

Second District Court of Appeal Case No.
Sixth Judicial Circuit Court Case No: 19-13170-CF

MARQUIE S GROOVER,
Petitioner,

vs.

STATE OF FLORIDA,
Respondents.

EMERGENCY PETITION FOR WRIT OF MANDAMUS

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INTRODUCTION

Petitioner respectfully requests this Honorable Court grant this writ of mandamus and order the Sixth Judicial Circuit of Florida to follow the Florida Supreme Court's Administrative Order AOSC20-32. In effect, Petitioner is also requesting that this Honorable Court, by ordering the Sixth Judicial Circuit to follow Fla Admin. Order No. AOSC20-32, order the cessation of jury trials in the Sixth Circuit effectively immediately.

REASONS FOR GRANTING THE WRIT

As demonstrated by the data below, the Sixth Judicial Circuit of Florida, based on Fla Admin. Order No. AOSC20-32, as well as the Sixth Judicial Circuit's Administrative Order No. 2020-027 PA/PI-CIR re: "Coronavirus Pandemic (COVID-19) – Phase 2 Court Operations," should be required to revert to Phase 1 of operations. At least six staff members of the State Attorney's Office for the Sixth Judicial Circuit, working in the County Justice Complex courthouse ("CJC"), have tested positive for COVID-19, one announced yesterday, October 26, 2020. Additionally, the positivity rate for COVID-19 in Florida, more specifically Pinellas County, has been on an incline over the last 14 days. Either of those factors alone require the Sixth Circuit to revert to Phase 1 of operations.

Petitioner was charged via Information with one-count of third-degree felony Domestic Battery by Strangulation on November 26, 2019. Petitioner has

been designated a Prison Releasee Reoffender by the State Attorney's Office. Petitioner's case is currently in trial in the midst of jury selection. "However, mootness does not destroy a court's jurisdiction if the question raised is of great public importance or is likely to recur, or if the error is capable of repetition yet evading review. Kelley v. Rice, 800 So. 2d 247, 250 (Fla. 2d DCA 2001) (citations omitted)." Gould v. State, 974 So. 2d 441, 444 (Fla. 2d DCA 2007).

This issue is of great public importance and likely to recur. First, the threat to the health and safety of the attorneys in trial, courtroom deputies, courtroom personnel, jurors, witnesses and Petitioner due to potential exposure to COVID-19 is great. "The health and safety of trial participants and the public are interests of the highest order for this court." See United States v. Fortson, No. 2:18-CR-416-WKW, 2020 WL 4059718, at *2 (M.D. Ala. July 20, 2020) (approving a joint motion to continue the trial in light of the COVID-19 pandemic even where masks were mandated and social distancing measures in place). "The COVID-19 global pandemic places persons' health at substantial risk when they gather in groups in relatively close proximity to one another, particularly indoors where persons are talking. A jury trial includes all of these risks for the trial participants." United States v. Crittenden, No. 4:20-CR-7 (CDL), 2020 WL 5223303, at *3 (M.D. Ga. Sept. 1, 2020) (continuing a trial light of the COVID-19 pandemic).

Moreover, there is a significantly reduced ability to obtain an adequate spectrum of jurors and available counsel, witnesses, and court personnel to be present in the courtroom for trial. Empaneling a jury, conducting a trial, and arranging jury deliberations, with due regard for health and safety, considering the broad spectrum of participants and their contacts outside the court, is not currently possible in the physical facilities available to the court. Long exposure in confined spaces, which is inherent in trial, increases risk of infection. Video and audio conferencing, used for hearings, are not available for trials.

United States v. Llamas-Rodriguez, No. 2:20-CR-00082-DBB, 2020 WL 5849905, at *2 (D. Utah Oct. 1, 2020) (ordering trial continuance in light of COVID-19 pandemic).

Second, this issue is ripe for repetition and likely to recur. There are several trials set to take place in Pinellas County in the upcoming weeks, including State of Florida v. Tymelle Huntley (Pinellas County Case No. 20-02734-CF), set to commence November 3, 2020, and State of Florida v. Milton Otero, (Pinellas County Case No. 20-01130-CF), set to commence November 4, 2020, both in front of the Honorable Michael Andrews.

Although the State of Florida is listed as the respondent in the above caption, Judge Joseph Bulone, Circuit Court Judge for the Sixth Judicial Circuit is also a respondent. Pursuant to Fla. R. App. P. 9.100(e)(1), the name of the judge and

lower tribunal is omitted from the caption and is included in the body of this petition as required by Fla. R. App. P. 9.100(e)(2).

This petition for writ for mandamus calls on the Second District Court of Appeal to direct the Sixth Judicial Circuit of Florida to follow Fla Admin. Order No. AOSC20-32 and indeed its own rules for operating during the COVID-19 pandemic, delineated in Administrative Order No. 2020-027 PA/PI-CIR re: “Coronavirus Pandemic (COVID-19) – Phase 2 Court Operations” signed on September 1, 2020 by the Honorable Anthony Rondolino, Chief Judge for the Sixth Judicial Circuit of Florida. The Order includes the Operational Plan for Transitioning the Sixth Judicial Circuit to Phase 2 During the COVID-19 Pandemic. Petitioner’s Motion to Compel the Sixth Judicial Circuit of Florida to Follow the Florida Supreme Court’s Administrative Order AOSC-32, attached Exhibit A, was heard by Judge Bulone this morning, October 27, 2020, and denied. The trial court did not prepare a written order denying the motion.

Additionally, Petitioner moves to stay the proceedings in the lower court pending the resolution of this petition. The trial court’s departure from the law will cause material injury for which there is no adequate remedy by appeal. If this Court issues an Order to Show Cause in this matter pursuant to Fla. R. App. P. 9.100(h), said order will stay the proceedings in the lower court while the petition is pending.

JURISDICTION

This Court has original jurisdiction to grant Petitioner a writ of mandamus under Article V, Section 4(b)(3) of the Florida Constitution. This proceeding is also authorized by Florida Rules of Appellate Procedure 9.030(b)(3). This petition complies with the Rule 9.100(a) requirements.

FACTS

1. Petitioner, Marquie Groover, is set for trial today, October 27, 2020 before the Honorable Joseph Bulone, Administrative Judge for Pinellas County of the Sixth Judicial Circuit of Florida.
2. Petitioner is currently incarcerated in the Pinellas County Jail. The Pinellas County Sheriff's Office responded to a Public Records Request (requested on August 28, 2020) on September 10, 2020 with the following information: "Since March, a total of 179 inmates have been tested for COVID19. 76 of those inmate[s] were positive." The Pinellas County Jail houses at any given time approximately 3000 inmates.
3. Petitioner has not been tested for COVID-19.
4. Within the last two weeks, five "CID" investigators employed by the State Attorney's Office for the Sixth Judicial Circuit have tested positive for COVID-19. The State Attorney's Office is physically housed in the County

Justice Complex courthouse. Those investigators physically work in the building.

5. On October 26, 2020, it was announced that an assistant state attorney (“ASA”) working in the CJC tested positive for COVID-19. In response, all the attorneys in county court divisions E, F and L were sent home from work and instructed to be tested for COVID-19 because of the suspicion that the attorneys working in those divisions may have COVID-19 because of contact with the individual who tested positive.
6. In fact, the assistant state attorney trying Petitioner’s case admitted on the record today to having contact with the assistant state attorney who tested positive for COVID-19. He volunteered to the trial court that he had had contact with the infected ASA within the last week, or several days prior to him testing positive. He indicated that the infected ASA came into his office, while both individuals were wearing masks, and the infected ASA looked at pictures.
7. As of October 25, 2020, the number of COVID-19 cases in Florida, and more specifically Pinellas County, have been on an upward trend over the last 14 days according to the Pinellas County COVID-19 Dashboard. On October 25, 2020, the Cases 5 Day Average for Pinellas County is listed at 165.20. The Cases 5 Days Ago (5 Day Avg) is listed at 137.20. The Cases %

Change (5 Day Avg) is listed at **20.41%**. See
<https://covid19.pinellascounty.org/dashboard/>

8. The COVID-19 case numbers for Pinellas County Cases 14 Day Average is listed at 145.29 as of October 25, 2020. The Cases 14 Days Ago (14 Day Avg) is 84.43 and the Cases % Change (14 Day Avg) is **72.08%**. See
<https://covid19.pinellascounty.org/dashboard/>
9. The Florida Supreme Court issued Fla Admin. Order No. AOSC20-32 on April 6, 2020, and seven amendments to the Order since, the most recent on October 2, 2020.
10. Regarding jury trials, the Court writes:

Non-statewide grand jury selection and proceedings, civil jury selection and trial proceedings, and criminal jury selection and trial proceedings shall remain suspended until 30 days after the chief judge of a judicial circuit has determined that the circuit or a county within the circuit has transitioned to Phase 2 pursuant to Fla. Admin. Order No. AOSC20-32, as amended. See Fla Admin. Order No. AOSC20-32, III. Court Proceedings, A. Jury Proceedings and Jury Trials, (2).

11. The Court also writes:

After the suspension ends, the proceedings shall be conducted remotely or, if one of the following criteria is satisfied, may be conducted in person:

The presiding judge for the statewide grand jury, under consultation with the county health department or local health expert, determines that the in-person proceeding can be conducted in a manner that protects the health and

safety of all participants if the circuit is in or has reverted to Phase 1; or

The circuit has transitioned to Phase 2 or Phase 3 pursuant to Fla. Admin. Order No. AOSC20-32, as amended, and the proceeding is conducted in a manner that is consistent with the circuit's operational plan. See Fla Admin. Order No. AOSC20-32, III. Court Proceedings, A. Jury Proceedings and Jury Trials, (1) a.

12. The Florida Supreme Court further writes:

If a circuit or a county within the circuit reverts to a previous phase, as addressed in Fla. Admin. Order No. AOSC20-32, as amended, the following provisions govern.

A. Certain Jury Proceedings and Jury Trials. If a circuit or a county within the circuit reverts to Phase 1, juror selection and proceedings for a non-statewide grand jury and juror selection and trial proceedings for a civil or criminal case that:

(1) Were not commenced before the reversion are suspended until the circuit or county returns to Phase 2, at which time such proceedings may be commenced in person in a manner consistent with the circuit's operational plan. See Fla Admin. Order No. AOSC20-32, X. Reversion to a Previous Phase.

13. In response to the Florida Supreme Court's Administrative Order's directives, the Sixth Judicial Circuit adopted its own Administrative Order No. 2020-027 PA/PI-CIR re: "Coronavirus Pandemic (COVID-19) – Phase 2 Court Operations" signed on September 1, 2020 by the Honorable Anthony Rondolino, Chief Judge for the Sixth Judicial Circuit of Florida. The Order includes the required Operational Plan for Transitioning the Sixth

Judicial Circuit to Phase 2 During the COVID-19 Pandemic. In that Operational Plan, Chief Judge Rondolino defined five required benchmarks to transition to Phase 2, relevantly:

a. No confirmed or suspected cases of COVID-19 in the courthouse/court facility within a 14 day period or if confirmed or suspected cases have occurred in the court facility, deep cleaning and disinfecting of exposed areas and applicable employee self-quarantine actions have been implemented.

c. Improving COVID-19 health conditions over a 14-day period in the community. The public health data necessary to determine whether this benchmark has been met will be provided on an Intranet page maintained by the Office of State Court Administrator (OSCA). Based on the seven-day averages of this public health data at the county level for the most recent two-week period ending on August 29, 2020, the Circuit has met the benchmarks for the following four measures:

i. New cases in both Pasco and Pinellas counties are declining.

ii. The positivity rate in both Pasco and Pinellas counties is less than 10%.

iii. The daily number of hospitalizations for COVID-19 in both counties has declined.

iv. The daily number of Emergency Department visits for COVID-like illness has declined in both counties has declined.

14. Chief Judge Rondolino communicated via email to Judge Bulone, which Judge

Bulone read into the record, in response to this motion this morning, writing:

The motion addresses requirements and guidelines for transitioning from Phase 1 to Phase 2, both in the AOSC and our AO.

The considerations for reverting to a previous operational phase are different.

The Chief Judge monitors public health data and local conditions weekly.

The Chief Judge did not find it necessary to revert to Phase 1 following the last review.

We remain in Phase 2 at this time.

15. Chief Judge Rondolino indicated that the benchmarks required to transition into Phase 2 versus the benchmarks required to stay in Phase 2 were different.

This is inaccurate. Chief Judge Rondolino's own Operational Plan for Transitioning the Sixth Judicial Circuit to Phase 2 During the Covid-19

Pandemic reads:

5. The Circuit operational teams are developing plans for resuming jury trials in a safe manner consistent with all benchmarks, requirements and guidelines during Phase 2 with the anticipation that limited jury trials may be able to start on or after October 26, 2020, assuming our COVID-19 public health data 7-day averages remain stable or continue to decline.

16. Petitioner's jury trial, which is currently on-going, does not comply with the benchmarks, requirements and guidelines required for the Sixth Circuit to safely remain in Phase 2.

17. The Florida Supreme Court has ordered that while circuit courts are in Phase 2 or Phase 3 "public health data and local conditions need to be monitored at least weekly." The Court further ordered that any circuit that was in Phase 2 before the date of the most recent Amendment, "may remain in Phase 2, but must comply with all requirements of this order and the

attached report for continuing and operating in Phase 2.” See Amendment 4, No. AOSC20-32, October 15, 2020, available at <https://www.floridasupremecourt.org/content/download/681704/file/AOSC20-32-Amendment-4.pdf>. As such, there is clear guidance from the Florida Supreme Court that the criteria for transitioning to Phase 2 is the same as the criteria for remaining in Phase 2.

18. Chief Judge Rondolino also indicated in the email to Judge Bulone that he reviewed the numbers and that the Sixth Circuit remains in Phase 2 without referring to what specific numbers he reviewed.

CONCLUSION

The trial court erred in denying Petitioner’s Motion to Compel the Sixth Judicial Circuit of Florida to Follow the Florida Supreme Court Administrative Order AOSC20-32. Because Pinellas County fails to meet the required benchmarks to remain in Phase 2, the Sixth Judicial Circuit should be required to revert to Phase 1.

For the foregoing reasons, Petitioner respectfully requests this Court grant a writ of mandamus and order the Sixth Judicial Circuit to comply with Fla Admin. Order No. AOSC20-32 and cease conducting jury trials immediately.

Respectfully submitted,

s/ Bob Dillinger

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CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished via email to the State Attorney's Office, specifically Assistant State Attorney Sara Macks, Clearwater, Florida; via email to the Honorable Joseph Bulone; and via email to the Office of the Attorney General, Criminal Appeals Division, Tampa, FL on October 27, 2020.

CERTIFICATE OF COMPLIANCE

I hereby certify that this petition complies with the font requirements of Florida Rule of Appellate Procedure 9.110(l).

/s/ Allison Ferber Miller
Allison Ferber Miller