

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

CASE NO: 2011-AP-22
Lower Court Case No: 2011-MM-190

COLBY WINDFORD YANDOW,

Appellant,

vs.

STATE OF FLORIDA,

Appellee.

_____ /

Appeal from the County Court,
for Orange County, Florida,
Martha C. Adams, County Court Judge

Robert Wesley, Public Defender and
Benjamin Wurtzel, Assistant Public Defender,
for Appellant

No Appearance for Appellee, State of Florida

Before POWELL, JOHNSON, and HIGBEE, J.J.

PER CURIAM.

FINAL ORDER REVERSING TRIAL COURT

In this case, the Appellant was charged with Prostitution in violation of section 796.07(2), Florida Statutes (2011), a misdemeanor punishable by 60 days county jail and \$500 fine. The trial judge denied Appellant's request for jury trial, issued a no jail/no adjudication statement¹, and over Appellant's objection conducted a bench trial. Appellant was found guilty, and this

¹ The trial judge was proceeding under section 918.0157, Florida Statutes (2011). However, this statute by its express wording does not apply to cases where "...a right to trial by jury for such offense is guaranteed under the State or Federal Constitutions."

appeal followed. We dispense with oral argument pursuant to Florida Rule of Appellate Procedure 9.320, and reverse.

The State of Florida did not file an Answer Brief. We have found one appellate court opinion in Florida² but none elsewhere dealing with the issue of whether there is a constitutional right to a jury trial in prostitution cases. The Federal³ and Florida Constitutions⁴, as well as Florida Rule of Criminal Procedure 3.251 appear on their face to guarantee the right to jury trial for *all* criminal offenses. However, both the United States Supreme Court and the Florida Supreme Court recognize a class of “petty offenses” which constitutionally require a jury trial.⁵ These offenses are (1) crimes that were indictable at common law, (2) crimes that involve moral turpitude, (3) crimes that are *malum in se*, and (2) crimes that carry a maximum penalty of more than six months incarceration.

“Moral turpitude” has been defined by the Florida Supreme Court in *State ex rel. Tullidge v. Hollingsworth*, 146 So. 660, 661 (Fla. 1933), in the following general way:

“Moral turpitude involves the idea of inherent baseness, or depravity in the private social relations or duties owed by man to man or by man to society. It has also been defined as anything done contrary to justice, honesty, principle, or good morals, though it often involves the question of intent as when unintentionally committed through error of judgment when wrong was not contemplated.”

We agree with Appellant, and think that Prostitution falls within the category of crimes involving moral turpitude. It involves baseness in human affairs and is contrary to good morals,

² In *Grace v. State*, 10 Fla. Supp. 595a, (Fla. 17th Cir. Ct. 2003), the State and defense agreed to a non-jury trial and that adjudication would be withheld and no imprisonment imposed. The circuit court on appeal affirmed noting that, “Solicitation for Prostitution is not a crime at common law or one that falls within the Sixth Amendment’s guarantee of a jury trial.” Since there was a stipulation and there was no mention in the opinion of moral turpitude, this case is not helpful.

³ Amend. VI & XIV, U.S. Const.

⁴ Art. I, § 16, Fla. Const.

⁵ See *Whirley v. State*, 450 So. 2d 836, 838 (Fla. 1984); *Reed v. State*, 470 So. 2d 1382, 1283 (Fla. 1985).

thus meeting the test set forth in *Hollingsworth*. The federal government has expressly classified Prostitution as a crime of moral turpitude in laws and regulations involving alien affairs.⁶ Convictions of somewhat similar sexual crimes have been held by courts of other jurisdictions to involve moral turpitude forming the basis for revocation of professional licenses.⁷ For these reasons, we hold that the Florida offense of Prostitution is an offense guaranteeing a Federal and Florida Constitutional right to jury trial, and that the trial court erred in conducting a bench trial.

REVERSED and REMANDED with instructions to vacate the finding of guilt and to conduct a jury trial.

DONE AND ORDERED at Orlando, Florida this 19th day of July, 2013.

/S/

ROM W. POWELL
Senior Judge

/S/

ANTHONY H. JOHNSON
Circuit Judge

/S/

HEATHER L. HIGBEE
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing order was furnished to **Benjamin Wurtzel, Assistant Public Defender**, 435 N. Orange Avenue, Ste. 400, Orlando, Florida 32801; **Jeff Ashton, State Attorney**, 415 N. Orange Avenue, Ste. 200, Orlando, Florida 32802-1673; and **Honorable Martha C. Adams**, 425 N. Orange Avenue, Orlando, Florida 32801, by mail, this 24th day of July, 2013.

/S/

Judicial Assistant

⁶ See 8 U.S.C.A. § 1182(a)(2)(A),(B) (West 2010); *U.S. Dept. of State Foreign Affairs Manual*, 9 FAM 40.21(a) N2.3-3.

⁷ See *McLaughlin v. Bd. of Med. Examiners*, 35 Cal. App. 3d 1010, 111 Cal. Rptr. 353 (Cal. Ct. App. 1973) (physician made homosexual advance to undercover police officer in public restroom); *Grievance Committee v. Broder*, 112 Conn. 263, 152 A. 292 (1930) (Lawyer disbarred for conviction of criminal Adultery); *Brun v. Lazzell*, 172 Md. 314, 191 A. 240 (1937)(dentist's license revoked for conviction for Indecent Exposure).