**IN THE SUPREME COURT OF FLORIDA**

CLAUDIO J. POILLOT,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.
_____/

CASE NO.: SC15-1691

Lower Tribunal No(s).:
5D15-353
49-2014-CF-002767-XXXXXX

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

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# INITIAL BRIEF ON THE MERITS

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JAMES S. PURDY
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

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## STATEMENT OF THE CASE AND FACTS

This Court has jurisdiction under Article V, section 3(b)(3), of the Florida Constitution.

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The facts are undisputed. Appellant, Claudio J. Poillot, was 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, Mr. 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. 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. Further, there is no evidence in the record as to the terms of his work release or the scope of the extended limits of the confinement of Mr. Poillot, nor was there an allegation that Mr. Poillot had notice knowledge of those terms or conditions. After hearing, the

trial court judge granted the defense's motion to dismiss. The trial court reasoned that before a failure to report constitutes the crime of escape under the statute, the State must allege either notification to Mr. Poillot that he is no longer in the work release program or that his work release privileges have been withdrawn, or some evidence of awareness by Mr. Poillott of the changed release conditions. (III 112)

The State of Florida appealed the trial court's order dismissing the amended information. The Fifth District reversed the trial court's order, concluding that the undisputed material facts were legally sufficient to withstand a motion to dismiss. The Fifth District did not address the due process concerns of either the trial judge or Mr. Poillot, nor did it mention the primary case on the issue relied on by Mr. Poillot, *State v. Williams*, 918 So. 2d 400 (Fla. 2d DCA 2006). The Appellee moved for en banc reconsideration and certification of conflict and was denied by the Fifth District on September 10, 2015.

The petitioner then sought review in this Court pursuant to Rules 9.030(a)(2)(A)(i), (ii) and (iv), Florida Rules of Appellate Procedure, in that the decision: (i) expressly declared valid a state statute; (ii) expressly construed a provision of the state or federal constitution; and (iv) conflicted with the decision in *State v. Williams*, 918 So. 2d 400 (Fla. 2d DCA 2006). This Court accepted jurisdiction on December 30, 2015. This brief follows.

## SUMMARY OF ARGUMENT

The decision and statutory construction adopted by the Fifth District runs afoul of the due process clauses of the United States and Florida Constitutions and is inconsistent with prior precedent. A charge of escape requires prior notice or knowledge on the part of the work releasee of the terms of their work release or that the terms of their work release had changed. Without such a showing, an incarceration facility may arbitrarily subject work releasees to felony charges without notice.

## ARGUMENT

### THE DUE PROCESS CLAUSES OF THE UNITED STATES AND THE FLORIDA CONSTITUTIONS REQUIRE EVIDENCE OF NOTICE OR KNOWLEDGE BEFORE THE CRIME OF ESCAPE MAY BE BROUGHT AGAINST A WORK RELEASEE.

#### STANDARD OF REVIEW

"Because this is a question of law arising from undisputed facts, the standard of review is *de novo*." *Aills v. Boemi*, 29 So. 3d 1105, 1108 (Fla. 2010) (*citing Kirton v. Fields*, 997 So. 2d 349, 352 (Fla. 2008); *D'Angelo v. Fitzmaurice*, 863 So. 2d 311, 314 (Fla. 2003) (stating that the standard of review for pure questions of law is *de novo*)).

#### RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

Amend. V, U.S. Const. "No person shall...be deprived of life, liberty, or property, without due process of law...."

Amend. XIV, Section 1 U.S. Const. "....nor shall any State deprive any person of life, liberty, or property, without due process of law...."

Art. I, Section 9, Fla. Const. Due process. "No person shall be deprived of life, liberty or property without due process of law [...]"

Section 945.091, Florida Statutes

## MERITS

**Argument.** A charge of escape requires knowledge on the part of the work releasee that the terms of their work release had changed. Without such a showing, an incarceration facility may arbitrarily subject work releasees to felony charges without notice. The statutory construction adopted by the Fifth District runs afoul of the due process clauses of the United States and Florida Constitutions. Such a construction is not supported by the law. Rather, the law requires notice or knowledge before a criminal charge of escape is levied.

In *State v Williams*, 918 So. 2d 400 (Fla. 2d DCA 2006), the Second District upheld a trial court dismissal for a work release prisoner who left his confinement on time, but showed up 90 minutes late for his work. The Second District correctly stated in *Williams*, 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. Rather, Williams is on authorized release from the time he leaves the work release center to go to work until the prescribed time for his return." The *Williams* decision was in harmony with the then existing law among Florida's District Courts. *Compare Howell v. State*, 45 So. 3d 527 (Fla. 1st DCA 2010) (Finding evidence of notice sufficient to uphold a conviction for escape after work release inmate failed to return to the

work release center at the appointed time); *also compare Price v State*, 333 So. 2d 84 (Fla. 1st DCA 1976) (providing that failing to timely return to a facility constitutes escape). The *Williams* holding was also in accord with the Fifth District. As pointed out by the Second District in *Williams*, the Fifth District has previously acknowledged the requirement of notice. In *Early v. State*, 678 So. 2d 901, 901 (Fla. 5th DCA 1996), the Fifth District upheld a charge of escape, opining that "Early's "escape" was his failure to report back to the Work Release Facility ***after notice***." [Emphasis added]. However, in the present case, the Fifth District receded from its earlier position requiring notice to the present position that such notice is not required. This position is in direct conflict with the Constitution and the Second District's holding in *Williams*.

The common law generally requires an act combined with a guilty mind and as a general rule, criminal liability does not attach to a person who merely acted with the absence of mental fault. *See Generally, Staples v. United States*, 511 U.S. 600, 619 (1994). Thus, the act must be accompanied by some level of mens rea to constitute the crime with which the defendant is charged. Following this rule, a charge of escape requires knowledge on the part of the work releasee of the changed conditions that necessitated his acting differently than was previously advised – namely that he was terminated from his employment or that his work

release privilege had been revoked. The Standard Jury Instructions for the felony charge of escape also support this knowledge element.[1] Absent such a showing, either through actual knowledge or notice of the changed conditions, a criminal charge of escape cannot stand.

In the present case, 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 before the previously instructed time of 6 pm. Mr. Poillot was absent from work, not escaping from confinement as contemplated by the statute. Mr. Poillot may have been in violation of the rules of the work release program, and his privilege to participate in the program may have been withdrawn (which, in actual fact, happened). *Cf. State v. Williams*, 918 So. 2d 400, 402 (Fla. 2d DCA 2006) He is, however, not subject to an additional escape charge without proper allegation of mens rea. In the present case, there was no allegation that Mr. Poillot was aware of or received prior notice of the changed conditions that resulted in his criminal charge. The trial court properly granted the motion to dismiss. The Fifth District's decision below should be overturned, and the trial court's ruling should be reinstated by this Honorable

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[1]Element 3. (Defendant) escaped or attempted to escape by (read overt act from charge), ***intending*** to avoid lawful confinement. [Emphasis added]

Court.

**The Fifth District Decision.** The Fifth District's statutory interpretation of the case does not adequately account for the due process concerns of the trial judge or Mr. Poillot. Tellingly, the Fifth District does not distinguish or even mention "due process" or the primary case on the issue relied on by Mr. Poillot, *State v. Williams*, 918 So. 2d 400 (Fla. 2d DCA 2006). In order to sustain an escape charge, there must be some allegation of knowledge or notice of either changed conditions or the extended limits of the confinement or prescribed conditions of Mr. Poillot's work release[2]. Because in the present case there was no such allegation, due process bars his prosecution for escape. Given that the terms related to work release are undefined by statute, there must be some allegation that Mr. Poillot was aware of the conditions of "the program" before he is deemed to have deviated from them. Petitioner asserts that absent this allegation of notice or knowledge in the record (for example, an allegation that Mr. Poillot was notified of the actual conditions of the extended limits of his confinement), there was an

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[2]Note that there is nothing in the appellate record as to the extended limits of the confinement or prescribed conditions of Mr. Poillot's work release of Mr. Poillot, leaving "the extended limits of his or her confinement" and the "prescribed conditions" undefined. See Section 945.091(1) *Compare, for example, Banasik v. State*, 889 So. 2d 916, 917 (Fla. 2d DCA 2004) (State elicited testimony of rules of work release program).

insufficient factual basis within the appellate record for the Fifth District to conclude in its opinion that "[...] 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 facia case for escape." While terms of the work release ***may*** have provided Mr. Poillot with prior notice, there is no such allegation or evidence in the appellate record, nor did the State argue below that such prior notice and consent was present. Instead, the State alleged that the Department of Corrections may unilaterally revoke the terms of work release, and that this revocation is sufficient to survive a motion to dismiss. They argued alternatively that the mere fact of his leaving work was per se an escape, without addressing the language of Section 945.091 that leaves the "the extended limits of his or her confinement" and the "prescribed conditions" definitions undefined. Because of this, thus the only question for the Appellate Court to resolve was whether the Department of Corrections may unilaterally create an escape charge without knowledge or notice to Mr. Poillot. Petitioner contends that the Fifth District's decision is in conflict with the Constitutions and prior precedent, as argued above.

The ruling of the Fifth District relies solely on statutory authority for its ruling. The Constitution is superior to a statue. If Constitutional Due Process

requires knowledge or notice of conditions before a work releasee can be criminally charged with escape, then any statue that fails to require it is unconstitutional. Because statutes should be interpreted in a way that is consistent with the Constitution, the statute should be construed as requiring either knowledge or notice, as the trial judge properly and correctly ruled and acknowledged.

## CONCLUSION

The decision of the District Court of Appeal of the State of Florida, Fifth District, should be quashed, and the trial court's dismissal should be reinstated.

Respectfully submitted,

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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.myflcourtaccess.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 15th day of January, 2016.

*/s/ Steven N. Gosney*
STEVEN N. GOSNEY
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