

IN THE CIRCUIT COURT FOR THE  
NINETEENTH JUDICIAL CIRCUIT IN AND  
FOR INDIAN RIVER COUNTY, FLORIDA.  
**APPELLATE DIVISION**

Circuit Case No. 18-AP-3  
Lower Tribunal No. 17-MM-1060

FLORIDA FISH AND WILDLIFE  
CONSERVATION COMMISSION,

Petitioner,

v.

Not final until time expires for filing motion  
for rehearing, and if filed, disposed of.

JONATHAN SICKEL,

Respondent.

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Decision filed February 26, 2019.

Petition for writ of certiorari to the County Court for Indian River County; Joe Wild, Judge.

Bridget McDonnell, Assistant General Counsel, Tallahassee, for petitioner.

Richard Barlow, Stuart, for respondent.

PER CURIAM.

The Respondent was charged by information with unlawfully transporting a net in violation of Fla. Admin. Code R. 68B-4.0082(1) and §379.401, Fla. Stat. (2017), and he pled no contest. The Respondent, his attorney, the prosecutor, and the trial court signed a plea agreement stating that “the prosecutor has agreed (to) withheld (sic) adjudication, \$200 fine, court costs, costs of prosecution, costs of investigation, no administrative costs or suspensions by FWC.” A month later, despite the trial court’s disposition of the criminal case, the Petitioner (“FWC”) administratively suspended all of the Respondent’s license privileges for ninety days and fined him \$2,500. The Respondent filed a “Motion to Set Aside Plea and Sentence Due to the State’s Violation of Terms of the Plea” in the criminal case and set it for hearing before the trial court. The trial court rendered an order enforcing the terms of the plea agreement, finding that it was

clear, unambiguous, and did not permit FWC's imposition of administrative costs or suspensions on the Respondent.

Since FWC was not a party to the criminal case, it was not entitled to direct appeal the order. Therefore, it filed a petition for writ of certiorari.<sup>1</sup> Certiorari relief is proper when the trial court's order departs from the essential requirements of law and leaves the nonparty petitioner no remedy on appeal. *Jenne v. Ammons*, 956 So. 2d 1291, 1292 (Fla. 4th DCA 2007).

FWC argues that the trial court's order departed from the essential requirements of law by violating the separation of powers doctrine expressed in Florida Constitution:

The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.

Art. II, § 3, U.S. Const. Amend. V, U.S. Const. FWC argues that the trial court's order compelling it to uphold a plea agreement negotiated between the State Attorney's Office ("State") and the Respondent exceeds the trial court's authority as part of the judicial branch. FWC is a state agency created by Florida Constitution and governed by the executive branch:

There shall be a fish and wildlife conservation commission, composed of seven members appointed by the governor, subject to confirmation by the senate for staggered terms of five years. The commission shall exercise the regulatory and executive powers of the state with respect to wild animal life and fresh water aquatic life, and shall also exercise regulatory and executive powers of the state with respect to marine life, except that all license fees for taking wild animal life, fresh water aquatic life, and marine life and penalties for violating regulations of the commission shall be prescribed by general law. The commission shall establish procedures to ensure adequate due process in the exercise of its regulatory and executive functions....

Art. IV, § 9, U.S. Const. Amend. V, U.S. Const. The general law referred to in the Florida Constitution that grants FWC the authority to suspend the Respondent's licenses and impose a fine is §379.407(9), Fla. Stat. (2017), which states in relevant part:

For purposes of imposing license or permit suspensions or revocations authorized by this chapter, the license or permit under which the violation was committed is subject to suspension or revocation by the commission. For purposes of assessing monetary

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<sup>1</sup> This case was originally filed in the Fourth District Court of Appeals, and upon receipt, it transferred the case to the circuit court in its appellate capacity.

civil or administrative penalties authorized by this chapter, the commercial harvester cited and subsequently receiving a judicial disposition of other than dismissal or acquittal in a court of law is subject to the monetary penalty assessment by the commission...

According to the statute, FWC had the authority to suspend the Respondent's licenses, regardless of the judicial disposition of the case. The Respondent pled no contest to a net transit violation, which was not a dismissal or acquittal. The no contest disposition authorized FWC to impose a fine in the amount of \$2,500 fine under §379.407(3)(a), Fla. Stat. (2017), which is clearly titled Penalties for Use of Illegal Nets:

In addition to being subject to the other penalties provided in this chapter, any violation of s. 16(b), Art. X of the State Constitution, or any statute or rule of the commission which implements the gear prohibitions and restrictions specified therein shall be considered a major violation; and any person, firm, or corporation receiving any judicial disposition other than acquittal or dismissal of such violation shall be subject to the following additional penalties:

a. For a first major violation within a 7-year period, a civil penalty of \$2,500 and suspension of all saltwater products license privileges for 90 calendar days following final disposition shall be imposed.

A review of the Florida Constitution and these statutes shows that FWC had the authority, as an agency of the executive branch, to suspend the Respondent's licenses and impose the \$2,500 fine. However, the trial court's order in the criminal case attempted to prohibit it from doing so by stating "the Florida Fish and Wildlife Conservation Commission shall not suspend the fishing license of Jonathan S. Sickel, or impose any administrative penalty."

The Florida Supreme Court has applied a strict separation of powers doctrine in interpreting this provision of the Florida Constitution, and one fundamental prohibition of that doctrine is that one branch of government may not encroach upon the powers of another. *Florida Dept. of State, Div. of Elections v. Martin*, 916 So. 2d 763, 768 (Fla. 2005). The judiciary "is precluded from interfering with, much less usurping the proper authority of the executive." *Sharrad v. State*, 998 So. 2d 1188, 1191 (Fla. 4th DCA 2009) (quoting *State v. Mendiola*, 919 So.2d 471, 472 (Fla. 3d DCA), *rev. denied*, 919 So.2d 435 (Fla.2005)). In *Sharrad*, the Fourth District held that the trial court violated the separation of powers doctrine and exceeded its jurisdiction when it compelled the Department of Corrections to comply with an earlier order to arrest and transport defendants on community control or probation who failed drug tests. *Id.*

In the instant case, the Respondent argues that *Santabello v. New York* applies, which is the case the trial court relied upon in its order. 404 U.S. 257 (1971). *Santabello* stands for the premise that when a defendant accepts a plea based on promises made by a prosecutor, such promises are part of the inducement and must be fulfilled, even when a different prosecutor stands in at sentencing for the prosecutor who negotiated the plea. *Id.* However, *Santabello* is distinguishable from the instant case because the instant case also involves a third party executive branch agency, which implicates the separation of powers doctrine, whereas *Santabello* involved two prosecutors who were employed by the same State Attorney's office. *Id.* Therefore, *Santabello* is not applicable here.

The Respondent further asserts the following in his response:

The State Attorney's Office negotiated a Plea which bound Florida Fish and Wildlife Conservation Commission. Florida Fish and Wildlife Conservation Commission, although having authority to act administratively, submitted to the authority of the State Attorney's Office, by electing to file and proceed with criminal prosecution rather than electing to handle the case by administrative action to impose fines and suspensions.

However, he cites no authority for these allegations. In fact, there is no evidence in the record to show that FWC was in any way involved with the criminal prosecution, specifically the plea agreement. Further, "under Florida's constitution, the state attorney has the discretion in deciding whether and how to prosecute a defendant", not an executive branch agency. *Seybel v. State*, 693 So. 2d 678, 679 (Fla. 4th DCA 1997) (citing *State v. Bloom*, 497 So.2d 2, 3 (Fla.1986)). Finally, the Respondent argues that the rules of contract law should apply, and FWC should be treated as third party beneficiary, as was done by the Third District Court in *State v. Frazier*, 697 So. 2d 944 (Fla. 3d DCA 1997). In *Frazier*, the defendant, her niece, and her nephew were all charged with aggravated battery arising from the same incident. *Id.* at 945. The State and the defendant negotiated a plea agreement, and the prosecutor announced in open court when the defendant pled guilty to battery that the niece and nephew's charges were nolle prossed. *Id.* The State later attempted to renege on the deal, and the Third District stated that the niece and nephew were third party beneficiaries of the defendant's plea agreement, so they were entitled to its enforcement. *Id.* *Frazier* is distinguishable from the instant case, in that it involves multiple participants in the same crime receiving the benefit of one plea agreement, whereas here, the office of a constitutional

officer in the judicial branch attempted to contract away the statutory rights and responsibilities of an executive branch agency.

Based on the foregoing, the trial court departed from the essential requirements of law when it rendered an order enforcing the terms of the plea agreement and prohibiting FWC from suspending the Respondent's licenses and imposing a \$2,500 fine. Therefore, the petition for writ of certiorari is granted, and the trial court's order is quashed.

*Petition for writ of certiorari granted, order quashed.*

METZGER, C.J., MCNICHOLAS, J., and WATERS, Acting Circuit Judge, concur.

Copies of above decision  
were furnished to the attorneys/parties  
of record on the same date  
the decision was filed.