

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2009

ARTHUR BLAIR,
Petitioner,

v.

STATE OF FLORIDA and **RIC L. BRADSHAW,** Palm Beach County
Sheriff,
Respondents.

No. 4D09-2335

[July 15, 2009]

GROSS, C.J.

The trial court ordered petitioner, Arthur Blair, held without bond after he failed to appear for a court date on a felony DUI charge. Blair had never been arrested on the felony charge and he did not receive notice of the court date. Blair had been arrested for misdemeanor DUI and appeared at a scheduled court date for that charge. At that time, he was advised that the court appearance had been cancelled and that the misdemeanor case had been nolle prossed. Unbeknownst to Blair, the state had filed an information charging felony DUI, but the uncontested evidence at the bond hearing showed that Blair did not receive notice of the felony charge.

The trial court did not find the failure to appear to be willful. The record is devoid of evidence to suggest that petitioner willfully failed to appear. Pretrial detention may not be ordered based on a failure to appear unless the court finds that the failure to appear was willful. See *Lee v. State*, 956 So. 2d 1292 (Fla. 4th DCA 2007); *Johnson v. Jenne*, 913 So. 2d 740 (Fla. 4th DCA 2005); *Winters v. Jenne*, 765 So. 2d 54 (Fla. 4th DCA 1999).

Further, the trial court improperly ordered pretrial detention without finding that “no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process.” Art. I, § 14, Fla. Const. A pretrial detention order must contain findings of fact and conclusions of law showing that the constitutional and statutory

criteria for pretrial detention are met. See Fla. R. Crim. P. 3.132(c)(2); § 907.041(4)(i), Fla. Stat. (2008).

This court's decision in *Bradshaw v. Jenne*, 754 So. 2d 109, 110-11 (Fla. 4th DCA 2000), predates the Florida Supreme Court's decision in *State v. Paul*, 783 So. 2d 1042 (Fla. 2001). In *Paul*, the supreme court agreed with Judge Taylor's dissent in *Bradshaw*. See *id.* at 1049 n.11. Pretrial detention based on a violation of a bond condition, other than the commission of a new offense while on pretrial release, is subject to the requirements of section 907.041, Florida Statutes. See § 907.041(4)(c)7, Fla. Stat. (2008) (requiring a court ordering pretrial detention based on a violation of a pretrial release condition to find 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"). Cf. § 903.0471, Fla. Stat. (2008) (permitting court to order pretrial detention when it finds probable cause to believe defendant committed a new offense while on pretrial release); *Parker v. State*, 843 So. 2d 871, 878 (Fla. 2003) (finding section 903.0471 constitutional and suggesting that an Article I, section 14 finding is not required when probable cause is found that defendant committed a new offense while on pretrial release).

Although a trial court has discretion in setting reasonable pretrial release conditions, a trial court's authority to order pretrial detention is circumscribed by the state constitution and relevant statutes. *Paul* makes clear that these requirements apply even where a defendant has violated pretrial release conditions, such as through a failure to appear. 783 So. 2d at 1051. *Paul* effectively overruled the majority's analysis in *Bradshaw*, which permitted a court to order pretrial detention following a finding of a willful failure to appear without also finding that the constitutional and statutory criteria for pretrial detention were met.

The court in *Ricks v. State*, 961 So. 2d 1093, 1093-94 (Fla. 5th DCA 2007), appears to have relied on pre-*Paul* cases to reach the same conclusion as *Bradshaw*, that a court may order pretrial detention based solely on a finding of a willful failure to appear "without determining whether conditions of release are appropriate." *Id.* (citing *Wilson v. State*, 669 So. 2d 312, 313 (Fla. 5th DCA 1996)). We certify conflict with this aspect of *Ricks*.

The petition for writ of habeas corpus is granted and the trial court shall hold a bond hearing and release the defendant on reasonable conditions unless the court determines that the failure to appear was willful and that "no conditions of release can reasonably protect the

community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process.” Art. I, § 14, Fla. Const.; § 907.041(4)(c)7, Fla. Stat. (2008); *Paul*, 783 So. 2d at 1042.¹

POLEN and STEVENSON, JJ., concur.

* * *

Petition for writ of habeas corpus to the Fifteenth Judicial Circuit, Palm Beach County; John J. Hoy, Judge; L.T. Case No. CF08-002566AMB.

Carey Haughwout, Public Defender, Daniel Cohen, and Yvette Farnsworth Baker, Assistant Public Defenders, West Palm Beach, for petitioner.

Bill McCollum, Attorney General, Tallahassee, and Myra J. Fried, Assistant Attorney General, West Palm Beach, for respondents.

¹The petition for writ of habeas corpus was previously granted by order of June 29, 2009, with opinion to follow.