

IN THE DISTRICT COURT OF APPEAL, SECOND DISTRICT  
STATE OF FLORIDA

SCOTT HUMINSKI,

Petitioner,

v.

CASE NO. 2D19-1247

L.T. No. 18-AP-3, 18-AP-9

STATE OF FLORIDA,

Respondent.

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**RESPONSE TO PETITION FOR WRIT OF PROHIBITION**

COMES NOW the Respondent, by and through the undersigned counsel, pursuant to this Honorable Court's Order of April 1, 2019, and responds to the instant petition for writ of prohibition as follows:

Petitioner seeks a writ of prohibition prohibiting the Twentieth Circuit Court's appellate division from exercising jurisdiction over the direct appeal of his convictions for indirect criminal contempt.

"Prohibition is an extraordinary writ by which a superior court may prevent an inferior court or tribunal, over which it has appellate and supervisory jurisdiction, from acting outside its jurisdiction." Mandico v. Taos Constr., Inc., 605 So.2d 850, 853 (Fla. 1992). Subject matter jurisdiction is the "[p]ower of a particular court to hear the type of case that is then before it" or "jurisdiction over the nature of the cause of action and relief sought." Fla.

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Star v. B.J.F., 530 So.2d 286, 288 (Fla. 1988)  
(quoting Black's Law Dictionary 767 (5th ed. 1979).

Scott v. Hinkle, 259 So. 3d 982, 984 (Fla. 1st DCA 2018).

Petitioner argues that the Lee County Circuit Court does not have appellate jurisdiction to hear his appeal of his convictions for indirect criminal contempt.

### **FACTS**

Judge Elizabeth V. Krier, Circuit Court Judge in the Twentieth Judicial Circuit in Lee County Florida, issued an order to show cause charging Petitioner with indirect criminal contempt for violating court orders in Petitioner's civil case No. 17-CA-000421. (See Petitioner's Exhibit 1). Judge Krier arraigned Petitioner on indirect criminal contempt charges and the case was assigned misdemeanor case number 17-MM-815. The indirect criminal contempt case then proceeded to a bench trial before County Court Judge James R. Adams. Petitioner was convicted and sentenced on both counts of indirect criminal contempt by the county court judge. (See Petitioner's Exhibit 5).

Petitioner's appeal was then assigned to the circuit court sitting in its appellate capacity and Anthony Candela was appointed appellate counsel. Within his September 11, 2018, motion for evidentiary hearing, Petitioner argued for transfer of appellate jurisdiction to this Court based on Puleo v. State,

109 So.2d 39 (Fla. 2d DCA 1959). (See Petitioner's Exhibit 8). On October 29, 2018, the motion for transfer was dismissed on by Circuit Court Judge Joseph C. Fuller, Jr., without prejudice for counsel to re-file the motion with a more thoroughly argued basis for transfer. (See Petitioner's Exhibit 9). However, it does not appear that counsel re-filed the motion to transfer.

On March 18, 2019, Judge Fuller issued an order to show cause directing Petitioner to show cause why his appeal should not be dismissed for failure to file an Initial Brief. (Petitioner's Exhibit 12). Petitioner filed his "Emergency Petition for Writ of Prohibition, or, in the Alternative, Emergency Petition for Writ of Mandamus" in this Court on March 29, 2019. Petitioner argues that under Puleo v. State, 109 So.2d 39 (Fla. 2d DCA 1959), the Circuit court does not have jurisdiction over his appeal and it should be transferred to this Court. On April 1, 2019, this Court ordered the State to respond to the petition for writ of prohibition.

## ARGUMENT

### SHOULD THIS COURT ISSUE AN EMERGENCY WRIT OF PROHIBITION PROHIBITING THE CIRCUIT COURT FROM EXERCISING APPELLATE JURISDICTION OVER PETITIONER'S CONVICTIONS FOR INDIRECT CRIMINAL CONTEMPT?

Petitioner seeks a Writ of Prohibition prohibiting the Circuit Court from exercising appellate jurisdiction over his appeal of his indirect criminal contempt convictions.

Although a writ of prohibition is meant to be employed "with great caution and utilized only in emergencies," English v. McCrary, 348 So.2d 293, 296 (Fla. 1977), it "may be granted when a trial court acts outside of its jurisdiction. For example, prohibition is appropriate when another court or administrative body has jurisdiction over the subject matter." Scott v. Francati, 214 So.3d 742, 749 (Fla. 1st DCA 2017), review denied sub nom. Francati v. Scott, No. SC17-730, 2017 WL 2991836 (Fla. July 14, 2017). See also Roberts v. Brown, 43 So.3d 673 (Fla. 2010) (granting prohibition in a matter in which the Florida Supreme Court possessed exclusive jurisdiction); Dep't of Agric. & Consumer Servs. v. Bonanno, 568 So.2d 24, 29 (Fla. 1990) (granting prohibition to keep the circuit court from exercising jurisdiction over citrus canker cases within the exclusive jurisdiction of the Department of Agriculture and Consumer Services).

Scott v. Hinkle, 259 So. 3d 982, 984 (Fla. 1st DCA 2018).

Petitioner argues that the Circuit Court's appellate division does not have jurisdiction over his appeal and that jurisdiction properly lies with this Court under this Court's decision in Puelo v. State, 109 So.2d 19 (1959). In Puelo, this Court found that an appeal from an order adjudging Puelo guilty

of criminal contempt should have been taken to district court of appeal and not the circuit court.

More recently, in Johnson v. State, 218 So.3d 957 (2017), the Fifth District held that the appellate division of the Circuit Court lacked jurisdiction over Johnson's appeal from a judgment of indirect criminal contempt, where the contempt proceeding was not a county court case, but arose from a family law matter in the Circuit Court. In Johnson the Fifth District found

Despite the fact that the indirect criminal contempt proceeding was given a misdemeanor case number, it was not a county court case; rather it was a circuit court case because it arose from a family circuit court matter.

Id. at 960.

Similarly, in Schaab v. State, 33 So.3d 763 (Fla. 4th DCA 2010), the Fourth District found that the appellate division of the circuit court properly transferred jurisdiction of the district court because the judgment of indirect criminal contempt was a circuit court matter over which the district court had jurisdiction. The court found that

[t]he contempt in this case arose from a felony proceeding, a circuit court case. Section 38.22 gave the circuit judge jurisdiction to hear and punish the contempt. The clerk's assignment of a misdemeanor case number did not affect the status of the contempt as a circuit court matter over which that court had jurisdiction. "[F]ile numbers are merely an administrative convenience for the clerk but not a

statutory prerequisite for filing by the parties to the action." Tanner v. State, 744 So.2d 1017, 1019 (Fla. 4th DCA 1997). Case numbers assist a clerk in satisfying the statutory duty to keep all papers filed "with the utmost care and security, arranged in appropriate files." § 28.13, Fla. Stat. (2008). Because the judgment of indirect criminal contempt was a circuit court matter, the appellate division of the circuit court did not have jurisdiction to hear the appeal.

Id. at 765-66.

In this case, the indirect criminal contempt charges arose from a violation of court orders in Mr. Huminski's civil case in the Circuit Court of the Twentieth Judicial Circuit. Those contempt charges were assigned misdemeanor case number and Petitioner was tried and convicted by a county court judge. Under Puleo, Johnson, and Schaab, it appears that despite the treatment of the indirect criminal contempt charges as misdemeanors in the county court, the indirect criminal contempt charges were a circuit court matter, and the appellate division of the circuit court does not have jurisdiction over the appeal.

However, because the Petitioner never refiled a more thoroughly argued motion for transfer as suggested by the circuit court, an emergency writ of prohibition may not be the appropriate remedy in this case. As the Florida Supreme Court noted in Hinkle, supra, "a writ of prohibition is meant to be employed with 'great caution and utilized only in emergencies.'" Hinkle, at 984 (citation omitted). What Petitioner characterizes

as an emergency, might well be remedied by filing a more thoroughly argued motion to transfer jurisdiction. This situation does not necessarily qualify as the rare sort of emergency which requires issuance of an emergency writ of prohibition by this Court.

**WHEREFORE**, Respondent requests this Honorable Court rule accordingly.

Respectfully submitted,

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ATTORNEY GENERAL

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**COUNSEL FOR RESPONDENT**

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on April 15, 2019, a true and correct copy of the foregoing response has been electronically filed with the Clerk of the Court by using the e-portal filing system which will send a notice of electronic filing to the following: Anthony M. Candela, Esq., 10312 Bloomingdale Ave Ste 108-170, Riverview, Florida 33578, at service@candelalawfirm.com and tony@candelalawfirm.com.

S/KATHERINE COOMBS CLINE  
**COUNSEL FOR RESPONDENT**