IN THE SUPREME COURT OF FLORIDA

MONIQUE WORRELL,

Petitioner,

v. Case No.: SC23-1246

RON DESANTIS, as Governor of the State of Florida,

Respondent.
_____/

BRIEF OF AMICUS CURIAE FLORIDA SHERIFFS ASSOCIATION IN SUPPORT OF THE GOVERNOR

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STATEMENT OF INTEREST OF *AMICUS CURIAE*

The Florida Sheriffs Association ("FSA" or the "Sheriffs") is a statewide organization comprised of the sheriffs of the state of Florida. Its mission as a self-sustaining charitable organization is to foster the effectiveness of the office of sheriff through leadership, education and training, innovative practices and legislative initiatives. On occasion, the FSA appears as *amicus curiae* in cases of interest to the sheriffs that may impact their operational duties and responsibilities.

The present case involves a challenge to the Governor's authority to suspend the Petitioner, Monique Worrell ("Worrell"), as the State Attorney for the Ninth Judicial Circuit, which comprises Orange and Osceola Counties. Worrell's abuse of prosecutorial authority, as outlined in Executive Order No. 23-160 ("Executive Order")[1], raises particular concerns for the sheriffs in light of the public safety issues implicated by these proceedings.

Worrell characterizes her actions as prosecutorial discretion. However, this is not a case where a sheriff and the state attorney are at odds on a filing decision by the state attorney. As articulated in the Executive Order, Worrell systematically circumvented minimum mandatory sentences for firearms

[1] References to the Executive Order, attached to Petitioner's Brief in the Appendix, shall be denoted by "App." followed by the page number.

offenses and drug trafficking as well as sentencing enhancements for prison release reoffenders and habitual violent offenders, declined to direct file on serious juvenile offenders, limited charges for possession of child pornography, and withheld adjudication in cases involving recidivist felons.

Historically, sheriffs and state attorneys have partnered together to protect the public from criminal activity. The Sheriffs anticipate that when their deputies make arrests, the state attorney will make case specific and individualized determinations. *See Ayala v. Scott*, 224 So. 3d 755, 759 (Fla. 2017). "[E]xercising discretion demands an individualized determination 'exercised according to the exigency of the case, upon a consideration of the attending circumstances.'" *Id* (quoting *Barber v. State*, 5 Fla. 199, 206 (Fla. 1853) (Thompson J. concurring)). When these cases involve hardened criminals who prey upon the public, the Sheriffs justifiably expect the state attorney to vigorously prosecute these cases and seek punishment that fits the crime.

Sadly, this did not happen here. Worrell consistently ignored legislative mandates by pursuing her personal agenda. The Governor was justified in the suspension because Worrell, as a result of her neglect of duty and incompetence, undermined the intent of the legislature to remove dangerous criminals from the streets. Worrell cannot hide behind prosecutorial discretion to justify her actions and escape the consequences of her

decisions. The Executive Order suspending Worrell from her position is well supported by case precedent and equally supported by the facts.

SUMMARY OF ARGUMENT

Worrell's quo warranto claim fails as a matter of law. The only issue before this Court is whether the factual allegations in the Executive Order, which suspended Worrell from office, are sufficient to support the charges. In reaching this determination, the scope of the Court's review is limited to the face of the Executive Order.

The Executive Order identifies "neglect of duty" and "incompetence" as grounds for Worrell's suspension. *See* App. 2–15 (Exec. Order 23-160). On its face, the Executive Order enumerates factual allegations which bear a reasonable relation to the charges against Worrell. The Sheriffs support the Governor's decision to suspend Worrell because her actions compromised the safety of their constituents whom they are sworn to protect.

Worrell's Petition for Writs of Quo Warranto and Mandamus ("Petition"), filed September 6, 2023, also requests mandamus relief. Mandamus lies if the petitioner has "a clear legal right to the performance of a clear legal duty by a public officer and that … no other legal remedies [are] available. *Hatten v. State,* 561 So. 2d 562, 563 (Fla. 1990). Quo warranto, however, rather than mandamus, is the proper remedy to determine a public

official's right to hold office. *See Winter v. Mack*, 142 Fla. 1 (Fla. 1940).

The Sheriffs, therefore, will focus their arguments on Worrell's contention that her petition for quo warranto relief should be granted because the Governor exceeded his authority in suspending her from office. It is abundantly clear from the record in this case that the Governor fulfilled his constitutional duty by suspending a state attorney who was unwilling to fulfill her statutory responsibilities.

ARGUMENT

I. Executive Order No. 23-160 Contains Sufficient Facts to Support the Charges of Neglect and Incompetence.

As Florida's chief executive officer, the Governor has a constitutional duty to "take care that the laws be faithfully executed." Art. IV, § 1(a), Fla. Const. In this case, it is apparent that as State Attorney for the Ninth Judicial Circuit, Worrell did not faithfully execute the laws that she was entrusted to enforce.

In the Executive Order, the Governor details his reasons for suspending Worrell from office. In short, the Executive Order charges Worrell with authorizing practices or policies that permit violent offenders, drug traffickers, serious juvenile offenders and pedophiles to evade incarceration when otherwise warranted under Florida law. *See* App. 2–15 (Exec. Order 23-160).

In her Petition, Worrell challenges the suspension, arguing that the Executive Order "fails to allege any facts relating to Ms. Worrell's own conduct (either acts or omission) that would constitute neglect of duty or incompetence…". Pet. 1. The Sheriffs disagree. It is abundantly clear from reviewing the Executive Order that Worrell was derelict in her duties as a state attorney and that her actions were adverse to the public interest.

At the outset, Worrell's quo warranto action cannot succeed when the facts alleged in the Executive Order are viewed in the light of established case law. In a quo warranto action, "the judiciary's role is limited to determining whether the executive order, **on its face**, sets forth allegations of fact relating to one of the constitutionally enumerated grounds of suspension." *Israel v. DeSantis*, 269 So. 3d 491, 495 (Fla. 2019) (emphasis added) (citing *State ex rel. Hardie v. Coleman*, 155 So. 129, 133 (Fla. 1934)). In fact, "where the executive order of suspension contains factual allegations relating to an enumerated ground for suspension, the Constitution prohibits the courts from examining or determining the sufficiency of the evidence supporting those facts, as the 'matter of reviewing the charges and the evidence to support them is solely in the discretion of the Senate.'" *Id*. at 496-97 (emphasis added) (quoting *Hardie*, 155 So. at 134); *see also State ex rel. Kelly v. Sullivan*, 52 So. 2d 422, 425 (Fla. 1951) ("It is the function of the

Senate, **and never the courts**, to review the evidence upon which the Governor suspends an officer in the event the Governor recommends his removal from office.") (emphasis added).

The deficiencies in Worrell's quo warranto claim are particularly evident upon reviewing *Israel v. DeSantis,* in which the sheriff of Broward County contested the Governor's authority to suspend him from office. As in the case of Worrell, the stated grounds for Sheriff Israel's suspension included neglect of duty and incompetence. *Israel*, 269 So.3d at 493. Holding Sheriff Israel accountable in part for the shootings at the Marjorie Stoneman Douglas High School, the executive order charged Israel with failure to provide frequent active shooter training for his deputies and the lack of active shooter protocols relating to access to emergency services, chain of command, and a unified command center. *Id.*

Sheriff Israel unsuccessfully argued that the Governor's executive order failed to identify any statutory duty prescribed to his office which he failed to perform. *Id.* at 496. Defining duty as "the action required by one's position or occupation" the Court turned then to what constitutes neglect of duty and incompetence. *Id.* Neglect of duty, explained the Court, refers to the neglect or failure on the part of a public officer "to do and perform some duty or duties laid on him as such by virtue of his office or which is required of him

by law." *Id.* (quoting *Hardie,* 155 So. at 132). The Court added that it was not material whether the neglect was willful through malice, ignorance, or oversight. *Id.* If the neglect was grave and the frequency of it endangered or threatened the public welfare, it is considered to be gross. *Id*.

Incompetency related to neglect of duty. The Court defined incompetency to refer to any "physical, moral, or intellectual quality, the lack of which incapacitates one to perform the duties of his office" and which "may arise from gross ignorance of official duties or gross carelessness in the discharge of them… from lack of judgment and discretion." *Id.* (quoting *Hardie,* 155 So. at 133).

In reviewing the executive order suspending Sheriff Israel, the Court was satisfied that the factual allegations were sufficient to establish both neglect of duty and incompetence. *Id.* at 496-97. The executive order, held the Court, contained allegations that bore a reasonable relation to the charges of neglect of duty and incompetence as those terms were understood in their usual and ordinary meaning. *Id*.

Nothing here compels a different result. The grounds articulated by the Governor in the Executive Order suspending Worrell are compelling. Worrell's dereliction of duty in cases involving firearms, drug trafficking, juvenile crime, child pornography, and repeat offenders endangered the

public welfare and demonstrated a complete disregard for the duties of her office.

The Sheriffs and their deputies are confronted with this criminal activity on a daily basis. They see the shattered lives from gun violence and the devastation to families as a result of the proliferation of drugs such as fentanyl and methamphetamine. They share the frustration of victims who feel violated by an element of society that has no regard for the rule of law.

Consequently, Worrell's practices are inimical to the mission of every sheriff to safeguard their constituents by removing the criminal element from their communities. In examining the Executive Order, there is little doubt that Worrell was given the tools to do the job, but she was simply unwilling to use them.

A. Worrell evaded minimum mandatory sentences for gun crimes and drug trafficking as well as enhanced sentences for repeat offenders.

Due to the Sheriffs' firsthand knowledge of the impact of crime in their communities, they have continually supported legislation that protects the public, including minimum mandatory sentences for significant crimes such as drug trafficking and the possession of firearms during the commission of a crime. *See* §§ 893.135, 775.087(2), Fla. Stat. Minimum mandatory sentences provide assurance that for certain serious crimes, the period of

incarceration is not decided by the discretion of a judge but rather it is determined by the legislature as a matter of public policy.

The Sheriffs' overarching goal – to provide for the safety of the residents in their counties – would presumably be the same for the state attorneys. Their partnership is grounded upon the expectation that arrests by sheriffs' deputies will be vigorously prosecuted, particularly in cases involving firearms and drugs.

Certainly, the Florida Legislature intended for these offenses to be vigorously prosecuted. This is particularly evident in cases where a firearm was used in the commission of the crime. In a preamble to the minimum mandatory sentencing scheme for these crimes, the Legislature commented "It is the intent of the legislature that offenders who actually possess, carry, display, use, threaten to use, or attempt to use firearms and destructive devices *be* punished to the fullest extent of the law, and the minimum terms of imprisonment imposed pursuant to this subsection shall be imposed for each qualifying felony count for which the person is convicted." § 775.087(2)(d), Fla. Stat.

Regrettably, in the Ninth Judicial Circuit, Worrell purposely ignored the stated intent of the Legislature to impose minimum mandatory sentences for gun crimes, as well as crimes involving drug trafficking. The Governor could

not have stated it more clearly. Worrell, according to the Executive Order, prevented or discouraged assistant state attorneys from pursuing minimum mandatory sentences. *See* App. 5 (Exec. Order 23-160).

Worrell argues that the Executive Order wrongly attempts to infer practices and policies from inapposite data. Pet. 8. The case statistics, however, speak for themselves.

We begin with Worrell's practices of evading minimum mandatory sentences for gun crimes. Firearms offenders are prone to recidivate, generally at a higher rate than other offenders and more quickly following their release into the community.[2] Minimum mandatory sentences at least ensure that for a stated period of time these offenders will be incarcerated.

As reported in the Executive Order, of the fifty-eight (58) non-homicide robbery with a firearm cases referred to the Ninth Judicial Circuit State Attorney's Office by the Osceola County Sheriff's Office ("OSCO") in 2021 and 2022, just one (1) case resulted in the minimum mandatory sentence of ten (10) years. Of the eleven (11) non-homicide carjacking with a firearm cases referred by the OSCO during this same two-year period, only one (1)

[2] *See* United States Sentencing Commission, *Recidivism Among Federal Firearms Offenders* (June 2019), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2019/20190627_Recidivism_Firearms.pdf (last visited Nov. 1, 2023).

resulted in a minimum mandatory sentence of ten (10) years. *See* App. 5 (Exec. Order 23-160).

The OCSO, according to the Executive Order, also referred fourteen (14) non-homicide cases involving home invasion robbery with a firearm, but not one resulted in a minimum mandatory sentence. Additionally, of the one-hundred and thirty (130) cases involving possession of a firearm by a convicted felon referred by the OCSO to Worrell's office, only five (5) resulted in a minimum mandatory sentence. *See* App. 5–6 (Exec. Order 23-160).

There is no anomaly here. As the Governor points out in the Executive Order, Worrell engaged in similar practices regarding minimum mandatory sentences for drug trafficking. Illegal drugs are often at the root of other criminal activity, including robberies, burglaries, assaults, and homicides. According to a 2020 study by the United States Department of Justice, approximately four (4) of ten (10) state prisoners and sentenced jail inmates who were incarcerated for property offenses committed the crime to get money for drugs or to obtain drugs.[3] In an effort to curb the illicit trade in drugs and punish those who traffic in controlled substances more severely,

[3] *See* U.S. Department of Justice, *Drug Use, Dependence, and Abuse Among State Prisoners and Jail Inmates, 2007 – 2009* (August 10, 2020), https://bjs.ojp.gov/content/pub/pdf/dudaspji0709.pdf (last visited Nov. 1, 2023).

the Legislature established minimum mandatory sentences based upon the nature and the quantity of a controlled substance. *See* § 893.135, Fla. Stat.

Yet, as charged in the Executive Order, Worrell's prosecutorial record reveals a concerted effort to evade minimum mandatory sentences for drug trafficking. According to the Executive Order, in 2021 the OCSO referred thirty-two (32) drug trafficking cases to Worrell's office, but only three (3) cases resulted in a minimum mandatory sentence. In 2022, of the sixty-four (64) drug trafficking cases referred, none have resulted in a minimum mandatory sentence. *See* App. 7 (Exec. Order 23-160).

The Governor supported these statistics with data from the Florida Department of Corrections. During the time period of January 1, 2022, through March 31, 2023, the Ninth Judicial Circuit ranked last among all circuits, on a per capita basis, in the number of individuals incarcerated for drug trafficking offenses. *See* App. 7 (Exec. Order 23-160).

Worrell dismisses these statistics, explaining that there are numerous factors which could come into play that would account for a referral not resulting in a minimum mandatory sentence. Pet. 22. This argument might carry more weight if the relatively low number of cases which resulted in minimum mandatory sentences was not indicative of Worrell's prosecutorial record. However, as apparent from the Executive Order, such is not the case.

B. Worrell declined to seek enhanced sentences or convictions for repeat offenders.

Notwithstanding efforts to rehabilitate inmates, recidivism is an accepted fact of life for sheriffs and their deputies, who see crimes committed by the same individuals that had previously been arrested and incarcerated. As in the case of minimum mandatory sentences, the sentencing enhancements for prison release reoffenders ("PRRs") and habitual violent felony offenders ("HVFOs") protect the public by prolonging the incarceration of recidivists. *See* §§ 775.082(9)(a), 775.084(4)(b), Fla. Stat.

In view of the propensity of these criminals to recidivate[4], the legislature intended for uniformity in sentencing and for the crimes be prosecuted "to the fullest extent of the law." See §§ 775.082(3)(e), 775.084(6), Fla. Stat. Worrell, however, impeded prosecutors from seeking sentencing enhancements for PRRs and HVFOs. *See* App. 10–11 (Exec. Order 23-160).

In a common theme, Worrell also directed her assistant state attorneys

[4] Even without narrowing the field to PRRs and HVFOs, inmates released from DOC tend to recidivate. Over half of those released from DOC in 2018 were re-arrested within twenty-four (24) months; 60.5% were re-arrested within thirty-six (36) months. *See* Florida Department of Corrections, *Florida Prison Recidivism Report: Releases from 2008 to 2020* (July 2022), https://fdc.myflorida.com/pub/recidivism/FDC%20Recidivism%20Report%202018%20Cohort.pdf (last visited Nov. 1, 2023).

to improperly withhold adjudication in cases where this disposition is not permitted under Florida law.[5] Significantly, Worrell instructed her prosecutors to disregard the statutory limitations and to pursue withhold of adjudications, even when this practice was in violation of Florida law. *See* App. 13 (Exec. Order 23-160).

These actions have consequences. If these offenders are not receiving minimum mandatory or enhanced sentences, they are receiving less time in prison. As a result, they return to the streets sooner, free to return to their criminal activity.

It is confounding, therefore, that in these cases in which the Legislature had provided the means to prolong the incarceration of repeat offenders and better protect the public, Worrell "thwarted the will of the Legislature by preventing or discouraging assistant state attorneys in her office from seeking sentencing enhancements for otherwise eligible defendants…" App. 13 (Exec. Order 23-160).

In cases where adjudication is withheld, little to no punishment is

[5] Withhold of adjudication is not allowed when a defendant charged with a third-degree felony has two or more prior withholdings of adjudication of felony offenses or a defendant charged with as second-degree felony has one prior withholding of adjudication of a felony. *See* §§ 775.08435(1)(d), 775.08435(1)(b), Fla. Stat.

administered. Aside from the troubling fact that the defendants may not be incarcerated for their crimes, they are incentivized to continue their illegal activity.

By declining to seek enhanced sentences for PRRs and HVFOs and promoting the withholding of adjudication for repeat felony offenders, Worrell neglected her duties as prescribed by the Legislature and demonstrated her incompetence to serve as State Attorney for the Ninth Judicial Circuit. Nonetheless, these actions were not the sole basis for the Governor's decision to remove Worrell from office.

C. Worrell limited charges against defendants charged with child pornography.

It may be stating the obvious, but child pornography is a scourge upon society. Child sexual abuse imagery has grown exponentially to nearly one (1) million per month, and child pornography videos increased by 379% from 2013 to 2017.[6]

Those who engage in these sordid crimes encourage the exploitation and manipulation of vulnerable children. The egregiousness of the offense

[6] Elie Bursztein, *Rethinking the Detection of Child Sexual Abuse Imagery on the Internet* (May 2019), https://web.archive.org/web/20190928174029/https:/storage.googleapis.com/pub-tools-public-publicationdata/pdf/b6555a1018a750f39028005bfdb9f35eaee4b947.pdf (last visited Nov. 1, 2023).

corresponds with the classification of the crime – possession of three (3) or more copies of pornographic photographs or motion pictures constitutes a second-degree felony. *See* § 827.071(4), Fla. Stat.

Notwithstanding the gravity of these offenses, Worrell, according to the Executive Order, directed prosecutors to limit the charges brought against these defendants "even when additional counts could be charged and proven at trial." *See* App. 12 (Exec. Order 23-160). Worrell excuses such a practice as yet another exercise of prosecutorial discretion, suggesting that all is well that ends well if a lengthy sentence is obtained. However, she does not represent that such was the result or the intent.

D. Worrell delayed the processing of cases involving juvenile offenders and declined to direct file on juvenile felony cases.

Cases involving juvenile crime present yet another example of Worell's lack of prosecutorial diligence. Juvenile offenders are a recurring problem for law enforcement. All too often sheriffs see the same suspects who have been arrested on multiple occasions.

Notably, juvenile crime continues to trend upward. Total felony arrests for juveniles increased by 13% from fiscal year 2020 – 2021 to fiscal year 2021 – 2022. Weapons/firearms arrests increased by 44% during this same period and total misdemeanor arrests also increased by 30% in this same

period of time.[7]

Timely processing of juvenile cases is important. Delays in processing cases negatively impact public safety by precluding access to necessary treatments and services to address a juvenile's conduct. *See* App. 33 (Exec. Order 23-160 – Exhibit C). According to the Executive Order, under Worrell's administration the Ninth Judicial Circuit ranked last in terms of juvenile case processing times. *See* App. 8 (Exec. Order 23-160).

Not to be outdone by juvenile case processing times, the Ninth Circuit is last of the twenty judicial circuits in the direct filing on juvenile felony cases based on the most serious offense disposed. In yet another dubious achievement, the Ninth Circuit ranks first among all circuits in the percentage of juvenile felony cases, including firearm-related felonies and violent felonies, dropped as a result of a non-file or nolle prosequi. *See* App. 8 (Exec. Order 23-160).

Worrell asserts that no conclusions can be drawn from these statistics. The only reasonable conclusion that may be drawn, however, is that Worrell has discouraged or prevented assistant state attorneys in the Ninth Judicial

[7] *See* Florida Department of Juvenile Justice, Delinquency Profile 2022 (Sep. 25, 2022), https://www.djj.state.fl.us/research/reports-and-data/interactive-data-reports/delinquency-profile/delinquency-profile-dashboard (last visited Nov. 1, 2023).

Circuit from effectively performing their duties. Worrell cannot simply explain this away as prosecutorial discretion. At best, this is gross negligence. At worst, it is reckless endangerment of the public.

E. Worrell's conduct cannot be excused as prosecutorial discretion.

In some respects, this case is reminiscent of *Ayala v. Scott,* in which Aramis Ayala, who previously served as State Attorney for the Ninth Circuit, contested the Governor's decision to reassign death penalty cases from her office due to her refusal to seek the death penalty in eligible cases. In a broad reach of her prosecutorial authority, Ayala argued that she had the complete discretion to decide which cases were deserving of the death penalty 224 So.3d at 758.

Finding this argument to be untenable, the Court held that Ayala's blanket refusal to seek the death penalty did not reflect an exercise of prosecutorial discretion but rather a misunderstanding of Florida law. *Id*. at 759. In support of its holding, the Court cited among other authority its decision in *Taylor v. State*, 49 Fla. 69 (Fla. 1905) in which the Court held that "a failure of the state's interests occurs" when the state attorney "is unwilling or refuses to act." 224 So. 3d at 759 (quoting *Taylor*, 49 Fla. at 78.

The case at hand is yet another instance in which a state attorney has declined to enforce the law. Worrell's actions go well beyond the scope of

prosecutorial discretion. She not only failed the Office of the State Attorney, but she failed the public whom she had a duty to serve.

The Sheriffs, therefore, support the suspension of Monique Worrell from the Office of the State Attorney of the Ninth Judicial Circuit. The Executive Order sufficiently details her neglect of duty and incompetence. Accordingly, the Petition should be denied.

CONCLUSION

Amicus curiae, the Florida Sheriffs Association, supports Governor DeSantis's suspension of Worrell for the reasons articulated in the Executive Order. The quo warranto claim fails because the Executive Order sets forth sufficient facts to support the neglect of duty and incompetence charges against Worrell. The mandamus claim should similarly be denied as a matter of law.

Respectfully submitted this 3rd day of November 2023.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of November, 2023, the foregoing was electronically filed via the Court's e-filing system, which will automatically send an electronic copy to all counsel of record.

By: */s/ R. W. Evans*
Attorney

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing brief contains 3,932 words, excluding the sections listed in Florida Rule of Appellate Procedure 9.045(e), in compliance with Florida Rule of Appellate Procedure 9.370(b).

By: */s/ R. W. Evans*
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