

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

BRITNEY S. FERNALD,

Petitioner,

v.

GRADY C. JUDD, Sheriff of Polk County,

Respondent.

No. 2D21-1304

November 3, 2021

Petition for Writ of Habeas Corpus to the Circuit Court for Polk County; David Stamey, Judge.

Howard L. Dimmig, II, Public Defender, Robert A. Young, General Counsel, and Ashley L. Malans, Assistant Public Defender, Bartow, for Petitioner.

Ashley Moody, Attorney General, Tallahassee, and Michael S. Roscoe, Assistant Attorney General, Tampa, for Respondent.

PER CURIAM.

Petitioner Britney Fernald filed a petition seeking issuance of a writ of habeas corpus after the trial court denied her motion to

reinstate her pretrial release. She challenges the trial court's order revoking her pretrial release and holding her without bond.

Ms. Fernald was arrested and charged with misdemeanor domestic battery on December 15, 2020. *See* §§ 741.28, 784.03, Fla. Stat. (2020). She was placed on pretrial release with conditions that included a prohibition on intentional contact with any identified victims. *See* § 903.047(1)(b), Fla. Stat. (2020).

On April 12, 2021, the trial court issued a "no bond" *capias*. Attached to the *capias* was an affidavit filed by a pretrial services officer stating that Ms. Fernald had contact with the victim. However, the affidavit did not contain a factual description of the alleged violation. Also attached to the *capias* was a notarized letter from the victim in which he described the contact he allegedly had with Ms. Fernald; however, the letter was unsworn.¹

¹ *See Simeus v. Rambosk*, 100 So. 3d 2, 4 (Fla. 2d DCA 2011) ("[A]lthough the supplemental police report indicated that the authoring officer himself observed Simeus committing the new offense, the report was not in the form of an affidavit, and it therefore did not provide a sufficient basis for the required probable cause determination under section 903.0471."); *Jackson v. State*, 881 So. 2d 666, 667 (Fla. 5th DCA 2004) ("By definition, 'an affidavit' is a written or printed declaration or statement of facts, made under oath, before a person having authority to administer such oath or affirmation.").

During Ms. Fernald's first appearance hearing, her counsel argued that the evidence was insufficient to establish that she violated a condition of her pretrial release. The first appearance judge determined that there was probable cause that Ms. Fernald violated her pretrial release and ordered her to be held without bond pursuant to the *capias* issued by the judge presiding over her case.

In response, Ms. Fernald's counsel requested a revocation hearing within five days pursuant to section 907.041(4)(f), Florida Statutes (2020), and Florida Rule of Criminal Procedure 3.132(c)(1). The clerk present at the hearing informed the parties that the judge who issued the *capias* "does not do five-day hearings on orders revoking pretrial release." Ms. Fernald was then taken into custody.

To the extent the clerk's comment could suggest that the trial court's refusal to grant Ms. Fernald's request for a five-day hearing might have been pursuant to a standard practice in instances where a defendant is accused of violating a pretrial release condition, such practice would contravene controlling legal authority. *See State v. Paul*, 783 So. 2d 1042, 1052 (Fla. 2001)

(holding that a trial court lacks "the inherent authority to deny a subsequent application for bond based solely on a defendant's violation of a bond condition"); *Salti v. State*, 287 So. 3d 533, 533 (Fla. 2d DCA 2019) (table decision) (granting a writ of habeas corpus and ordering the trial court to hold a pretrial detention hearing within five days because, "although the breach of a bond condition provides the basis for revocation of the original bond, the trial court's discretion to deny a subsequent application for a new bond is limited by the terms of [section 907.041]." (quoting *State v. Paul*, 783 So. 2d 1042, 1051 (Fla. 2001))); § 907.041(4)(f) ("The pretrial detention hearing shall be held within 5 days of the filing by the state attorney of a complaint to seek pretrial detention."). Had such a hearing been held, the court would have been required to make the necessary findings in order to justify Ms. Fernald's pretrial detention. See § 907.041(4)(i) ("The pretrial detention order of the court shall be based solely upon evidence produced at the hearing and shall contain findings of fact and conclusions of law to support it, [which the court must render] within 24 hours of the pretrial detention hearing."); see also, e.g., *Kendrick-Nelson v. Guevara*, 187 So. 3d 913, 914 (Fla. 3d DCA 2016) (holding that the

trial court failed to make the necessary findings "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" (quoting § 907.041(4)(c)(7)).

However, we are compelled to dismiss the petition as moot because Ms. Fernald has since entered into a plea agreement with the State and is no longer in custody. *See M.M. v. Wood*, 152 So. 3d 1280, 1281 (Fla. 1st DCA 2015) (concluding that the petitioner's release from secure detention warranted dismissal based on mootness despite the possibility that the issue "may conceivably recur," because "it will not necessarily evade review if it does so"). As such, we do not reach the issues of whether the affidavit and notarized letter would be sufficient to justify revocation of pretrial release or whether such revocation was alternatively justifiable under section 903.0471 based on the alleged commission of a new crime in violation of section 741.29(6).²

² *See* § 903.0471 ("Notwithstanding s. 907.041, a court may, on its own motion, 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."); § 741.29(6) ("A person who willfully violates a condition of pretrial release provided in s. 903.047, when the original arrest was for an

The petition for writ of habeas corpus is dismissed as moot.

Dismissed.

KELLY, ROTHSTEIN-YOUAKIM, and ATKINSON, JJ., Concur.

Opinion subject to revision prior to official publication.

act of domestic violence as defined in s. 741.28, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and shall be held in custody until his or her first appearance.").