2014 WL 3407111 (Fla.Cir.Ct.) (Trial Order)
Circuit Court of Florida.
Eleventh Judicial Circuit
Miami-dade County

STATE of Florida, Plaintiff,
v.
Jermaine HARRIS, Defendant.

Nos. F14-2996, F14-2997A.
July 3, 2014.

***1** Section 15

Order

Miguel M. De La O, Judge.

THIS CAUSE came before the Court on Defendant, Jermaine Harris's ("Harris"), Motion to Set Bond ("Motion"). The Court has reviewed the Motion and is fully advised in the premises. The Motion is denied.

This Court revoked Harris's pretrial release pursuant to Florida Statutes section 903.0471 because he was arrested after the Court released him on his own recognizance, [1] and the Court found probable cause to believe Harris committed a new criminal offense. [2]

Harris admits that if section 903.0471 applies to defendants released on their own recognizance and enrolled in PTI, then the Court may lawfully deny Harris a bond. Motion, at 1-2. Conversely, if section 903.0471 does not apply to Harris, in the absence of a motion for pretrial detention (which the State has not filed nor indicated they intend to file), the Court cannot deny Harris a reasonable bond.

The issue presented by the Motion is whether a defendant who is released on his own recognizance and enrolled in PTI is "on pretrial release" within the meaning of section 903.0471. [3] Unless Harris's prosecution is deemed to have terminated upon his referral to PTI, Harris remained on pretrial release while enrolled in PTI - it then follows that this Court can detain Harris without bond pursuant to section 903.0471 because he is accused of committing a new criminal offense while on pretrial release. The Court concludes that Harris was on pretrial release at the time he was arrested for committing a new criminal offense.

Until a defendant completes all conditions of PTI, and the State subsequently announces a *nolle prosequi*, the case against the defendant remains open. The language used in the PTI statute makes it abundantly clear that the prosecution of the defendant does not terminate upon the defendant's admission to PTI. *See* 948.08(3), Fla. Stat. ("The criminal charges against an offender admitted to the program shall be continued without final disposition."); § 948.08(5)(c), Fla. Stat. ("The state attorney shall make the final determination as to whether the prosecution shall *continue*.") (emphasis added); § 948.08(4), Fla. Stat. ("*Resumption* of pending criminal proceedings shall be undertaken at any time if the program administrator or state attorney finds that the offender is not fulfilling his or her obligations under this plan or if the public interest so requires.") (emphasis added).

***2** It follows that if a defendant's prosecution has been merely temporarily paused to see if the defendant can earn a *nolle prosequi* by completing the terms of PTI, then the prosecution has not terminated. There is no meaningful difference between a

case that is reset for lengthy periods of time, or even multiple short periods, to allow the State and the defense to reach agreement on an acceptable plea bargain, and pausing the case to see if a defendant can complete PTI successfully. If a defendant who reoffends in the former situation can be incarcerated without bond pursuant to section 903.0471, the defendant in the latter situation should likewise be detained without bond.

Certainly, the difference between the defendants is *not* that the latter was released on his own recognizance in light of enrollment in PTI. Release on own recognizance is a form of pretrial release. *See Griglen v. Ryan*, 2014 WL 2116365, *1 n.1 (Fla. 3d DCA, May 21, 2014); *Paolercio v. State*, 129 So. 3d 1174, 1175 (Fla. 5th DCA 2014) (defendant was on pretrial release after trial court released him on his own recognizance). Section 903.047(1)(a) expressly provides that regardless of whether a defendant has posted a monetary bond or has been given release on own recognizance, the defendant must not commit a new criminal offense. § 903.047(1), Fla. Stat. ("As a condition of pretrial release, whether such release is by surety bail bond or recognizance bond or in some other form, the defendant shall: (a) Refrain from criminal activity of any kind.").

Harris's argument that he was not on pretrial release while in PTI because he did not have a right to counsel pursuant to section § 948.08(4) is unavailing. The right to counsel has no bearing on whether or not a defendant is on pretrial release. Defendants accused of misdemeanor offenses are not entitled to appointed counsel where the State has certified it will not seek a jail sentence upon conviction. *See Scott v. Illinois*, 440 U.S. 367, 374 (1979). Nevertheless, a defendant accused of a misdemeanor, even where the State has certified it will not seek a jail sentence upon conviction, is on pretrial release whether he is released by virtue of posting a surety bond or released on his own recognizance.

Similarly, the fact that Florida law provides that an original surety bond does not guarantee appearance during or after admission to PTI does not answer the issued raised by the Motion. Surety bonds are not the only form of pretrial release. Therefore, the fact that Florida law provides that surety bonds are cancelled upon admission to PTI (thus necessitating that trial courts grant defendants release on their own recognizance) does not mean the defendants are no longer on pretrial release when admitted to PTI. Rather, the defendant is on a different form of pretrial release.

Finally, though not precisely addressing the issue raised in the Motion, it appears to this Court that the Third DCA's decision in *Santiago v. Ryan*, 109 So. 3d 848 (Fla. 3d DCA 2013), is highly instructive. In *Santiago*, the defendant was accused of committing new crimes after he was granted bond on his initial charge, but before he had posted the bond and been released from custody (*i.e.*, he committed the new offenses while in jail awaiting release on bond). Like Harris, Santiago argued that he was not "on pretrial release" at the time of his new offenses. Not surprisingly, the Third DCA was unimpressed with his claim.

The very purpose of enacting section 903.0471 was to reinstate the common and well justified practice of, in effect, granting a defendant only one shot at pretrial release and, as it were, automatically revoking it when he has violated its most basic term by committing another offense thereafter. By doing so, the legislature overruled *Paul v. Jenne*, 728 So. 2d 1167 (Fla. 4th DCA 1999), *rev. granted*, 741 So. 2d 1137 (Fla.1999), which held that this could not lawfully be done. It is inconceivable, that the legislature would contemplate that the policy of "two strikes and you're in" would not take effect merely because the defendant did not even have the goodness to be released from jail before he violated his first bond.

***3** *Id*. at 851 (citations omitted).

It is equally inconceivable to this Court that a defendant extended the privilege by the State of avoiding prosecution, and possible conviction and incarceration, can seek refuge from the most obvious and direct consequence of his actions, revocation of pretrial release, by claiming that the State has waived the right to protect the community from a defendant who there is probable cause to believe has committed a new offense before the pending charges have been dismissed. As the Third DCA wrote in the context of a defendant who, having failed to surrender to commence a jail term which would have been followed by probation, had the probation term revoked by the trial court:

The question here is whether a defendant probationer can, with impunity, engage in a criminal course of conduct (or for that matter any course of conduct which is essentially contrary to good behavior) during the interval between the date of an order of probation and some subsequent date when the probationary term is to commence. We think not. To hold otherwise would make a mockery of the very philosophy underlying the concept of probation, namely, that given a second chance to live within the rules of society and the law of the land, one will prove that he will thereafter do so and become a useful member of society.

Williamson v. State, 388 So. 2d 1345, 1347 (Fla. 3d DCA 1980).

In the instant case, Harris makes a mockery of the very philosophy underlying the concept of PTI, and asks that this Court allow him to engage in a criminal course of conduct without revoking his pretrial release. We think not.

DONE and ORDERED in Miami-Dade County, Florida this 3rd day of July, 2014.

<<signature>>

Miguel M. de la O

Circuit Judge

Footnotes

1 The sole basis for the Court modifying Harris's prior release status, and releasing him on his own recognizance, was the State of Florida's ("State") decision to enroll Harris in Pre-Trial Intervention ("PTI") pursuant to Florida Statutes section 948.08 (2013).

2 Section 903.0471 provides: "Notwithstanding s. 907.041, a court may, on its own motion, revoke pretrial release and order pretrial detention if the court finds probable cause to believe that the defendant committed a new crime while on pretrial release."

3 Section 903.0471 is constitutional. *See Parker v. State*, 843 So. 2d 871, 878 (Fla. 2003).

End of Document