

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT OF FLORIDA

LOGAN M. STEELE,
Petitioner,

v.

CASE NO. 1D18-4881

STATE OF FLORIDA,
Respondent.

RESPONSE TO ORDER TO SHOW CAUSE

The Respondent, the State of Florida (“State”) responds to the Court’s Order to Show Cause and states the following:

1. On 20 October 2016, Petitioner was charged with burglary of a dwelling with a person assaulted. (Petitioner's Appendix-3).
2. On 18 May 2017, Petitioner and the State entered into a deferred prosecution agreement. (Petitioner's Appendix-5).
3. Under the terms of the contract, Petitioner and the State agreed in pertinent part to the following:
 - a. “[P]rosecution . . . will be deferred for the period of 12 MONTHS from [18 May 2017], provided [that] [Petitioner] abide[s] by the conditions hereafter specified in th[e] contract and order.” (Petitioner's Appendix-11).

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- b. “[I]n the event of a criminal arrest while on the diversion program, [Petitioner] [would be] subject to automatic dismissal.” (Petitioner's Appendix-11).
- c. Petitioner was required to “advise [the] PTI program officer of any new arrests.” (Petitioner's Appendix-11).
- d. Petitioner was required to abstain from “us[ing] intoxicants to excess.”
- e. The agreement provided one special condition of consequence: “Early Termination upon completion of community service hours if in full compliance.”
- f. Under the terms of the agreement, the Assistant State Attorney had the authority (during the period of deferred prosecution) to “revoke or modify” the conditions of the deferred prosecution by (a) “[c]hanging the period of deferred prosecution not to exceed an additional 6 MONTHS,” (b) “[p]rosecuting [Petitioner] for th[e] offense if [Petitioner] violate[d] any of the[] conditions,” or (c) “[v]oid[ing] th[e] agreement should it be determined that [Petitioner] ha[s] a prior record of adult criminal convictions.” (Petitioner's Appendix-12).
- g. Toward the end of the agreement, the contract states, “If [Petitioner] compl[ies] with these conditions during the period of deferred prosecution, the criminal charge will be dismissed.” (Petitioner's Appendix-12).

4. On 26 July 2017, Petitioner provided proof that he had completed 150 community service hours.
5. On 6 August 2017, Petitioner was arrested for DUI.
6. On 16 August 2017, Petitioner was ninety days into the period of supervision.
7. On 1 August 2018, trial counsel for Petitioner filed a Motion to Enforce the Terms of the Pretrial Intervention Contract Or In the Alternative Dismiss The Information. (Petitioner's Appendix-5).
8. On 25 September 2018, the trial court conducted a hearing on Petitioner's Motion. (Petitioner's Appendix-18).
 - a. During that hearing, trial counsel for Petitioner contended "that on July 26, 2017, when Mr. Steele completed the terms of the pretrial intervention agreement, relayed the completion to the State . . . the contract was terminated at that point," emphasizing that the State "could have put into the contract that . . . it can terminate after consultation" but as drafted by the State "it said it terminates upon completion of the community service hours." (Petitioner's Appendix-23).
 - b. The Assistant State Attorney emphasized that the agreement was for "a full 12 month[s] of PTI" and that Petitioner was arrested for DUI only approximately three months into the twelve. The Prosecutor further pointed out that only thirteen days elapsed between the DUI and the date on which the Petitioner

emailed proof of completion of the community service hours. (Petitioner's Appendix-25). Further, the Assistant State Attorney noted that the Petitioner never asked for early termination and pointed out that any determination as to whether Petitioner was in full compliance “requires some consideration of whether or not the Defendant is in compliance.” (Petitioner's Appendix-25). Finally, the Prosecutor stated, “The State Attorney's office became aware that the Defendant was continuing th[e] drinking and partying lifestyle.” (Petitioner's Appendix-26). The Prosecutor then introduced photographs from Petitioner’s Instagram account through the victim.

- c. The victim of the burglary testified that she called the Prosecutor and stated that she did not want Petitioner placed on PTI. (Petitioner's Appendix-29). The victim subsequently began monitoring Petitioner’s posts on social media. (Petitioner's Appendix-30). According to the victim, Petitioner’s Instagram account could be viewed by the public and was easy to find. (Petitioner's Appendix-30). The victim found pictures from the birthday celebration of Petitioner’s girlfriend. (Petitioner's Appendix-30). When asked whether the pictures were dated, the victim responded affirmatively, noting, “One's May 18th . . . right around the exact time the PTI was signed.” (Petitioner's Appendix-30). According to the victim, there were pictures from late May and

June of 2017. “I don't remember the exact dates by heart. And there was May 18th, May 19th, June 11th, all in the same span of a month.”

9. On 25 September 2018, the trial court denied Petitioner’s motion to enforce the terms of the contract. The judge noted the uncertainty as to when the Instagram pictures were taken and did not find that Petitioner drank to excess during the term of supervision.
10. On 26 November 2018, Steele filed his Petition For Writ of Mandamus.
11. On 10 January 2019, this Honorable Court issued an order directing the State to show cause as to why the petition should not be granted. This response timely follows.

Argument

1. For the reasons stated in paragraph number two below, the deferred prosecution agreement was illegal; consequently, it was void, and it cannot be enforced. Harris v. Gonzalez, 789 So. 2d 405, 409 (Fla. 4th DCA 2001) (A contract which violates a provision of the constitution or a statute is void and illegal, and, will not be enforced in our courts.).
2. Under Section 948.08(2), Florida Statutes, one is eligible for release to the pretrial intervention program only where multiple criteria are met.¹ The criteria

¹ The State respectfully argues that Petitioner has incorrectly contended that

are the following: (a) the offender must be charged only with “any misdemeanor or felony of the *third* degree”; (emphasis added) (b) the offender must have the approval of the “administrator of the program”; and (c) the offender must have “the consent of the victim.” § Fla. Stat. 948.08(2). Since Petitioner lacked the consent of the victim, (Petitioner's Appendix-29), he could not enter into any legal deferred prosecution agreement. Petitioner cites to Carson v. State, 37 So. 3d 884 (Fla. 1st 2010), but that case involved a defendant who waived any objection to the legality of a sentence, not a victim who was never consulted. Although a defendant might be able to agree to a special type of probation, a defendant cannot waive any victim’s right on the victim’s behalf.

3. Even if the victim had consented, the deferred prosecution agreement still would have been void since the offense charged was burglary of a dwelling with a battery or assault. (Petitioner's Appendix-3). The offense charged is not a third-degree felony; it is a first-degree felony that is punishable by life in prison. § Fla. Stat. 810.02(2)(a).

Section 948.08, Florida Statutes, is inapplicable to the instant case. Petitioner enrolled in a “PRETRIAL INTERVENTION PROGRAM.” Pretrial intervention programs are governed by § 948.08.

4. Even if the contract were legal, Petitioner violated the conditions thereof during the period of supervision.

a. The DUI arrest occurred during the period of supervision.

i. Section 948.08(3), Florida Statutes, provides that even if an offender's participation is satisfactory, "criminal charges against an offender admitted to the program shall be continued without final disposition for a period of 90 days after the date the offender was released to the program"

ii. Accordingly, since Petitioner was released to the program on 18 May 2017, the criminal charges against Petitioner were required by law to be continued without final disposition for a period of 90 days; i.e., they were required by law to be continued without final disposition until 16 August 2017. Importantly, Petitioner's DUI arrest (6 August 2017) took place during the ninety-day window in which the criminal charges against Petitioner were required by law to be continued. Given the statutory law and the timeline (deferred prosecution agreement began (5-18-17), community service hours completed (7-25-17), DUI arrest (8-6-17), and the end of the first ninety days (8-16-17)), the DUI arrest indisputably occurred during the period of supervision.

iii. Even if there could be any question as to whether the DUI occurred during the period of supervision, the period of supervision could have been

extended beyond 16 August 2017. In addition to the aforementioned ninety-day period required by Section 948.08(3), the period of deferred prosecution can be extended for “an additional 90 days upon the request of the program administrator and consent of the state attorney, if the offender’s participation in the program is satisfactory.”

5. Importantly too, the gist of Petitioner’s position —that the supervision automatically and immediately terminated upon completion of the community service hours— is clearly irreconcilable with the applicable statute.
 - a. A deferred prosecution remains open until the program administrator makes a recommendation and *the Assistant State Attorney “make[s] the final determination as to whether the prosecution shall continue.”* § Fla. Stat. 948.08(5). (emphasis added).
 - b. By statute, the period of supervision —irrespective of whether Petitioner had completed the community service hours— would not terminate until the administrator recommended dismissal of the charges and the Assistant State Attorney made the final determination. Because there was no recommendation or final determination, the Petitioner’s deferred prosecution agreement was still in effect when the Petitioner was arrested for DUI.
 - c. The State respectfully argues that the contractual language on which the Petitioner relies does not establish that the period of supervision terminated

immediately and automatically upon completion of the community service hours.

- i. Admittedly, the contract provides —under some circumstances— for eligibility for termination before the expiration of the twelve-month period.
- ii. However, the State respectfully argues that under no reasonable interpretation can the contract be interpreted to mean the following: Notwithstanding any statutory provision(s) to the contrary, the period of supervision shall terminate *immediately and automatically* upon production of proof of completion of 150 community service hours, if the offender is otherwise fully compliant with the terms herein.”
- iii. Rather, with respect to early termination, the contract provides only the following: “Early Termination upon completion of community service hours if in full compliance.”
- iv. Importantly, whether the period of supervision will terminate early depends on findings made by the Assistant State Attorney. Under the applicable statute, the Assistant State Attorney determines whether an offender has been compliant; accordingly, “[r]esumption of pending criminal proceedings shall be undertaken at any time *if the program administrator or state attorney finds that the offender is not fulfilling his or her obligations* under this plan or if the public interest so requires.” § Fla. Stat. 948.08(4) (emphasis added).

- v. Moreover, the Assistant State Attorney had the authority to modify the agreement by doing either of the following: (a) by extending the period of supervision to a total of eighteen months or (b) by prosecuting Petitioner for violating any condition, e.g. a new arrest or excess use of intoxicants. Importantly, the record contains evidence not only that Petitioner was arrested but also that he used intoxicants to excess. Accordingly, the State Attorney's Office would not have determined that the charges should be dismissed. After Petitioner signed the deferred prosecution agreement, he continued using intoxicants to excess and was arrested for DUI.
6. Given the foregoing, Petitioner did not abide by the conditions of the deferred prosecution agreement. Accordingly, the State respectfully asks that this Honorable Court dismiss the Petitioner's Writ.

SIGNATURE OF ATTORNEY AND CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing response has been furnished by email to Michael Ufferman at ufferman@uffermanlaw.com on this 15th day of March 2019.

Respectfully submitted and served,
ASHLEY MOODY
ATTORNEY GENERAL

/s/ Steve Woods

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