

In the Third District Court of Appeal
State of Florida

Orlando Chillon Hernandez,

Petitioner,

CASE NO. 3D24-_____
Previous Case No. F24-523

vs.

The State of Florida,

Respondent.

_____/

Petition for Writ of Habeas Corpus,

Orlando Chillon Hernandez seeks a writ of habeas corpus challenging the trial court's refusal to grant nonmonetary conditions of release at first appearance based on newly amended section 907.041(5)(b), Florida Statutes (2024). That statute has already been declared an unconstitutional violation of the separation of powers by the Supreme Court of Florida, and the amendment did nothing to solve that unconstitutionality. The grounds for this petition are as follows:

FACTS

1. On January 9, 2024, Mr. Chillon Hernandez was arrested by police and charged with felony battery. (A. 2-3).¹

2. Mrs. Greta Companioni, the defendant's wife and the alleged victim in this case, appeared at first appearance on his behalf. She told the court that her husband is mentally ill, and was under the influence of medication recently prescribed by a doctor at Citrus Health. (A. 9). The doctor told the wife that recovery from his illness is a step-by-step process.² (A. 9-10).

3. The wife told the judge that her husband had never been physically aggressive before, but that he had a panic attack and hit her with a ceramic mug. (A. 10). She also stated she was not afraid of her husband, did not want any cooling off period, and that no

¹ The symbol "A." followed by a numeral indicates the page number in the appendix filed contemporaneously with this petition pursuant to Florida Rules of Appellate Procedure 9.100(g) and 9.220.

² Because of the ephemeral nature of this issue (*see* discussion of mootness in the jurisdiction section, *infra*) this writ was filed based on the attorney's affidavit rather than a transcript. Securing a transcript from a felony first appearance hearing in Miami-Dade County is a lengthy process, even on an expedited basis. Undersigned counsel has already begun this process and will file a supplemental appendix with the transcript as soon as it becomes available.

one had forced her to come to court to testify. (A. 10).

4. The arrest affidavit is similar, saying: “The victims advised that the defendant is diagnosed with anxiety and is on medication. The victim stated that the last several days the defendant has not been sleeping, making irrational statements and stating that he is going to die. On today’s date [January 9,] the victim was drinking coffee with the defendant when he observed a vase and fresh flowers that were brought to the victim by the client. The defendant began to accuse the victim of trying to do Santeria on him and threw the vase on the floor. When the victim tried to exit the room, the defendant grabbed the ceramic coffee mug and hit the victim on the left side of her face. The victim sustained a laceration on her left eyebrow and laceration below her left eye.” (A. 2-3).

5. The arrest affidavit also confirms Mr. Chillon Hernandez’s mental state: “The defendant made spontaneous statements to officer’s [sic] on scene advising that people were out to get him and that he was going to die. Due to defendant’s altered mental status, making irrational statements and is his irrational behavior, he was unable to provide a statement.” (A. 3).

6. A computer check verified that Mr. Chillon Hernandez had never before been arrested for any crime. (A. 4).

7. The Honorable Mindy Glazer (“first appearance judge”) found probable cause only for battery, but that the battery was a crime of domestic violence. (A. 10). Because it is domestic violence, that charge is on the long list of “dangerous crimes” in section 907.041(5)(a), Florida Statutes.

8. The first appearance judge indicated a willingness to release Mr. Chillon Hernandez to “pretrial services,” a nonmonetary release program that relies on frequent reporting. (A. 10). The state argued that nonmonetary conditions for pretrial release could not be granted based on section 907.041(5)(b), Florida Statutes. (A. 10).

9. The defense objected that statute was unconstitutional based on *State v Ramond*, 906 So. 2d 1045 (Fla. 2005). The defense had previously given the first appearance judge a copy of a written objection (without a client name or case number) in anticipation that this issue would arise. (A. 10). After the hearing, defense counsel filed the same written objection under Mr. Chillon Hernandez’s name and case number. (A. 5-7).

10. The first appearance judge denied that objection and imposed

a monetary bond of \$1,000. The first appearance judge issued a modified stay-away order allowing Mr. Chillon Hernandez to have contact with his wife provided it is non-violent and non-threatening.

11. As of the filing of this petition, Mr. Chillon Hernandez remains incarcerated on a \$1,000 monetary bond. (A. 8).

ARGUMENT

Section 907.041(5)(b), Florida Statutes, is unconstitutional.

The legislature amended section 907.041(5)(b), effective January 1, 2024. Because it is important to the analysis to understand how it read before the amendment, the chapter law is quoted here:

(b) A No person arrested for charged with a dangerous crime may not shall be granted nonmonetary pretrial release at a first appearance hearing if the court has determined there is probable cause to believe the person has committed the offense; ~~however, the court shall retain the discretion to release an accused on electronic monitoring or on recognizance bond if the findings on the record of facts and circumstances warrant such a release.~~

Chap. 2023-27, § 4, Laws of Fla (codified as § 907.041(5)(b), Fla. Stat.).

Almost twenty years ago, the Supreme Court of Florida

declared that this statute was an unconstitutional violation of the separation of powers because it was procedural. “The provision at issue here merely affects the timing of the release on nonmonetary conditions.” *State v. Raymond*, 906 So. 2d 1045, 1050 (Fla. 2005). As the court noted: “Because the right to nonmonetary pretrial release is not itself at issue-any person entitled to PTS nonmonetary release before the amendment is still entitled to it after the amendment—this is not a substantive provision.” *Id.*³

The most-often quoted definition of procedure is from Justice Adkins: “Practice and procedure encompass the course, form, manner, means, method, mode, order, process or steps by which a party enforces substantive rights or obtains redress for their invasion. “Practice and procedure” may be described as the machinery of the judicial process as opposed to the product thereof. *In re Florida Rules of Criminal Procedure*, 272 So. 2d 65, 66 (Fla. 1972) ((Adkins, J., concurring) (emphasis supplied).

Section 907.041(5)(b) only governs when (“method” “order”, or

³ At the time of *Raymond*, this language was codified in subsection (4)(b), but another new law, Chapter 2023-225, § 1, inserted a new subsection (4), dealing with offenses involving schools or students. The former subsection (4) is now renumbered as (5).

“steps”) nonmonetary release occurs. To illustrate the problem, a court could comply with the statute and then hold a “second appearance” a day, an hour, or five minutes after the first appearance hearing and grant nonmonetary release at that second hearing.

By governing only when it can happen, not what happens, the statute is procedural, and that is for the courts, not the legislature. *Massey v. David*, 979 So. 2d 931, 937 (Fla. 2008) ([W]here a statute has some substantive aspects, but the procedural requirements of the statute conflict with or interfere with the procedural mechanisms of the court system, those requirements are unconstitutional.”); Art. II, § 3, Art. V, §2(a), Fla. Const. As the court explained in *Raymond*, the statute in question here conflicts with Criminal Rules of Procedure 3.130(d) and 3.131(b)(1), and is therefore an unconstitutional violation of the separation of powers. 906 So. 2d at 1051.

The legislature has done nothing to address the unconstitutionality of this statute for almost two decades. There was no recognition that *Raymond* had declared this section unconstitutional in the staff analysis of HB 1627, which became

Chapter 2023-27.⁴ Unsurprisingly therefore, the recent amendments in Chapter 2023-27 did nothing to solve the problem.

Leaving aside grammatical and stylistic alterations, there are only two substantive changes in this amendment. The first is a requirement that there be probable cause that the person committed the crime. Whether probable cause is found does not change whether the person can be placed on nonmonetary release. It only determines when it can be done—if no probable cause is found, at first appearance; if probable cause is found, after first appearance. The unconstitutionality of the law remains.

The second substantive amendment is the deletion of the exception for electronic monitoring or recognizance bonds. This amendment just makes the constitutional problem worse because now the statute applies to the timing of all forms of nonmonetary release, including electronic monitoring and recognizance bonds.

Thus, the amended statute is still unconstitutional under *Raymond* because the legislature has never attempted to fix this

⁴ Available at: <https://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=78460&SessionId=99>

statute so that it comports with the constitutional separation of powers.

JURISDICTION AND NATURE OF RELIEF SOUGHT

This Court has jurisdiction to issue writs of habeas corpus and pursuant to [Article V, section 4\(b\)\(3\) of the Constitution of the State of Florida](#) and [Florida Rules of Appellate Procedure 9.030\(b\)\(3\) and 9.100](#). “A petition for writ of habeas corpus in the appellate court is the appropriate way to challenge a trial court's ruling on the conditions of pretrial release.” *Greenwood v. State*, 51 So. 3d 1278, 1279 (Fla. 2d DCA 2011).

It may be that Mr. Chillon Hernandez will be eventually released, perhaps even on nonmonetary conditions at a later date. Since this law became effective on January 1, 2024, this issue has recurred several times a day in the Eleventh Judicial Circuit. Because this statute is procedural, this constitutional issue will evade review because nonmonetary conditions of release can be granted at later hearings. “A well-settled exception to mootness applies to an issue that is ‘capable of repetition, yet evading review.’” *K.B. v. Florida Dept. of Children & Families*, 202 So. 3d

909, 912 (Fla. 3d DCA 2016) (quoting *Kight v. Dugger*, 574 So. 2d 1066, 1068 (Fla. 1990)); see also *Martinez v. Singletary*, 691 So. 2d 537, 538 (Fla. 1st DCA 1997) (“[S]hort-lived violations of law that are over before they can be fully challenged in court are *not* considered moot if they are capable of repetition yet evade judicial review.”).

Additionally, there is another exception to mootness for questions of great public importance. *State v. Matthews*, 891 So. 2d 479, 483 (Fla. 2004) (“The mootness doctrine does not destroy our jurisdiction because the question before this Court is of great public importance and is likely to recur.”); *Holly v. Auld*, 450 So. 2d 217, 218 (Fla. 1984) (“It is well settled that mootness does not destroy an appellate court's jurisdiction, however, when the questions raised are of great public importance or are likely to recur.”). Because this petition raises questions of the constitutionality of a statute and the constitutional separation of powers that it is an issue of great public importance. See *State v. Cotton*, 769 So. 2d 345, 346-47 (Fla. 2000) (question of great public importance whether section 775.082(8), Florida Statutes, violates the constitutional separation of powers.).

Therefore, even if the petitioner's specific case becomes moot, this Court will still have jurisdiction to decide this case, and should do so to resolve this important and recurring issue.

WHEREFORE, the petitioner respectfully requests that this Honorable Court grant its writ of habeas corpus, affirm that section 907.041(5)(b), Florida Statutes statute is unconstitutional under the controlling precedent of *Raymond*, and order the first appearance judge to consider nonmonetary conditions of release notwithstanding the unconstitutional statute.

Respectfully submitted,

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CERTIFICATES

I hereby certify that a copy of the above petition and accompanying appendix was sent by electronic service through the electronic filing portal to the Office of the Attorney General 1 S.E. Third Avenue, Suite 900, Miami Florida 33131 at CrimAppMia@myfloridalegal.com, and to the Honorable Robin Faber, 1351 N.W. 12th Street, Miami, Florida 33125, at rfaber@jud11.flcourts.org this tenth day of January 2024.

I hereby certify that this petition was created in 14-point Bookman Old Style and that it is within the prescribed word limits.

/s/ John Eddy Morrison
JOHN EDDY MORRISON
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