IN THE SUPREME COURT OF FLORIDA

CASE NO. SC19-1182
LT. NO. 3D18-2433

BRANDON THOURTMAN,

Petitioner,

-vs.-

DANIEL JUNIOR, etc., et al.,

Respondents.

BRIEF OF PETITIONER ON JURISDICTION

ON PETITION FOR DISCRETIONARY REVIEW
FROM THE DISTRICT COURT OF APPEAL
OF FLORIDA, THIRD DISTRICT

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INTRODUCTION

Petitioner Brandon Thourtman seeks this Court's discretionary review of the decision of the Third District Court of Appeal on three grounds: 1) the Third District's decision expressly construes Article I, section 14 of the Florida Constitution, involving the right to pretrial release, 2) the decision was certified to be in direct conflict with decisions of the Fourth District Court of Appeal, and 3) it expressly and directly conflicts with this Court's decision in *State v. Arthur*, 390 So. 2d 717 (Fla. 1980). This Court should accept jurisdiction to resolve this important constitutional issue. All citations in this brief are to the attached appendix, which is the opinion in *Thourtman v. Junior, et al.*, No. 3D18-2433 (Fla. 3d DCA June 12, 2019), paginated separately and identified as "A" followed by the page number.

STATEMENT OF THE CASE AND FACTS

The defendant, Brandon Thourtman, filed a petition for writ of habeas corpus in the Third District Court of Appeal, challenging his pretrial confinement without bond (A. 2). Mr. Thourtman was arrested on the charge of armed robbery with a firearm, a crime punishable by life imprisonment (A. 3-4). At the first appearance hearing, the judge announced that Thourtman would remain incarcerated with no bond, and made no findings as to whether the proof was evident or the presumption was great pursuant to *State v. Arthur*, 390 So. 2d 717 (Fla. 1980) (A. 5). Rather, the first appearance judge deferred the bond

determination to a later time when the trial court could conduct a full evidentiary *Arthur* hearing (A. 5).

Mr. Thourtman's habeas petition asserted that this ruling was contrary to Article I, section 14 of the Florida Constitution, which states that "unless charged with a capital offense or an offense punishable by life imprisonment *and* proof of guilt is evident or the presumption is great, every person charged with a crime . . . *shall be entitled to pretrial release* on reasonable conditions." (A. 9-10, emphasis added). Petitioner also relied on this Court's pronouncement in *Arthur* that "before release on bail pending trial can *ever* be denied, the state must come forward with a showing that the proof of guilt is evident or the presumption is great" (A. 21, 28, emphasis added). Finally, Thourtman argued that two cases from the Fourth District Court of Appeal, *Ysaza v. State*, 222 So. 3d 3 (Fla. 4th DCA 2017) and *Gray v. State*, 257 So. 3d 477 (Fla. 4th DCA 2018), were also binding on the trial court (A. 10). Those cases held that *Arthur* requires a two-step procedure: 1) the first appearance judge must make a preliminary finding that the probable cause affidavit establishes proof of guilt is evident or the presumption is great, before a defendant may be detained without bond for an offense punishable by life, and 2) if

the first appearance judge declines bond on this basis then the defendant can move for a full evidentiary *Arthur* hearing at a later time (A. 10). [1]

The Third District Court of Appeal denied Thourtman's habeas petition, construing the Florida Constitution as follows:

> [W]e hold that Article I, section 14 of the Florida Constitution does not prohibit the trial court the discretion at first appearance, upon a finding of probable cause that the defendant committed a crime punishable by capital punishment or life imprisonment, to defer ruling on bail and to detain the defendant for a reasonable time to conduct a full Arthur bond hearing. To exercise such discretion, the court is not required by the Constitution to make a preliminary finding of 'proof evident, presumption great.' As the Supreme Court ruled in Arthur, that issue is reserved for the full Arthur bond hearing.

(A. 27). The majority opinion certified conflict with *Ysaza* and *Gray* (A. 27). Judge Kevin Emas dissented (A. 28).

In support of its holding, the majority noted that historically, "after *Arthur*, the general understanding of Article I, section 14 remained that there occurred only one *Arthur* bond hearing and that the defendant could be detained a reasonable time past first appearance pending that hearing." (A. 12). The majority relied on

[1] After Mr. Thourtman filed his habeas petition, the trial court conducted an *Arthur* hearing, found that proof was *not* evident as to the firearm possession charge, and authorized Thourtman's release (A. 8). Although the petition became moot, the Third District Court recognized that the identical issue had been raised in a prior case that was dismissed as moot. The court determined to reach the merits of this case because it "presents a question capable of repetition yet evading review." (A. 8).

"benchguides prepared by Florida's most experienced trial judges, distributed throughout the judiciary by the court system." (A. 12). The majority also noted that it was not until the *Ysaza* decision that the constitution was interpreted to require two *Arthur* determinations (A. 13).

The majority opinion interpreted the text of Article I, section 14 requiring pretrial release for those charged with a crime punishable by life unless proof of guilt is evident or the presumption is great. The majority construed this language as referring to release "not for the time between arrest and the *Arthur* bond hearing – but for the time between the *Arthur* bond hearing and the trial." (A. 13-14). The majority also maintained that interpreting the Florida Constitution to require a preliminary finding of proof evident would be "impractical" given the fast-paced summary nature of first appearance hearings, and lack of time for substantive motions to be heard (A. 16-17).

The majority rejected Thourtman's argument that this Court's plain language in *Arthur* prohibits pretrial detention for any length of time without a finding that proof of guilt is evident. The majority concluded that the *Arthur* Court decided only the issue of which party would bear the burden of proof, and that the language relied on by Thourtman was dicta, taken "out of context." (A. 24). The majority also reasoned that this Court could have promulgated a rule for the two-hearing *Arthur* procedure, but did not do so (A. 21).

The dissent maintained that the Third District was duty-bound to follow this Court's clear and unambiguous holding in *Arthur*: "We **hold**, therefore, that before release on bail pending trial **can ever be denied,** that state must come forward with a showing that the proof of guilt is evident or the presumption is great." (A. 30). The dissent also pointed out that the majority created a rule of practice and procedure, "engrafted onto Article I, section 14" of the Constitution, allowing a "reasonable time" period during which a defendant may be held without bond based only on probable cause that the crime took place, rather than proof evident (A. 29, 36). Such a rule of procedure may only be promulgated by this Court, rather than a district court. (A. 29). "However, the Court in *Arthur* said no such thing" (A. 35).

A notice to invoke this Court's discretionary jurisdiction was timely filed, and this jurisdictional brief follows.

SUMMARY OF THE ARGUMENT

The Third District Court of Appeal's decision in this case expressly construes Article I, section 14 of the Florida Constitution governing pretrial detention requirements for defendants charged with crimes punishable by life imprisonment or death. The decision certifies conflict on this issue with decisions of the Fourth District Court of Appeal. As the law now stands, the length of time that defendants may be detained pretrial, without any constitutionally required judicial determination of "proof evident presumption great," will vary by appellate district.

This Court should accept jurisdiction to resolve this conflict, so that defendants charged with the same crimes will be treated uniformly throughout the state with respect to pretrial release.

The decision in this case also expressly conflicts with *State v. Arthur*, 390 So. 2d 717, 720 (Fla. 1980), where this Court held that before release on bail "can *ever* be denied" the state must show that the proof of guilt is evident or the presumption is great. The Third District's decision improperly creates a procedural rule permitting pretrial detention for an unspecified "reasonable time" pending a full evidentiary bond hearing. This Court has the exclusive authority to promulgate rules of procedure, and should accept jurisdiction to clarify the proper pretrial bond procedure for these cases statewide.

ARGUMENT

THE DECISION OF THE THIRD DISTRICT COURT OF APPEAL EXPRESSLY CONSTRUES THE FLORIDA CONSTITUTION, CERTIFIES CONFLICT WITH THE FOURTH DISTRICT, AND DIRECTLY CONFLICTS WITH THIS COURT'S DECISION IN *STATE v. ARTHUR*, 390 SO. 2D 717 (FLA.1980).

This Court may exercise its discretionary jurisdiction to review a decision that expressly construes a provision of the state constitution, or one that certifies direct conflict with decisions of another district court of appeal. Fla. R. App. P. 9.030(a)(2)(A)(ii)-(vi). The Third District Court of Appeal's decision this case

expressly interprets Article I, section 14 of the Florida Constitution. This interpretation was certified to be in direct conflict with the decisions of the Fourth District Court of Appeal in *Ysaza v. State*, 222 So. 3d 3 (Fla. 4th DCA 2017) and *Gray v. State*, 257 So. 3d 477 (Fla. 4th DCA 2018) (A. 26).

Article I section 14 states in relevant part that "unless charged with a capital offense or an offense punishable by life imprisonment *and* proof of guilt is evident or the presumption is great, every person charged with a crime . . . *shall be entitled to pretrial release* on reasonable conditions." (A. 9, emphasis added). The Third District's opinion construed this provision to permit pretrial detention without bond, absent any finding of proof evident or presumption great, for a "reasonable time" "between arrest and the *Arthur* bond hearing" (A. 14). The Fourth District reached the contrary conclusion, holding that it is error to deny a "defendant pretrial release at first appearance without making a determination that the probable cause affidavit, or some other evidence presented, established that proof of guilt was evident or presumption great," as required by the Florida Constitution (A. 37).

The Third District's decision also directly conflicts with this Court's holding in *State v. Arthur*, 390 So. 2d 717, 720 (Fla. 1980), which stated, "We **hold**, therefore, that before release on bail pending trial **can ever be denied,** that state must come forward with a showing that the proof of guilt is evident or the presumption is great." (A. 30). As the dissent points out, "No amount of parsing can

change this holding, its manifest meaning, and the consequential obligation of the state and the trial court before a defendant's constitutional right to pretrial release may be lawfully denied." (A. 31). This conflict with a decision of this Court provides a third basis for this Court's discretionary review of this case. Fla. R. App. P. 9.030(a)(2)(A)(iv).

A DEFENDANT'S CONSTITUTIONAL RIGHT TO PRETRIAL RELEASE SHOULD NOT VARY BY DISTRICT. THIS COURT SHOULD ACCEPT JURISDICTION TO RESOLVE THIS CONFLICT AND CLARIFY THE PROPER BOND DETERMINATION PROCEDURES FOR DEFENDANTS CHARGED WITH FELONIES PUNISHABLE BY LIFE IMPRISONMENT OR DEATH.

As it stands now, the constitutional right to pretrial release for defendants charged with crimes punishable by life imprisonment or death varies by district. In the Fourth District, the accused will benefit from an immediate preliminary judicial bond determination, within 24 hours of arrest, on whether the state's proof of guilt is evident. But a defendant charged with the very same crime in the Third District will remain incarcerated after first appearance for any amount of time determined to be reasonable, in order for the division judge to set, and for the parties to prepare, a full evidentiary hearing. The trial courts in the remaining appellate districts will be left to choose between these competing constitutional interpretations. Trial courts that opt to follow the Third District must then make ad hoc determinations as to what

lengths of pretrial detention are "reasonable." This Court should accept jurisdiction to resolve this conflict and make uniform the constitutional protections of Article I section 14.

The Third District's decision in this case not only creates conflict but also improperly creates a "reasonable time" rule of procedure, governing when trial courts make bond determinations for defendants charged with these crimes. This Court has the exclusive authority to promulgate rules of practice and procedure for Florida's courts under Article V section 2(a) of the state constitution. The Court should accept jurisdiction to clarify the proper pretrial bond procedures for these cases statewide.

CONCLUSION

The petitioner respectfully requests that this Court exercise its discretionary jurisdiction to review the decision of the Third District Court of Appeal.

Respectfully submitted,
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CERTIFICATE OF SERVICE AND CERTIFICATE OF FONT

I CERTIFY that a true and correct copy of the foregoing was emailed to the Office of the Attorney General, Criminal Division, One SE 3rd Ave, Suite 900, Miami, Fl 33131 at CrimAppMIA@MyFloridaLegal.com this 18th day of July, 2019, and that the type used in this brief is 14 point proportionately spaced Times New Roman. Counsel designates the following email addresses for the purpose of service of all documents in this proceeding: AppellateDefender@pdmiami.com (primary email address); Mlauredo@pdmiami.com (secondary email address).

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