

DISTRICT COURT OF APPEAL OF FLORIDA  
SECOND DISTRICT

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FRANK J. MADERI and CARLOS E. GUZMAN-ROIG,

Petitioners,

v.

STATE OF FLORIDA,

Respondent.

No. 2D21-957

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April 13, 2022

Petition for Writ of Certiorari from the Circuit Court for Pinellas County; Kimberly Todd, Judge.

Marc F. Plotnick of Plotnick Law, P.A., St. Petersburg, for Petitioner Frank J. Maderi.

Michael Braxton of Parks & Braxton, P.A., Miami; and Rupak R. Shah, Escobar & Associates, of Counsel, c/o Parks & Braxton, P.A., Miami, for Petitioner Carlos E. Guzman-Roig.

Ashley Moody, Attorney General, Tallahassee, and Cynthia Richards, Assistant Attorney General, Tampa, for Respondent.

SLEET, Judge.

Frank Maderi and Carlos Guzman-Roig (Petitioners) petition this court for (1) a writ of mandamus to direct the Secretary of State to expunge unconstitutional portions of chapter 2021-240 and (2) a writ of certiorari to quash the trial court's orders denying their entry into the pretrial veteran's treatment intervention court program (PVTIP). We deny the petition for a writ of mandamus without further comment. However, because the trial court improperly relied upon the State's rejection of the Petitioners' admittance into the PVTIP rather than exercising its discretion to determine whether the Petitioners were entitled to admittance pursuant to applicable law, the trial court departed from the essential requirements of law. We therefore grant the petition for writ of certiorari and quash the trial court's orders.

### **Background**

This court revisits this matter for a second time. *See Maderi v. State*, 311 So. 3d 235, 236 (Fla. 2d DCA 2020) (*Maderi I*). In *Maderi I*, the petitioners, four veterans charged with DUI,<sup>1</sup> sought certiorari

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<sup>1</sup> Of the original four petitioners in *Maderi I*, only Maderi and Guzman-Roig filed the second petition for certiorari, so we only address these two orders, both of which are identical for purposes of the trial court's reasoning.

review of a trial court order denying their motions to be accepted into the PVTIP in Pinellas County, arguing that an administrative order established such a program in the Sixth Circuit and that the petitioners were entitled to participate in the program. This court granted the petition, concluding that the trial court departed from the essential requirements of law by denying the petitioners' admission into the PVTIP on the basis that no such program existed when it was, in fact, established by the chief judge of the Sixth Circuit. *Id.* at 239-40. This court further concluded that the petitioners were entitled to a determination by the trial court of whether they should be admitted into the program.<sup>2</sup> *Id.* at 239.

On remand, the trial court conducted multiple hearings<sup>3</sup> pursuant to this court's mandate and ultimately entered its March

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<sup>2</sup> We noted in *Maderi I* that the trial court found the petitioners were eligible for the PVTIP. *Maderi I*, 311 So. 3d at 239 n.4 ("The State argues that the petitioners have not established that they are eligible for the program, if one exists. However, when one of the petitioners' counsel asked to establish a record regarding the petitioners' eligibility for the program, the trial court stopped him and said that the petitioners met the criteria.").

<sup>3</sup> While there are no transcripts of the hearings, that fact does not preclude our review as the Petitioners allege a departure from the essential requirements of the law on the face of the orders. See *Reinoso v. Fuentes*, 932 So. 2d 536, 537 (Fla. 3d DCA 2006)

1, 2021, Order on [Maderi's] Motion for Acceptance into Misdemeanor Pretrial Veterans' Treatment Intervention Program and its March 2, 2021, Order on [Guzman-Roig's] Request to Transfer to Veterans' Court.

In its orders, the trial court acknowledged that a PVTIP exists in the Sixth Circuit, that it is funded and operated by the state attorney's office (SAO), and that the Petitioners met the statutory eligibility requirements of section 948.16(2)(a). However, it noted that historically the State has not accepted defendants charged with DUI into a pretrial intervention (PTI) program administered by their office and that "[i]f the State objects to a defendant entering the PTI program administered by their office, the Court has limited options to provide that defendant with services." Based upon the State's rejection of veterans with DUIs into the program, the trial court concluded that it did not have the authority to compel the State to expend funds to supervise the Petitioners in the PTI program, but it granted the Petitioners' admittance into the postadjudicatory program. The Petitioners rejected the offer and filed this petition

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(granting certiorari relief where there was no transcript but the departure was apparent on the face of the order).

seeking a writ of certiorari to quash the trial court's orders denying their entry into the PVTIP.

### **Analysis**

"To obtain certiorari relief, a petitioner must demonstrate that the order departs from the essential requirements of law, that it causes material injury, and that the petitioner lacks an adequate remedy on appeal." *Maderi I*, 311 So. 3d at 238 (quoting *Gincley v. State*, 267 So. 3d 444, 446 (Fla. 4th DCA 2019)). The last two elements are jurisdictional and must be analyzed before the court may even consider the first element. *Parkway Bank v. Fort Myers Armature Works, Inc.*, 658 So. 2d 646, 648-49 (Fla. 2d DCA 1995).

Once again, the Petitioners satisfy the jurisdictional prongs because "[p]reclusion from receiving the benefit of a pretrial intervention program causes irreparable harm." *Maderi I*, 311 So. 3d at 238 (quoting *Gincley*, 267 So. 3d at 446); *see also Hewlett v. State*, 661 So. 2d 112, 116 (Fla. 4th DCA 1995) (concluding that where an order terminating a defendant from a pretrial intervention program precluded the defendant from obtaining dismissal of the charges upon successfully completing the program, such an order

met the "irreparable harm" prong of the test for certiorari jurisdiction).

Section 948.16, Florida Statutes (2020), discusses types of pretrial intervention programs whereby, if a defendant successfully completes the program, the charges are dismissed. One of the programs, the misdemeanor veterans treatment court program, is designed specifically for veterans. § 948.16(2)(a). Specifically, section 948.16(2)(a) provides as follows:

A veteran, as defined in s. 1.01; a veteran who is discharged or released under any condition; a servicemember, as defined in s. 250.01; an individual who is a current or former United States Department of Defense contractor; or an individual who is a current or former military member of a foreign allied country, who suffers from a military service-related mental illness, traumatic brain injury, substance abuse disorder, or psychological problem, and who is charged with a misdemeanor *is eligible* for voluntary admission into a misdemeanor pretrial veterans' treatment intervention program approved by the chief judge of the circuit, for a period based on the program's requirements and the treatment plan for the offender, upon motion of either party or the court's own motion. However, the court may deny the defendant admission into a misdemeanor pretrial veterans' treatment intervention program if the defendant has previously entered a court-ordered veterans' treatment program.

(Emphasis added.)

As this court in *Maderi I* previously determined, the Sixth Judicial Circuit approved a PVTIP in Administrative Order 2019-059, which was signed by Chief Judge Anthony Rondolino. *Maderi I*, 311 So. 3d at 238-39. Veterans submit an application to the Sixth Judicial Circuit SAO, and once an employee screens the application, it is sent to an attorney with the SAO to "identify those applicants who meet the eligibility criteria" set forth in section 948.16. If approved, the veteran has two options, PVTIP or a postadjudicatory program.

By its plain language, section 948.16(2)(a) does not make any exception for DUI offenses. Nor does it confer authority upon the State to approve or disapprove of the admission of any eligible veteran charged with any misdemeanor, including a DUI, into the misdemeanor PVTIP.<sup>4</sup> Rather, admission of an eligible veteran is

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<sup>4</sup> The Florida Legislature has made clear that it knows how to confer this authority upon the SAO when it so desires. See § 948.08(2) ("Any first offender, or any person previously convicted of not more than one nonviolent misdemeanor, who is charged with any misdemeanor or felony of the third degree is eligible for release to the pretrial intervention program *on the approval of the administrator of the program and the consent of the victim, the state attorney, and the judge who presided at the initial appearance hearing of the offender.*" (emphasis added)); see also *Cason v. Fla. Dep't of Mgmt. Servs.*, 944 So. 2d 306, 315 (Fla. 2006) ("[W]e have

subject only to the discretion of the trial court. Accordingly, by allowing the State to act as gatekeeper and divert veterans charged with misdemeanor DUIs only to the postadjudicatory veterans' intervention program, the trial court departed from the essential requirements of section 948.16(2)(a).

We also note that the trial court's concern with violating the separation of powers doctrine is misplaced because the statute bestows no authority on the State to summarily prevent eligible veterans charged with DUI from participating in the PVTIP or to otherwise override the trial court's discretion to determine entitlement to PVTIP admission.<sup>5</sup>

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pointed to language in other statutes to show that the Legislature 'knows how to' accomplish what it has omitted in the statute in question."); *State v. James*, 298 So. 3d 90, 93 (Fla. 2d DCA 2020) ("[C]ourts must 'presume that [the] legislature says in a statute what it means and means in a statute what it says there.' " (second alteration in original) (quoting *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992))).

<sup>5</sup> We recognize the legislature has since amended section 948.16(2)(a) to expand the definition of a veteran, confer authority upon the State to determine eligibility, and condition participation in a PVTIP upon the approval of the State in consultation with the court. But we must use the statute in effect at the time the Petitioners sought pretrial intervention. See ch. 2021-240, § 6, Laws of Fla.; see also § 394.47891, Fla. Stat. (2021).

To be clear, nothing precludes the State from objecting to a defendant's admission or asserting its legal bases for denial of admission, but the trial court has the ultimate authority and discretion to grant or deny that admission. *Cf. Simeone v. State*, 276 So. 3d 797, 806 (Fla. 4th DCA 2019) (interpreting section 948.08(7), which is nearly identical to section 948.16(2) but deals with felony charges rather than misdemeanor offenses, and concluding that "conditioning an eligible and willing defendant's admission into veterans' court [pretrial intervention program] based upon the state's (or anyone's) concurrence would constitute an abdication of the judge's discretion").

By accepting the SAO's blanket policy to foreclose otherwise eligible and willing veterans from participating in the PVTIP because they have been charged with misdemeanor DUI without any independent review as to whether the Petitioners were otherwise eligible for the program pursuant to section 948.16(2)(a), the trial court erroneously abdicated its statutorily provided discretion and authority and thus departed from the essential requirements of law.

Petition granted; order quashed.

CASANUEVA and KELLY, JJ., Concur.

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Opinion subject to revision prior to official publication.