed within 5 working days of when release should have occurred. Reed's commitment was initiated the next day after his time-served sentence was imposed. He had obtained a highly beneficial plea bargain; but, apparently, did not insist that bargain also provide he would not be subject to commitment. Still he accuses the State of seeking to "evade consequences under the Act" (answer brief, p.7), when he is trying to do the same thing; through an extreme application of Larimore and Phillips.[4] He cannot do so.

CONCLUSION

This court should hold that "lawful custody" is satisfied when the highly expedited deadlines in §394.9135, Fla.Stat. are met.

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[3]Reflecting this obligation, the 2014 legislature amended several parts of the SVP Act to require the multi-disciplinary team (MDT) to prioritize its work based on scheduled release dates; and to provide its recommendation a month before a person's release date. *See* ch.2014-2, Laws of Fla. at §3.

[4]State v. Phillips, 119 So.3d 1233 (Fla.2013).

With that qualification, the certified question should be answered affirmatively and the First DCA's decision reversed.

Respectfully submitted,

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CERTIFICATE OF SERVICE AND COMPLIANCE WITH RULE 9.210

I certify a copy of this REPLY BRIEF has been sent by email to Reed's counsel, **CHARLES MICHAEL WILLIAMS**, at: seemichaelwilliams@gmail.com; on November 18, 2014. I also certify this brief complies with Fla.R.App.P. 9.210.

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