

Supreme Court of Florida

Nos. 68,564 & 68,633

MICHAEL E. ALLEN, etc., et al.,
Petitioners,

vs.

HAL S. McCLAMMA, etc., Respondent.

[January 5, 1987]

OVERTON, J.

These consolidated proceedings concern a county court judge's authority, under section 27.51(1)(b), Florida Statutes (1985), to discharge a public defender or limit the scope of his duties. In the first case, the county court judge appointed a public defender on one charge, but would not allow the public defender to represent the defendant on another charge, arising out of the same incident, being tried at the same time. In the second case, the judge discharged a public defender after he had been duly appointed, having given the defendant a choice between representation by the public defender and possible incarceration, or proceeding without the public defender and not risking a jail term.

The petitioners seek writs of prohibition and mandamus. We hold that prohibition and mandamus are not the proper remedies, but conclude that the petitions do set forth justiciable issues for which relief may be sought by common law certiorari. This Court does not have common law certiorari

jurisdiction, although that remedy is available in the district courts of appeal and the circuit courts. We treat these petitions as petitions for common law certiorari, and we remand them to the Circuit Court of the Second Judicial Circuit for appropriate consideration. See art. V, §§ 2(a), 5(b), Fla. Const.

It is so ordered.

McDONALD, C.J., ADKINS, BOYD, EHRLICH and BARKETT, JJ., concur
SHAW, J., concurs in result only

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF
FILED, DETERMINED.

Original Proceedings - Mandamus (two consolidated cases)

Michael E. Allen, Public Defender and P. Douglas Brinkmeyer,
Assistant Public Defender, Tallahassee, Florida,

for Petitioners

Jim Smith, Attorney General and Mark C. Menser, Assistant
Attorney General, Tallahassee, Florida,

for Respondent

Elton H. Schwarz, President and A. Anne Owens, Assistant Public
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for Florida Public Defender Association, Amicus Curiae