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IN THE SUPREME COURT OF FLORIDA

CLAUDIO J. POILLOT,

Petitioner,

v. CASE NO. SC15-1691

STATE OF FLORIDA,

Respondent.

________________________________/

ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

RESPONDENT'S ANSWER BRIEF ON THE MERITS

PAMELA JO BONDI
ATTORNEY GENERAL

KRISTEN L. DAVENPORT
ASSISTANT ATTORNEY GENERAL
Fla. Bar #909130

WESLEY HEIDT
BUREAU CHIEF
FLORIDA BAR #773026
444 Seabreeze Blvd.
Fifth Floor
Daytona Beach, FL 32118
(386) 238-4990

COUNSEL FOR RESPONDENT

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STATEMENT OF FACTS

To provide a more complete picture of the proceedings below, Respondent submits the following additions to Petitioner's Statement of Facts:

The Defendant was convicted of a felony and sentenced to 48 months in the Department of Corrections ("DOC"). (R. 44). On the date of the instant offense, he was in state custody, housed at the Kissimmee Community Center. (R. 45).

As part of a work release program, the Defendant began employment with a construction company. (R. 31). He carried a phone, and he was informed of all the work release program requirements. (R. 48, 80).

The Defendant's authorized work schedule was 6 am to 6 pm Monday through Saturday. (R. 31). He was required to clock in when he arrived at work, then report to one of the vans the workers were scheduled to ride on to the different work sites. (R. 76-77). On the date of the offense, the Defendant clocked in as required, and then left. (R. 76-77).

The employer conducted a search of their premises, including all their vehicles and their different work locations. (R. 77). At approximately 7 am, when they could not find the Defendant, they called DOC and stated that the Defendant was missing and his employment was terminated. (R. 44, 77). The Defendant's work release status was revoked by DOC at approximately 2 pm. (R. 44, 85).

An extensive, nine hour search was conducted by the Orange County Sheriff's Office, with K9 assistance and helicopters. (R. 44). The Defendant was not located, but he reported back to the Kissimmee Community Center before 6 pm, where he was arrested for escape. (R. 31-32).

The Defendant was charged by amended information with escaping from the confinement of the Kissimmee Community Work Release Center or JS & Son Construction and going at large with the intent to avoid lawful confinement. (R. 14). He filed a motion to dismiss this charge. (R. 31-34). The State filed a traverse/demurrer. (R. 44-49). A hearing was held on the motion. (R. 74-90).

The trial court granted the Defendant's motion, and the State timely appealed. (R. 50-51).

The Fifth District Court of Appeal reversed the trial court's order, finding that these facts, viewed in the light most favorable to the State, demonstrated that the Defendant had failed to remain with the "extended limits of confinement" as defined in section 945.091, Florida Statutes. State v. Poillot, 173 So. 3d 1070 (Fla. 5th DCA 2015). This Court accepted jurisdiction to review that decision.

SUMMARY OF ARGUMENT

The trial court erred in granting the Defendant's motion to dismiss. Viewing the evidence in the light most favorable to the State, the Defendant's actions fall under the plain language of the escape statutes, as he failed to remain within the extended limits of his confinement. The district court's decision reversing the trial court's order should be approved.

ARGUMENT

THE DISTRICT COURT OF APPEAL PROPERLY CONCLUDED THAT THE STATE COULD ESTABLISH A PRIMA FACIE CASE OF ESCAPE.

This case comes before the Court at an early stage of the proceedings – the Defendant successfully moved to dismiss the case under Rule 3.190(c)(4) of the Florida Rules of Criminal Procedure. Under this Rule, dismissal is warranted only if "[t]here are no material disputed facts and the undisputed facts do not establish a prima facie case of guilt against the defendant." The Defendant could not meet this standard here, and the order of dismissal was properly reversed.

Standard of Review

A trial court's ruling on a motion to dismiss is reviewed on appeal de novo. See, e.g., State v. N.F., 924 So. 2d 912, 913 (Fla. 5th DCA 2006); State v. Walthour, 876 So. 2d 594, 595 (Fla. 5th DCA 2004). When considering a defendant's motion to dismiss, "all questions and inferences from the facts must be resolved in favor of the state," and where a traverse disputes material facts, the motion must be denied. Boler v. State, 678 So. 2d 319, 323 (Fla. 1996).

Under this standard, then, "[o]nly 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." State v. Taylor, 16 So. 3d 997, 999 (Fla. 5th DCA 2009). To

establish a prima facie case, the State can rely on circumstantial evidence, as well as all inferences from that evidence viewed in the light most favorable to the State. State v. Kalogeropolous, 758 So. 2d 110, 112 (Fla. 2000). As the Fifth District Court of Appeal long ago explained:

> The order dismissing the charges cuts off the right of the state to attempt to prove its allegations in much the same manner as a summary judgment proceeding on the civil side. So long as the state barely shows a case against the accused it should be allowed to proceed with its case. Then if the accused is entitled to a directed verdict at trial or an acquittal, each party has been given its due. **It is only when the state cannot establish even the barest bit of a prima facie case that it should be prevented from prosecuting.**

State v. Pentecost, 397 So. 2d 711, 712 (Fla. 5th DCA 1981) (emphasis added). Applying that standard here, the district court properly concluded that the trial court's order was legally erroneous.

Escape as defined by the Florida Statutes

The Defendant was charged with the crime of escape, which is defined by Florida Statute 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.

In the trial court, the Defendant did not contest that he willfully left work and knew that he was supposed to be at work. (R. 84-85). Instead, he argued that he was not "confined" when he was at his place of employment, and accordingly he could not have "escaped from confinement." The district court properly concluded that this argument has no merit.

The Florida Legislature has specifically recognized that an inmate who is participating in a state work release program does so under an "extension of the limits of the place of confinement." § 945.091(1)(b), Fla. Stat. The Legislature has further specifically stated that the willful failure to "remain within the extended limits of his or her confinement . . . shall be deemed as an escape from the custody of the department and shall be punishable as prescribed by law." § 945.091(4), Fla. Stat. Cf. Thomas v. Department of Corrections, 159 So. 3d 291, 292 (Fla. 1st DCA 2015) (recognizing that this language in the statute shows that work release is merely an extension of the limits of the place of confinement). See also Fla. Admin. Code R. 33-601.602(2014) (DOC rules permitting the extension of the limits of the place of confinement).

As the First District Court of Appeal has recognized, section 945.091 and section 944.40, construed together, provide that an inmate on authorized work release can be guilty of escape in at least two different ways – by willfully failing to remain within the extended limits of confinement, or 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).

The Defendant's argument recognizes only the latter action as an escape, which is contrary to the plain language of the statute and essentially renders the first option under section 945.091(4) meaningless. Such a reading violates a fundamental rule of statutory construction. See Reeves v. State, 957 So. 2d 625, 629 (Fla. 2007) (statutory language cannot be construed in such a way as to render it meaningless).

The district court properly reversed the trial court's decision and recognized, as the Legislature expressly has, that a prisoner on work release is not free to go wherever he chooses during working hours, but is still confined, free to move about only *within* the "extended limit of confinement" provided by the terms of his employment.

As the court below noted, the Defendant "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." Poillot, 173 So. 3d at 1073. This reading of the statute is absurd. See also State v. Lanier, 701 S.E.2d 53, 55-56 (S.C. Ct. App. 2010) (prisoner who left site of work release program committed an escape; legislature clearly intended that "the lawful confinement of a prisoner in a

work release program is extended to the limits of a prisoner's designated work release location").

Williams and Early

In the trial court, and here, the Defendant relies on cases addressing escape in a different context. Specifically, the Defendant relies on State v. Williams, 918 So. 2d 400 (Fla. 2d DCA 2006), and Early v. State, 678 So. 2d 901 (Fla. 5th DCA 1996). In both cases, the district courts stated that defendants who fail to timely report to work while on work release do not commit the crime of escape. Williams, 918 So. 2d at 401-02; Early, 678 So. 2d at 901 (in dicta). In both cases, however, the courts did so based on section 951.24 of the Florida Statutes. This statute is not applicable here.

Section 951.24 does not include the specific "extending confinement" language discussed above, but instead provides that a court may grant the privilege to "leave the confines of the jail or county facility" to report to work as part of a work release program. § 951.24(2)(a), Fla. Stat. The State submits that Williams and Early incorrectly find that prisoners who fail to report to work are not escaping from confinement under this statute. See § 951.24(4), Fla. Stat. (expressly providing that failure to remain within the extended limits of confinement is an escape from custody – language which is rendered a nullity by these decisions). However, this Court need not address this issue here,

and the district court properly refrained from doing so, because this section does not apply to the instant case.

The Defendant was convicted of a felony and was in state custody when he left his work release employment. (R. 44-45). Section 951.24, and indeed all of Chapter 951, address county and municipal prisoners, not state prisoners. See Price v. State, 333 So. 2d 84, 85 (Fla. 1st DCA 1976) (recognizing different application of the two statutes).

The decisions in Early and Williams are not relevant here, as they do not involve state prisoners and the statute governing escapes from state custody.

Due Process/Notice

The Defendant asserts that the prosecution for escape violates his right to notice under the Due Process Clause. This argument involves two claims – one, that he was never aware of the conditions of the work release program, and two, that he was never told that he had been terminated from that program. The first point is contradicted by the record, the second is interesting but irrelevant.

First, the notion that the Defendant had to be specifically told that he could not report for work and then skip out on his job and do whatever he wanted so long as he was back in time is contrary to common sense. At any rate, the record contains exactly the allegation that the Defendant deems to be missing (Initial Brief at p. 8-9) – the State alleged in its traverse/demurrer that

the Defendant was informed of the consequences for such a violation and confirmed this notice by signing DOC Work Release Center Rules and Policy Certificate of Orientation on March 25, 2014. (R. 48, 80).

To the extent the Defendant claims that he had a due process right to notice that his actions would constitute the crime of escape, the State submits that the plain language of the statutes and case law discussed above more than satisfy any due process concerns. See, e.g., State v. Beasley, 580 So. 2d 139, 142 (Fla. 1991) ("[a]s to notice, publication in the Laws of Florida or the Florida Statutes gives all citizens constructive notice of the consequences of their actions").

As to the allegation that the Defendant was never notified that he had been terminated from his work release program and accordingly cannot be held criminally accountable, the State submits that this is an interesting point, but irrelevant. As discussed above, the Defendant committed an escape when he left the extended place of his confinement (his work release job). That he was ultimately not even on work release by mid-morning, as his privilege to participate in this program was terminated when he left the grounds of his employer (R. 44, 77, 85), is not the basis for the charge of escape.

Whether providing formal notice of termination to a missing inmate is required under these circumstances, or whether the inmate's being aware that work release is automatically terminated

under such circumstances is enough, is an issue for another day, as the escape was already complete before the program was terminated in the instant case.

Conclusion

The Defendant escaped from confinement when he chose to leave his place of employment, and his decision to ultimately return to the work release center does not negate his earlier escape. As a matter of policy, the Legislature did not intend to allow convicted felons to wander around without consequence when they are required to be in a certain place, albeit outside the prison walls. Work release programs provide a good opportunity for inmates to gain skills and become productive members of society. Interpreting the statutes governing such programs in the manner advocated by the Defendant endangers the acceptance of these programs and puts the public at risk.

Viewing all the facts in the light most favorable to the State, the trial court's order dismissing this case was properly reversed, and the State was properly given the chance to demonstrate to a jury that the Defendant willfully escaped from the extended limits of his confinement.

Based on the arguments and authorities presented herein, Respondent respectfully requests this honorable Court approve the decision of the Fifth District Court of Appeal.

Respectfully submitted,
PAMELA JO BONDI
ATTORNEY GENERAL

/s/ Kristen L. Davenport
KRISTEN L. DAVENPORT
ASSISTANT ATTORNEY GENERAL
Florida Bar # 909130

/S/Wesley Heidt
WESLEY HEIDT
BUREAU CHIEF
Florida Bar # 773026
444 Seabreeze Blvd. Ste. 500
Daytona Beach, FL 32118
(386) 238-4990
crimappdab@myfloridalegal.com

COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above Answer Brief On the Merits has been furnished to Steven N. Gosney, counsel for Petitioner, 444 Seabreeze Blvd., Ste. 210, Daytona Beach, Florida 32118, by email to appellate.efile@pd7.org and gosney.steve@pd7.org, this 9th day of February, 2016.

CERTIFICATE OF COMPLIANCE

The undersigned counsel certifies that this brief was typed using 12 point Courier New, a font that is not proportionately spaced.

/s/ Kristen L. Davenport
Kristen L. Davenport
Counsel for Respondent