

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JANUARY TERM 2006

BRANDON SMITH,

Petitioner,

v.

Case No. 5D06-1389

STATE OF FLORIDA,

Respondent.

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Opinion filed May 15, 2006

Petition for Writ of Habeas Corpus,
a Case of Original Jurisdiction.

Elaine A. Barbour, Orlando, for Petitioner.

Charles J. Crist, Jr., Attorney General,
Tallahassee, and Rebecca Roark Wall,
Assistant Attorney General, Daytona
Beach, for Respondent.

PER CURIAM.

Brandon Smith, who is charged with committing the crime of first-degree murder, petitions for a writ of habeas corpus or mandamus. He claims that the trial court erred in revoking his bond based upon his violation of conditions of his pretrial release. We disagree. The trial court's only error is that it revoked Smith's bond without making a written finding that pretrial detention is required. However, if the trial court does so, it has the authority to revoke Smith's bond for violating a condition of his pretrial release.

In 2000, the Legislature enacted two laws which amended sections 907.041, and 903.046, and also added section 903.0471, all to broaden a trial court's discretion over

bond for pretrial detention. See Chapters 2000-178; 2000-229, Laws of Florida; §§ 907.041 (“Pretrial detention and release”); 903.046 (“Purpose of and criteria for bail determination”), Fla. Stats. Specifically, Chapter 2000-229 created subsection 907.041(4)(c)7., Florida Statute, which allows pretrial detention for persons accused of “dangerous crimes” if there is a “substantial probability” that:

The defendant has violated one or more conditions of pretrial release or bond for the offense currently before the court and the violation, in the discretion of the court, supports a finding that no conditions of release can reasonably protect the community from risk of physical harm to persons or assure the presence of the accused at trial.

By enacting these laws, “[t]he legislature sent a clear signal about revocation of existing bonds during the 2000 session” and further made it clear that the previous caselaw interpreting the pretrial detention statute “too severely limited the trial court’s discretion on bond issues.” *Barns v. State*, 768 So.2d 529, 531, 533 (Fla. 4th DCA 2000), *review dismissed*, 796 So.2d 535 (Fla. 2001). These amendments intended to, and did, “expand[] the power of the trial courts to revoke existing bonds and order pretrial detention.” *Id.* at 531. The amendments also comport with the legislative intent first expressed back in 1983 in section 907.041(1), Florida Statute, that the “primary consideration” of the pretrial detention statute is “the protection of the community from risk of physical harm to persons.”

In *Parker v. State*, 843 So.2d 871 (Fla. 2003), the Supreme Court of Florida had its first occasion to apply the 2000 amendments. There, Parker violated a condition of his pretrial release bond by committing a new crime. Consequently, his situation was governed by the newly created section 903.0471. That section allows the trial court to “revoke pretrial release and order pretrial detention if the court finds probable cause to believe that the defendant committed a new crime while on pretrial release.” The supreme court ruled that this pretrial detention could be ordered without the necessity of

holding a second section 907.041 hearing: “In light of the fact that a Florida defendant is accorded a full adversarial hearing under section 907.041 upon his or her initial application for pretrial release, the requirements of article I, section 14, Florida Constitution, are satisfied by the dictates of section 903.0471 upon subsequent violation.” *Parker*, 843 So.2d at 880.

Smith’s situation, on the other hand, is governed by subsection 907.041(4)(c)7., Florida Statute. However, the same reasoning in *Parker* applies. The only difference is the standard of review. Since Smith has already been accorded a full adversarial hearing when he made his initial application for pretrial release, Florida’s constitutional requirements will be satisfied if the trial court complies with section 903.0471(4)(c)7., and finds that there is a “substantial probability” (1) that Smith violated one of his bond conditions and (2) that no conditions of release can reasonably protect the community from physical harm or assure Smith’s presence at trial. See *Parker*, 843 So.2d at 880; *State v. Paul*, 783 So.2d 1042, 1051 (Fla. 2001) (breach of a bond condition provides basis for revocation of original bond, but trial court’s discretion to deny a subsequent application for new bond is still limited by the terms of § 907.041). See generally *State v. Raymond*, 906 So.2d 1045, 1048 (Fla. 2005) (§ 907.041(4)(b), Fla. Stat., which states that “[n]o person charged with a dangerous crime shall be granted nonmonetary pretrial release at a first appearance hearing,” violates Article I, section 14, of Florida’s Constitution).

PETITION GRANTED in part; DENIED in part.

SAWAYA, PALMER and TORPY, JJ., concur.