IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT, IN AND FOR ORANGE COUNTY, FLORIDA

NATHAN J. GAST,

Petitioner,

CASE NO.: 2006-CA-10166-O
LOWER CASE NO.: 2006-CT-12237-E
WRIT NO.: 06-85

v.

STATE OF FLORIDA,

Respondent.

_____/

Petition for Writ of Prohibition
from the Order of the Orange County Court,
C. Jeffery Arnold, County Court Judge.

Adam H. Sudbury, Esquire
for Petitioner.

Lawson Lamar, State Attorney for the Ninth Judicial Circuit, and
LaMya A. Henry, Assistant State Attorney,
for Respondent.

Before TURNER, FLEMING, and GRINCEWICZ, J.J.

PER CURIAM.

FINAL ORDER DENYING PETITION FOR WRIT OF PROHIBITION

Nathan J. Gast, ("Petitioner"), pursuant to section 81.011, Florida Statutes, and rules 9.030(b), 9.100(a), and 9.100(e), Florida Rules of Appellate Procedure, filed a petition for Writ of Prohibition with the Fifth District Court of Appeal against Lawson Lamar, the State Attorney for the Ninth Judicial Circuit of Florida, ("Respondent"), and C. Jeffery Arnold, County Judge of the Orange County Court. On November 20, 2006,

the Fifth District Court of Appeal, pursuant to rule 9.030(b), Florida Rules of Appellate Procedure, declined to accept jurisdiction and transferred Petitioner's cause to this Court. This Court has jurisdiction pursuant to rules 9.030(c), and 9.100, Florida Rules of Appellate Procedure.

Factual and Procedural Background

Petitioner was detained on July 4, 2006, on suspicion of driving under the influence in violation of section 316.193, Florida Statutes. Petitioner was seventeen years old, a minor, at the time of the alleged offense. Petitioner's charging document was the uniform traffic citation pursuant to rule 6.165, Florida Rules of Traffic Court. Respondent did not file a petition for delinquency or a criminal information charging Petitioner as an adult.

Petitioner filed, in the county court, a Motion to Dismiss, an Amended Motion to Dismiss, and a Second Amended Motion to Dismiss. A hearing was held on October 5, 2006, regarding Petitioner's Second Amended Motion to Dismiss. The motion was denied by written order of the county court on October 30, 2006, based on the holding in *State v. Jones*, 899 So. 2d 1280 (Fla. 4th DCA 2005).

The county court certified the following question to the Fifth District Court of Appeal as being one of great public importance.

> DOES A COUNTY COURT HAVE JURISDICTION TO ADJUDICATE A CRIMINAL CASE IN WHICH A JUVENILE IS CHARGED BY UNIFORM TRAFFIC CITATION WITH VIOLATING SECTION 316.193,

> FLORIDA STATUTES (2006), DRIVING UNDER THE INFLUENCE?

The Fifth District Court of Appeal declined to accept the certified question and transferred Petitioner's Writ of Prohibition to this Court.

Petitioner requests this Court, upon disposing of the instant Writ of Prohibition, to certify the following question to the Florida Supreme Court as being one of great public importance.

> DOES A COUNTY COURT HAVE JURISDICTION TO ADJUDICATE A CRIMINAL CASE IN WHICH A JUVENILE IS CHARGED BY UNIFORM TRAFFIC CITATION WITH VIOLATING SECTION 316.193, FLORIDA STATUTES (2006), DRIVING UNDER THE INFLUENCE?

Discussion

Following the Florida Supreme Court's opinion in *English v. McCrary*, 348 So. 2d 293, 296 (Fla. 1977), the Fifth District Court of Appeal recognized:

> The writ of prohibition is an extraordinary writ extremely narrow in scope and operation by which a superior court, having appellate and supervisory jurisdiction over an inferior court or tribunal, may prevent that court or tribunal from exceeding its jurisdiction or usurping jurisdiction over matters not within its jurisdiction. It will be invoked only in emergency cases to forestall an impending injury where

> no other appropriate and adequate legal remedy exists and only when damage is likely to follow. Prohibition therefore may generally be granted only when it is shown the lower tribunal is without jurisdiction or is attempting to act in excess of its jurisdiction. It will not lie to prevent the mere erroneous exercise of jurisdiction by an inferior tribunal.

Florida Water Services Corp. v. Robinson, 856 So. 2d 1035, 1037 (Fla. 5th DCA 2003) (citations omitted).

Petitioner prays for this Court to issue the Writ of Prohibition because section 985.201,[1] Florida Statutes (2006), vests exclusive original jurisdiction with the circuit court in cases where any minor has allegedly committed a law violation. Therefore, according to Petitioner, the county court is without jurisdiction to hear the case because "[t]he circuit court has exclusive original jurisdiction of proceedings in which a child is alleged to have committed a delinquent act or violation of law." § 985.201, Fla. Stat. (2006). Under section 985.201(4)(b), Florida Statutes, once the child is taken into custody personal jurisdiction attaches to the circuit court.

Petitioner acknowledges that section 316.635, Florida Statutes (2006), provides **jurisdiction to the county court over juveniles alleged to have committed a criminal traffic law violation**. Additionally, he acknowledges that section 26.012, Florida Statutes (2006), provides jurisdiction to the circuit court "[i]n all cases in equity including all cases relating to juveniles **except traffic offenses**." (emphasis added.) However, he alleges that sections 985.201, 316.635, and 26.012, Florida Statutes, are hopelessly

[1] Effective January 1, 2007, section 985.201, Florida Statutes, was renumbered as section 985.0301, Florida Statutes.

conflicted. Therefore, according to Petitioner, this Court should apply the rules of statutory construction and find the county court lacks subject matter jurisdiction over Petitioner because section 985.201, Florida Statutes, is clear and unambiguous.

Additionally, Petitioner acknowledges the Fourth District Court of Appeal's holding that under section 316.635, Florida Statutes, the county court, and not the circuit court, is the proper court for juveniles charged with a criminal traffic law violation. *State v. Jones*, 899 So. 2d 1280, 1281 (Fla. 4th DCA 2005). While Petitioner recognizes this Court will likely find that it too is bound by the holding in *Jones*, he argues against such a finding because *Jones* failed to address whether section 985.201, Florida Statutes, precludes county courts from exercising jurisdiction over juveniles charged with criminal traffic law violations. Therefore, he argues that in the absence of a binding opinion by a higher court, this Court has the authority to grant Petitioner's Writ of Prohibition.

The Florida Supreme Court has long recognized:

> Stare decisis is a fundamental principle of Florida law. It played an important part in the development of English common law and its importance has not diminished today. Where an issue has been decided in the Supreme Court of the state, the lower courts are bound to adhere to the Court's ruling when considering similar issues, even though the court might believe that the law should be other wise.

State v. Dwyer, 332 So. 2d 333, 335 (Fla. 1976).

The principle of stare decisis also binds this Court to decisions of other District Courts of Appeal where the Fifth District Court of Appeal has not issued an opinion. *Don's Sod Co., Inc. v. Dep't of Revenue*, 661 So. 2d 896, 898 (Fla. 5th DCA 1995) ("Since this district has not issued an opinion . . . we agree that the circuit court was bound to follow [the First District Court of Appeal]."); *Nard, Inc. v. DeVito Contracting & Supply, Inc.*, 769 So. 2d 1138, 1140 (Fla. 2d DCA 2000) (circuit courts are not free to disregard decisions of District Courts of Appeal). Therefore, because the Fifth District Court of Appeal has offered no opinion on the present issue, this Court is obligated to follow Fourth District Court of Appeal's holding in *State v. Jones*, 899 So. 2d 1280 (Fla. 4th DCA 2005), if it applies.

In *Jones*, three juveniles were charged with driving without a valid license, but the county court granted the defense's motion to dismiss. *Id*. at 1280. The cases were transferred to the circuit court's juvenile division for petitions of delinquency under chapter 985, Florida Statutes. *Id*. The state then petitioned for a writ of prohibition to prevent the juvenile court from proceeding under chapter 985, Florida Statutes, because the circuit court lacked jurisdiction over juveniles charged with misdemeanor traffic violations. *Id*. The Fourth District Court of Appeal agreed with the state and held the county court, and not the circuit court, has original jurisdiction, under section 316.635, Florida Statutes, to hear cases involving juveniles charged with a misdemeanor traffic offenses. *Id*. at 1281.

Petitioner correctly states that *Jones* does not expressly mention section 985.201's grant of exclusive original jurisdiction to the circuit court regarding juveniles charged with violations of law. (Pet'rs Reply 1-2.) However, consideration of section 985.201,

Florida Statutes, is implicit in the Fourth District Court of Appeal's holding. In *Jones*, the county court dismissed the charges against the juveniles expressly because of section 985.201, Florida Statutes. Why else would the county court have transferred the cases to the circuit court's juvenile division in order for the state to file petitions of delinquency? The Fourth District Court of Appeal issued the writ of prohibition because that action by the county court placed cases before the circuit court which it had no jurisdiction over. *Jones*, 899 So. 2d at 1280.

In the instant case, Petitioner is a juvenile charged with violating section 316.193, Florida Statutes, a misdemeanor traffic offense, for allegedly driving under the influence. Petitioner sought to have the charges dismissed, and the case transferred to the circuit court's juvenile division in order for the state to file a petition for delinquency. The county court denied Petitioner's motion to dismiss, and now, Petitioner is seeking a Writ of Prohibition. If this Court were to grant Petitioner's request, it would be declaring that the county court lacks jurisdiction over juveniles charged with misdemeanor traffic offenses. Such a declaration from this Court would directly contravene the opinion of the Fourth District Court of Appeal. The sound principle of stare decisis strictly forbids such a result.

Assuming, without deciding, that this Court was able to reach Petitioner's argument without relying on the Fourth District Court of Appeal's opinion, we would still deny the petition. Petitioner correctly points out that, other than *Jones*, the opinions of the Florida Supreme Court and various district courts of appeal holding the county court is vested with jurisdiction over juveniles charged with misdemeanor traffic offenses were issued prior to the major legislative reforms in the juvenile justice system. (Pet. 7.); *See*

State v. G.D.M., 394 So. 2d 1017 (Fla. 1981); *Nettleton v. Doughtie*, 373 So. 2d 667 (Fla. 1979); *J.R.S. v. State*, 483 So. 2d 834 (Fla. 2d DCA 1986); *State v. C.B.K.*, 362 So. 2d 354 (Fla. 1st DCA 1978); chapter 39[2], Fla. Stat. (1990). Petitioner is also correct that some laws under Chapter 316, pertaining to juveniles charged with traffic offenses were repealed as a response to the major legislative reforms. Additionally, Petitioner analogizes *V.K.E. v. State*, 934 So. 2d 1276 (Fla. 2006), for the proposition that because the legislature created the juvenile justices system as a separate and distinct system from the adult criminal court, a county court may not exercise jurisdiction over juveniles based on statutes enacted and cases decided prior to the creation of Chapter 985, Florida Statutes. Petitioner's argument is well researched and thoughtfully drafted. However, it is not compelling.

True, section 316.635, Florida Statutes (2006), was first enacted in 1972. Ch. 72-179, § 3, Laws of Fla. 1972. However, section 316.635, Florida Statutes, has not, as Petitioner suggests, remained stagnant passively waiting to be thrown into the proverbial legislative trash bin. Prior to the enactment of the juvenile justice reforms, section 316.635 was amended in 1973, renumbered in 1976, and amended twice more in 1981 and 1983. *See* Ch. 73-734 § 24, Laws of Fla. 1973; Ch. Ch. 76-31 § 1, Laws of Fla. 1976; Ch. 81-218 § 14, Laws of Fla. 1981; Ch. 83-218 § 4, Laws of Fla. 1983. Then, after it enacted the separate system for handling juveniles who violate the law, the Legislature saw fit to amend section 316.635, Florida Statutes, three more times. Ch. 94-209 § 64, Laws of Fla. 1994 (specifically addressing the creation of the Department of Juvenile Justice and creating the maximum sentence of 5 days for a first offense and 15

[2] Laws relating to juvenile delinquency were consolidated and renumbered in 1997. See Ch. 97-238 § 1, Laws of Fla. 1997.

days for a second offense in a staff-secure juvenile shelter); Ch. 98-280 § 27, Laws of Fla. 1998 (amended in accordance with the reorganization of Ch. 39, now Ch. 985); Ch. 2004-11 § 7, Laws of Fla. 2004. Therefore, contrary to Petitioner's argument, it seems that section 316.635, Florida Statutes, has not been merely overlooked by Legislature as it overhauled the juvenile justice system, but remains vital.

Petitioner correctly postulates that *V.K.E v. State*, 934 So. 1276 (Fla. 2006), clarifies the instant issue. However, a complete analysis of *V.K.E.* calls for the opposite conclusion than the one reached by Petitioner. In *V.K.E.* the Florida Supreme Court, while finding the trial judge lacked authority to impose certain costs under adult criminal statutes on a juvenile, held:

> [F]irst, the Legislature has created a juvenile justice system as a totally separate and distinct rehabilitative alternative to the punitive criminal justice system, and not as a subset of that system with all of its attendant punitive measures and costs;
>
> [S]econd, *the Legislature has expressly provided in certain instances for the taxation of criminal justice costs and surcharges against delinquents but not done so here*;
>
> [T]hird, the Legislature has actually spoken on the issue before us by expressly providing that court fees and costs should not ordinarily be imposed in juvenile proceedings.
>
> Moreover, we conclude that a contrary holding would open the door to the assessment in juvenile proceedings of the

> unrelated costs, fees, and surcharges provided for in the adult criminal system without a clear legislative mandate to do so. This in turn would impair the ability of the juvenile system to focus on and serve its legislatively mandated rehabilitative function.

Id. at 1278 (emphasis added).

The substance of *V.K.E.'s* holding is that unless the Legislature expressly provides otherwise, the distinct and separate nature of the juvenile system forbids applying adult sanctions to juveniles. *Id*. Here, section 26.012[3], Florida Statutes (2006), expressly provides that the circuit court shall have jurisdiction over all cases involving juveniles **except those cases involving traffic offenses**. (emphasis added.) Section 316.635, Florida Statutes, entitled, "Courts having jurisdiction over traffic violations; powers relating to custody and detention of minors," **expressly gives jurisdiction over juveniles accused of committing misdemeanor traffic violations to the county court**. (emphasis added.) Like the financial sanctions discussed in *V.K.E.*, here, the Legislature has seen fit to make a limited exception to the circuit court's jurisdiction over juveniles. The statutes, read together, are not in conflict, but a clear indication of the Legislature's continuing intent to have juveniles accused of committing misdemeanor traffic violations heard in county court. If this, or any, Court were to find otherwise, without a clear legislative mandate to do so, it would impair the ability of the juvenile system to focus on and serve its legislatively mandated rehabilitative function.

[3] Petitioner also suggests that section 26.012, Florida Statutes, is equally outdated and in conflict with section 985.201. Section 26.012 was enacted in 1972, but has been amended twelve times, including five times since 1990. See generally Ch. 2004-11 § 1, Laws of Fla. 2004.

Petitioner's Question to the Florida Supreme Court

Petitioner requests this Court to certify a question directly to the Florida Supreme Court. However, under rule 9.030, Florida Rules of Appellate Procedure, the Florida Supreme Court lacks the jurisdiction to hear such a question from the circuit court. Rule 9.030(a)(2), Fla. R. App. P. (2006). Additionally, under rule 9.030(b)(4), Florida Rules of Appellate Procedure, the District Court of Appeal lacks discretionary jurisdiction to hear a question certified to it by the circuit court to be of great public importance. Petitioner's only path to the Florida Supreme Court is through the Fifth District Court of Appeal. Rule 9.030(b), Fla. R. App. P. (2006).

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** that Gast's Petition for Writ of Prohibition is **DENIED**.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, this _19th___ day of _____February_____, 2007.

____/S/_____
DONALD E. GRINCEWICZ
Circuit Court Judge

_____/S/_____
THOMAS W. TURNER
Circuit Court Judge

_____/S/_____
JEFFREY M. FLEMING
Circuit Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. mail to **Adam H. Sudbury, Esq.,** 809 Irma Avenue, Orlando, Florida 32803; and to **LaMya A. Henry,** Assistant State Attorney, 415 N. Orange Avenue, Orlando, Florida 32801 on this _19_____ day of ___Feb._____, 2007.

_____/S/_____
Judicial Assistant