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IN THE SUPREME COURT OF THE STATE OF FLORIDA

IN RE: AMENDMENT TO FLORIDA RULE OF CRIMINAL PROCEDURE 3.131 **CASE NO.: SC23-1294**

COMMENTS OF THE FLORIDA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

The Florida Association of Criminal Defense Lawyers (FACDL), an organization comprised of hundreds of public and private criminal defense lawyers across the State of Florida, opposes the proposed amendment to Fla. R. Crim. P. 3.131. The proposed amendment comes before this Court on petition from the Criminal Court Steering Committee (CCSC).

In response to the recent appellate decisions in *Benoit v. Hoffman*, 359 So. 3d 886 (Fla. 2d DCA 2023) and *Lindsey v. Gualtieri*, 367 So. 3d 1255 (Fla. 2d DCA 2023), CCSC proposes to add a new sentence to 3.131(d) specifically authorizing a first appearance judge to revoke pretrial release in a case in which they are not the presiding judge. Alternatively, CCSC proposes an amendment to 3.131(f), adding a new subdivision authorizing the revocation of a defendant's pretrial release pursuant to section 903.0471, Florida Statutes, in a case by a first appearance judge not assigned to that case. The

petition asks this Court, through a proposed rule amendment, to overturn existing district court of appeal precedent, and to interpret the legislative intent of the recently enacted version of 903.0471, which does not go into effect until January 1, 2024. FACDL believes that the question of whether a first appearance judge has the legal authority to revoke pretrial release in a case not presided over by that particular judge should be addressed by this Court "in a case involving a challenge to an actual order, where [the Court's] answers to the questions would matter to the outcome." *C.N. v. I.G.C.* 316 So. 3d 287 (Fla. 2021).

CCSC argues that *Benoit* was incorrectly decided. It is CCSC's position that a judge's revocation of pretrial release pursuant to section 903.0471 is not a modification of pretrial release, and therefore, the 2nd DCA's reliance upon 3.131(d)(1) in *Benoit* was improper. However, CCSC does not cite to any precedent to support its position. Rather, in footnote 3 of the petition, CCSC specifically recognizes that Florida case law has consistently applied 3.131(d) to bond revocations, citing *Saravia v. For Miami-Dade Cnty.*, 129 So. 3d 1163 (Fla. 3d DCA 2014) and *Bush v. State*, 74 So. 3d 130 (Fla. 1st DCA 2011). More recently, in *Little v. Guilatieri*, 353 So. 3d 675, 677

(Fla. 2d DCA 2022), the court relied upon 3.131(d) when determining whether an emergency judge had the authority to revoke a defendant's pretrial release. The court wrote: "As can be seen, [rule 3.131(d)] does not empower an alternate judge such as an emergency duty judge to 'modify or set a condition of release.'" FACDL does not believe that a petition for a rule amendment is the appropriate vehicle to seek reversal of decades of case law precedent. Further, FACDL believes that that precedent correctly applies 3.131(d) to the revocation of pretrial release. For example, if a defendant is out on a $5000 bond, and the trial court enters an order setting bond at no bond, the monetary bond condition has been modified.

CCSC suggests that the outcome in *Benoit* creates unnecessary administrative efforts, noting that some judicial circuits have formed workarounds, such as issuing an administrative order allowing first appearance judges to revoke bond on another judge's case, or individual judges specifically authorizing a first appearance judge to revoke bond on their cases. While CCSC suggests to this Court that 3.131(d) is not the appropriate rule to consider, the workarounds discussed in the petition are all based upon 3.131(d). CCSC also suggests that *Benoit* "creates a public safety issue by allowing a two-

time arrestee a chance to get out of jail before pretrial release can be revoked." Florida Rule of Criminal Procedure 3.132(a) alleviates any concerns regarding the need for procedural workarounds and possible public safety issues. In *Johnson v. State*, 277 So. 3d 123, 126 (Fla. 4th DCA 2019), the Fourth District explained that "[w]hen a defendant is arrested for new charges while on pretrial release for existing cases, the rules provide a mechanism for the first appearance judge to hold a defendant pending a ruling by the trial court." The court cited to 3.132, which allows a first appearance judge to inquire whether the state intends to file a motion for pretrial detention and, if the state can establish probable cause that the defendant committed the offense and exigent circumstances, the defendant can be held in custody pending the filing of the motion. The current rules provide a way for a first appearance judge to detain a defendant who is already out on bond, eliminating both the need for "workarounds" and the concern for the safety of the public.

In the petition, CCSC also expresses concern for defendants who post bail on the second case, only to later have the bond on the first case revoked, wasting their money. As defense attorneys, FACDL appreciates this position, but would suggest that the alternative

presented has an impact much greater than losing money. Under the proposed amendment, a first appearance judge can revoke a defendant's bail without consulting the trial judge presiding over the case, keeping the defendant in custody pending a bond motion hearing before the presiding judge. Rather than being able to pay a bondsman to be released while the presiding judge considers whether to revoke bond based on the new arrest, the defendant must sit in jail for days, if not weeks, before finding out whether the presiding judge agrees with the first appearance judge's decision to revoke bond. While money is important, freedom is priceless.

Another problem with the proposed amendment is that there is no statutory basis creating jurisdiction for a first appearance judge to revoke bond on case presided over by another judge. As CCSC correctly points out in its petition, "[j]urisdiction cannot be conferred by rule; it must be based on a statute." CCSC mistakenly looks to § 903.0471 for a statutory basis creating the jurisdiction required for this amendment. Noting that the legislature enacted an updated version of § 903.0471 this past legislative session, CCSC argues that the use of the phrase "a court" in the new version of § 903.0471 evinces the legislature's intent to allow first appearances judges to

revoke bond on another judge's case. However, the phrase "a court" was used in the previous version of the statute and was not added this past legislative session. The recently passed amendment to section 903.0471 only added the language "or violated any other condition of pretrial release in a material respect." The amendment merely expanded the bases for which the presiding judge could revoke a defendant's bond; it in no way addressed the jurisdiction of first appearance judges. It is a "well-settled rule of statutory construction that the legislature is presumed to know the existing law when a statute is enacted, including 'judicial decisions on the subject concerning which it subsequently enacts a statute.'" *Wood v. Fraser*, 677 So. 2d 15, 18 (Fla. 2d DCA 1996)(quoting *Collins Inv. Co. v. Metropolitan Dade County*, 164 So. 2d 806, 809 (Fla. 1964)). "Thus, 'in reenacting a statute the legislature is presumed to have an awareness of the judicial construction placed upon the re-enacted statute, and to have adopted this construction, absent a *clear* expression to the contrary.'" *Wood v. Fraser*, 677 So. 2d at 18 (Fla. 2d DCA 1996)(quoting *Deltona Corp. v. Kipnis*, 194 So. 2d 295, 297 (Fla. 2d DCA 1966))(citing *Burdick v. State*, 594 So. 2d 267 (Fla. 1992). Section 903.0471, Florida Statutes, contained the phrase "a

court" during the same time period that Florida appellate courts have clearly held that a first appearance judge does not have jurisdiction to revoke bond on a case where they are not the presiding judge. Therefore, it must be assumed that the legislature was aware that Florida law did not confer jurisdiction to a first appearance judge to revoke bond when it enacted the updated version of 903.0471 this past legislative session. The legislature made no *clear* expression that it was overturning Florida precedent and that it was granting jurisdiction to first appearance judges. Under the rules of statutory construction, absent such a clear expression, it must be assumed that legislature did not intend to confer the jurisdiction sought in this proposed rule amendment.

Additionally, CCSC's broad interpretation of the phrase "a court" would mean that any judge, including judges located in other Florida jurisdictions, would have the authority to revoke bond in a defendant's case without any consultation with the presiding judge. FACDL does not believe that the legislature clearly conferred jurisdiction to first appearance judges to revoke bond on another judge's case, and it certainly does not agree with the proposition that the legislature intended that a judge in Miami could revoke bond on

a case pending in Jacksonville. CCRC's petition argues that the legislature intended a broad interpretation of "a court," yet also states that a majority of the members do not believe that it should be interpreted broadly enough to include "any judge." It is within the purview of the legislature to establish jurisdiction. Because the case law existing at the time the legislature enacted the new version of § 903.0471 interpreted the phrase "a court" to mean the judge presiding over the case, and since the legislature did not make it clear that it was expanding the jurisdiction of judges to allow revocation of bail, CCSC's proposed amendment lacks statutory authority.

Finally, FACDL does not agree with CCSC's argument that 3.131(g) does not apply to a criminal defendant who is out on bond on case #1 and is arrested on case #2. Florida Rule of Criminal Procedure 3.131(g), which addresses revocation of bail based upon a breach of the undertaking, specifically provides that only the judge presiding over the case has the authority to revoke a defendant's bail. CCSC takes the position that that since the defendant before a first appearance judge on case #2 is in custody, the defendant can no longer be considered at large on bail on case #1, and therefore, Rule 3.131(g) no longer applies to case #1. This position is contrary to

Florida law. In *Daffin v. State*, 31 So. 3d 867, 870 (Fla. 1st DCA 2010), the court explained:

> If, for example, a defendant posts bond on one charge and is released, only to be reincarcerated later on other charges, he is then being held only on the charges occasioning the later arrest, until and unless the bond posted on the initial charge is revoked.

A defendant is not entitled to jail credit on case #1 where they have posted bond and it has not been revoked, no matter how long they sit in jail on case #2 because the law considers them to be out of bond on case #1. Therefore, 3.131(g) would still apply in case #1, and only the presiding judge would have the authority to revoke bond under a plain reading of the rule.

Based upon the foregoing arguments, FACDL opposes the proposed rule amendment to Rule 3.131. Whether or not a first appearance judge has the legal authority to revoke bond in a case where it is not the presiding judge is an issue that should be addressed by this Court in a case involving a challenge to an actual order, not through a proposed rule amendment. Additionally, Florida law currently considers a bond revocation to be a modification of bond and to be governed by Rule 3.131(d), and that rule has clear limitations on when a first appearance judge can modify bond.

Additionally, if CCSC is correct, and a bond revocation is not a modification, but just that, a revocation, then the governing rule would be 3.131(g), not 3.131(f), which unambiguously limits the authority to revoke bail to the presiding judge. Finally, there is no statute creating jurisdiction for a first appearance judge to revoke bail on a case in which they are not the presiding judge. Had the legislature wanted to confer such jurisdiction, it could have added the language proposed here to § 903.0471, yet it chose not to despite the existing judicial interpretation of the statute.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing comment was furnished by electronic service to:

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by electronic delivery on this the 1st day of December, 2023.

/s/ Jason Cromey, Esq.
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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing comment of the Florida Association of Criminal Defense Lawyers has been prepared using Bookman Old Style 14-point font.

/s/ Jason Cromey, Esq.
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