

IN THE SUPREME COURT OF FLORIDA

CLAUDIO J. POILLOT,

Petitioner,

v.

Supreme Court Case No. SC15-1691

STATE OF FLORIDA,

Respondent.

_____ /

**ON DISCRETIONARY REVIEW FROM
THE DISTRICT COURT OF APPEAL OF FLORIDA
FIFTH DISTRICT**

JURISDICTIONAL BRIEF OF PETITIONER

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TABLE OF CONTENTS

	PAGE NO.
TABLE OF CITATIONS	ii
STATEMENT OF THE CASE AND FACTS	1
SUMMARY OF ARGUMENT	3
ARGUMENT	4
THIS COURT HAS JURISDICTION TO REVIEW <i>STATE V. POILLOT</i> , 40 FLA. L. WEEKLY D1845 (FLA. 5TH DCA AUG. 7, 2015).	
CONCLUSION	7
CERTIFICATE OF FONT	7
DESIGNATION OF E-MAIL ADDRESS	8
CERTIFICATE OF SERVICE	8

TABLE OF CITATIONS

CASES CITED:	PAGE NO.
<i>Atwell v. State</i> 739 So. 2d 1166 (Fla. 1st DCA 1999)	6
<i>State v. Poillot</i> 40 Fla. L. Weekly D1845 (Fla. 5th DCA Aug. 7, 2015)	3, 5
<i>State v. Poillot</i> 5D15-353, 2015 WL 4660119, at *2 (Fla. 5th DCA 2015)	4
<i>State v Williams</i> 918 So. 2d 400 (Fla. 2d DCA 2006)	3, 5
OTHER AUTHORITIES CITED:	
Article V, section 3(b)(3), Florida Constitution	3, 4, 6
Section 944.40, Florida Statutes	1, 3, 4
Section 945.091(4), Florida Statutes	3, 4, 5
Rule 3.190(c)(4), Florida Rules of Criminal Procedure	2
Rule 9.030(a)(2)(A)(i), Florida Rules of Appellate Procedure	3, 4, 6
Rule 9.030(a)(2)(A)(ii), Florida Rules of Appellate Procedure	3, 4, 6
Rule 9.030(a)(2)(A)(iv), Florida Rules of Appellate Procedure	3, 4, 6

STATEMENT OF CASE AND FACTS

1. Mr. Poillot was in the custody of the Department of Corrections (DOC) where he was enrolled in the DOC work release program.
2. This program allowed Mr. Poillot to report to work at 6 am and to report back to the DOC at 6 pm.
3. Within the prescribed time periods, he left the work release center with permission to go to work, arriving at work within the prescribed time.
4. Sometime after checking in for work, Mr. Poillot left the work site.
5. After he left, his employment was terminated by the employer and his DOC work release permission was revoked by the DOC.
6. Sometime on or before 6 pm, Mr. Poillot reported back to DOC – within the previously proscribed time period.
7. There was no evidence or allegation that Mr. Poillot was aware of or notified of either his termination from employment or revocation from the work release program prior to him arriving back at the DOC at 6 pm.
8. In the amended information, the State alleged that Poillot “did, in violation of section 944.40, Florida Statutes, while a prisoner confined in any prison, jail, road camp or other penal institution, to-wit: Kissimmee Community Work Release Center or JS & Son Construction, unlawfully escape, or

attempt to escape, from such confinement and go at large with intent to avoid lawful confinement.”

9. The defense moved to dismiss pursuant to Rule 3.190(c)(4), Florida Rules of Criminal Procedure.
8. At the trial level, the trial court granted the defense’s motion to dismiss, finding that a defendant must be notified that he is no longer in the work release program or that his work release privileges have been withdrawn before a failure to report constitutes an escape under the statute. (III 112)
9. The State appealed the court order and the Fifth District Court of Appeal reversed the dismissal.
10. The Appellee moved for en banc reconsideration and certification of conflict and was denied by the Fifth District Court of Appeal on September 10, 2015.

SUMMARY OF ARGUMENT

The Fifth District Court of Appeal's reversal expressly declared valid Sections 944.40 and 945.091(4), Florida Statutes against a due process challenge by allowing the criminal prosecution of Mr. Poillot for escape without notice of his employment termination or his DOC work release permission revocation.

The Fifth District Court of Appeal's reversal expressly construed a provision of the state or federal constitution by construing Sections 944.40 and 945.091(4), Florida Statutes as not violative of Mr. Poillot's due process rights.

The Fifth District Court of Appeal's reversal in *State v. Poillot*, 40 Fla. L. Weekly D1845 (Fla. 5th DCA Aug. 7, 2015) is in direct conflict with the Second District Court of Appeal's opinion in *State v Williams*, 918 So. 2d 400 (Fla. 2d DCA 2006).

Accordingly, this Court has jurisdiction to accept the instant case for review pursuant to Article V, section 3(b)(3), Florida Constitution, and Rules 9.030(a)(2)(A)(i), (ii) and (iv), Florida Rules of Appellate Procedure.

ARGUMENT

THIS COURT HAS JURISDICTION TO REVIEW
STATE V. POILLOT, 40 FLA. L. WEEKLY D1845
(FLA. 5TH DCA AUG. 7, 2015).

Pursuant to Article V, section 3(b)(3), Florida Constitution, and Rules 9.030(a)(2)(A)(i), (ii) and (vi), Florida Rule of Appellate Procedure, this Court has discretionary jurisdiction over the present case.

The Fifth District Court of Appeal's reversal expressly declared valid Sections 944.40 and 945.091(4), Florida Statutes against a due process challenge by allowing the criminal prosecution of Mr. Poillot for escape without notice of his employment termination or his DOC work release permission revocation. Interpreting the Statute, the Fifth District Court of Appeal alleged that the position adopted by Mr. Poillot would render the first option under section 945.091(4), Florida Statutes meaningless. *State v. Poillot*, 5D15-353, 2015 WL 4660119, at *2 (Fla. 5th DCA 2015). Petitioner respectfully disagrees, as section 945.091(4), Florida Statutes would still subject a person on work release to a charge of escape (as in *Atwell*) when that person has knowledge of their changed status.

The Statutory interpretation adopted by the Fifth District Court of Appeal does not account for the constitutional due process rights of Mr. Poillot. Under the logic of the Fifth District Court of Appeal, Mr. Poillot's actions may be

criminalized by the State without notice. Allowing the charge of escape to stand, without the knowledge element, would allow for the State to unilaterally and without notice withdraw permission and arbitrarily create a felony violation on any work releasee whom they choose. This interpretation grants the State Department of Corrections unfettered discretion to criminalize actions of individuals on work release. When a statute threatens a fundamental Constitutional right such as due process, special judicial scrutiny is required.

The Fifth District Court of Appeal's reversal expressly construed a provision of the state or federal constitution by construing section 945.091(4), Florida Statutes as not violative of Mr. Poillot's due process rights. The Fifth District Court of Appeal reversed the due process reasoning of the trial judge, wherein the trial court granted the defense's motion to dismiss by finding that a defendant must be notified that he is no longer in the work release program or that his work release privileges have been withdrawn before a failure to report constitutes an escape. (III 112)

The Fifth District Court of Appeal's reversal in *State v. Poillot*, 40 Fla. L. Weekly D1845 (Fla. 5th DCA Aug. 7, 2015) is in direct conflict with the Second District Court of Appeal's opinion in *State v Williams*, 918 So. 2d 400 (Fla. 2d DCA 2006), wherein the Second District Court of Appeal stated that a work

releasee's "status does not change throughout the day depending on his activities. He is not suddenly escaping from a confinement facility when he arrives at work late, regardless of the reason."

The Fifth District Court of Appeal relied on *Atwell v. State*, 739 So. 2d 1166, 1167 (Fla. 1st DCA 1999) for the proposition that a person on work release can be subject to an escape charge. *Atwell* is clearly distinguishable in that Mr. Atwell was on notice of his changed work release status, while Mr. Poillot was not. ("Instead of going to the courthouse, Mr. Atwell went to his mother's house. His aunt informed the police that he was there, which occasioned a car chase that ended with his fleeing on foot when the car he was driving stalled. About nine o'clock that evening law enforcement officers discovered him under a boat in his mother's back yard.") *Atwell v. State*, 739 So. 2d 1166, 1167 (Fla. 1st DCA 1999) Thus, this case does not resolve Mr. Poillot's due process concerns.

Accordingly, this Court has jurisdiction to accept the present case for review pursuant to Article V, section 3(b)(3), Florida Constitution, and Rules 9.030(a)(2)(A)(i), (ii) and (iv), Florida Rule of Appellate Procedure.

CONCLUSION

Based on the foregoing reasons and authorities, petitioner respectfully requests this Honorable Court to accept jurisdiction of this case.

Respectfully submitted,

JAMES S. PURDY
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

/s/ Steven N. Gosney

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CERTIFICATE OF FONT

I HEREBY CERTIFY that the font used in this brief is 14-point proportionally spaced Times New Roman.

DESIGNATION OF E-MAIL ADDRESS

I HEREBY DESIGNATE the following e-mail addresses for purpose of service of all documents, pursuant to Rule 2.516, Florida Rules of Judicial Administration, in this proceeding: appellate.efile@pd7.org (primary) and gosney.steve@pd7.org (secondary).

CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been filed electronically to the Florida Supreme Court, Supreme Court Building, 500 South Duval Street, Tallahassee, Florida 32399-1925, at www.myflcourtaaccess.com; delivered electronically to the Office of the Attorney General, 444 Seabreeze Boulevard, fifth floor, Daytona Beach, Florida 32118, at crimappdab@myfloridalegal.com and kristen.davenport@myfloridalegal.com; and Mr. Claudio J. Poillot @ C.Poillot@aol.com, on this 23rd day of September, 2015.

/s/ Steven N. Gosney
STEVEN N. GOSNEY
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IN THE SUPREME COURT OF FLORIDA

CLAUDIO J. POILLOT,

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Supreme Court Case No. SC15-1691

STATE OF FLORIDA,

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APPENDIX

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

STATE OF FLORIDA,

Appellant,

v.

Case No. 5D15-353

CLAUDIO J. POILLOT,

Appellee.

_____ /

Opinion filed August 7, 2015

Appeal from the Circuit Court
for Osceola County,
Jon B. Morgan, Judge.

Pamela Jo Bondi, Attorney General,
Tallahassee, and Kristen L. Davenport,
Assistant Attorney General, Daytona
Beach, for Appellant.

James S. Purdy, Public Defender, and
Steven N. Gosney, Assistant Public
Defender, Daytona Beach, for Appellee.

LAMBERT, J.

The State of Florida appeals the trial court's order dismissing the amended information charging Appellant, Claudio J. Poillot, with escape. Concluding that the undisputed material facts are legally sufficient to withstand a motion to dismiss, we reverse.

Poillot is a prisoner in the custody of the State of Florida Department of Corrections (“DOC”) and was a participant in a work-release program, which permitted him to work outside of the correctional facility from 6:00 a.m. to 6:00 p.m. On July 29, 2014, he left the Kissimmee Community Work Release Center and timely reported to work at JS & Son Construction. Shortly thereafter, Poillot left his place of employment without permission and was unaccounted for until he timely returned to the work-release center before 6:00 p.m., at which time he was placed under arrest for escape.

In the amended information, the State alleged that Poillot “did, in violation of Florida Statute 944.40, while a prisoner confined in any prison, jail, road camp or other penal institution, to-wit: Kissimmee Community Work Release Center or JS & Son Construction, unlawfully escape, or attempt to escape, from such confinement and go at large with intent to avoid lawful confinement.” In pertinent part, section 944.40, Florida Statutes (2014), provides as follows:

Any prisoner confined in any prison, jail, private correctional facility, road camp, or other penal institution, whether operated by the state, a county, or a municipality, or operated under a contract with the state, a county, or a municipality, working upon the public roads, or being transported to or from a place of confinement who escapes or attempts to escape from such confinement commits a felony of the second degree
.....

§ 944.40, Fla. Stat. (2014).

Pursuant to Florida Rule of Criminal Procedure 3.190(c)(4), Poillot filed a motion to dismiss, arguing that even though he “deviated from his work assignment,” he was not “confined” during the 12 hours he was released to work in the work-release program, and therefore, the State was unable to establish a prima facie case of escape under the undisputed facts. In response, the State filed two traverses to the motion, asserting that

Poillot was no longer on authorized work release because his unauthorized departure from employment at approximately 6:10 a.m. that day resulted in both his termination from employment by his employer and later revocation of his work release by the DOC, all of which occurred prior to Poillot's return to the work-release facility.¹ In the alternative, the State argued that even if Poillot was on authorized release, he was still confined when he left his employment because the work-release program was an extension of his confinement. After a hearing on the motion to dismiss, the trial court ultimately granted Poillot's motion.

The standards we apply in reviewing a motion to dismiss filed pursuant to rule 3.190(c)(4) are as follows:

[T]he State in order to defeat the motion is required to demonstrate a prima facie case against the defendant, since the purpose of the motion is to allow a pretrial determination of the law of the case when material facts are not in dispute. Our review of the trial court's order in this respect is, accordingly, *de novo*. In conducting such a review we accord the State the most favorable construction of the evidence, and we resolve all inferences against the defendant. Only where the most favorable construction to the State would still not establish a prima facie case of guilt should a rule 3.190 motion to dismiss be granted. Thus, this procedure is the functional equivalent of a motion for summary judgment in the civil context. As in the case of summary judgments, a dismissal on this basis should be granted sparingly.

State v. Taylor, 16 So. 3d 997, 999 (Fla. 5th DCA 2009) (citations omitted). Additionally, the trial court "may not grant a motion to dismiss criminal charges simply because it concludes that the case will not survive a motion for judgment of acquittal." *Id.* at 1002 (citing *State v. Paleveda*, 745 So. 2d 1026, 1027 (Fla. 2d DCA 1999)).

¹ The DOC also conducted an extensive manhunt to apprehend Poillot but was unable to locate him prior to his return.

In determining whether the State sufficiently demonstrated a prima facie case of escape under section 944.40 in the context of this case, we must also examine section 945.091, Florida Statutes (2014), which authorizes the DOC to extend the limits of a prisoner's confinement. This statute provides in pertinent part:

(1) The department may adopt rules permitting the extension of the limits of the place of confinement of an inmate as to whom there is reasonable cause to believe that the inmate will honor his or her trust by authorizing the inmate, under prescribed conditions and following investigation and approval by the secretary, or the secretary's designee, who shall maintain a written record of such action, to leave the confines of that place unaccompanied by a custodial agent for a prescribed period of time to:

.....

(b) Work at paid employment . . . while continuing as an inmate of the institution or facility in which the inmate is confined, except during the hours of his or her employment, education, training, or service and traveling thereto and therefrom. . . .

.....

(4) The willful failure of an inmate to remain within the extended limits of his or her confinement or to return within the time prescribed to the place of confinement designated by the department shall be deemed as an escape from the custody of the department and shall be punishable as prescribed by law.

§ 945.091, Fla. Stat. (2014).²

"The language in [subsection (1)(b)] shows that work release is merely an extension of the limits of the place of confinement." *Thomas v. DOC*, 159 So. 3d 291, 292 (Fla. 1st DCA 2015); see also *Price v. State*, 333 So. 2d 84, 85 (Fla. 1st DCA 1976)

² The DOC adopted rules permitting the extension of the limits of the place of confinement. See Fla. Admin. Code R. 33-601.602 (2014).

(“The Legislature, by the adoption of Florida Statutes 945.091 and 951.24, has recognized that a prisoner may still be regarded as ‘confined’ even though not physically present in a state or county correctional facility.”)³ As such, under section 945.091, an inmate on authorized work release can still be guilty of escape under section 944.40 in at least two different ways: (1) by willfully failing to remain within the extended limits of his or her confinement; or (2) by willfully failing to return within the time prescribed to the place of confinement. *Atwell v. State*, 739 So. 2d 1166, 1167 (Fla. 1st DCA 1999).

Here, Poillot essentially argues that once he leaves the work-release center and timely reports to his employer in the work-release program, he is free to deviate from his work-release employment during his entire 12-hour work period and cannot be found guilty of escape unless he fails to return to the work-release facility on time. Conversely, if Poillot’s argument was true, a separate prisoner on the same 12-hour work-release program who timely reports to work and then “deviates” from his or her extended limits of confinement, but unlike Poillot, returns late to the work-release facility may be properly charged with escape. We decline to adopt Poillot’s interpretation of the statute, as it essentially renders the first option under section 945.091(4) meaningless. See *Reeves v. State*, 957 So. 2d 625, 629 (Fla. 2007) (“It is a fundamental rule of construction that statutory language cannot be construed so as to render it potentially meaningless.” (quoting *Ellis v. State*, 622 So. 2d 991, 1001 (Fla. 1993))); see also *Larimore v. State*, 2 So. 3d 101, 106 (Fla. 2008) (noting that “[r]elated statutory provisions must be read together to achieve a consistent whole, and . . . [w]here possible, courts must give full

³ Section 951.24, Florida Statutes, addresses the extension of the limits of confinement for county prisoners.

effect to all statutory provisions and construe related statutory provisions in harmony with one another.” (alterations in original) (internal quotation marks omitted) (quoting *Heart of Adoptions, Inc. v. J.A.*, 963 So. 2d 189, 199 (Fla. 2007)); *Lewis v. Mosley*, 204 So. 2d 197, 201 (Fla. 1967) (stating that “statutory enactments [] are to be interpreted so as to accomplish rather than defeat their purpose”). Under Poillot’s interpretation, the only way to violate section 944.40 when on work release is to fail to return to the place of confinement within the time prescribed, which is simply not true. See *Atwell*, 732 So. 2d at 1167. Here, the work-release program was an extension of Poillot’s confinement, and his deviation from the program in the manner asserted by the State establishes a prima facie case for escape. See *id.* We therefore find that the trial court erred in dismissing the amended information. Accordingly, we reverse the order on appeal and remand this cause for further proceedings consistent with this opinion. 4

REVERSED and REMANDED.

ORFINGER and BERGER, JJ., concur.

⁴ We acknowledge that because the crime of escape may be committed in more than one way, the evidence at trial must establish that it was committed in the manner charged in the information. *Long v. State*, 92 So. 2d 259, 260 (Fla. 1957). Here, Poillot has not challenged a lack of factual specificity in the amended information or that the State did not include section 945.091, Florida Statutes, in its charging document, nor has he asserted that he has been prejudiced based on how the crime in the amended information was alleged to have occurred. Rather, Poillot argued that under the facts construed in the light most favorable to the State, he cannot be guilty of escape and, therefore, according to him, the charge was properly dismissed.