

39 So.3d 1190, 35 Fla. L. Weekly S311  
(Cite as: 39 So.3d 1190)

**H**

Supreme Court of Florida.  
STATE of Florida, et al., Petitioners,  
v.  
Arthur BLAIR, Respondent.  
**No. SC09-1407.**

June 3, 2010.

**Background:** Defendant filed petition for writ of habeas corpus, challenging an order of the Circuit Court, Fifteenth Judicial Circuit, Palm Beach County, [John J. Hoy, J.](#), requiring that he be held without bond after he failed to appear for a court date on a felony charge of driving under the influence (DUI). The District Court of Appeal, [15 So.3d 758](#), granted petition and certified conflict.

**Holding:** The Supreme Court held that trial court lacked authority to order pretrial detention of defendant without bond for failure to appear, absent finding that failure to appear was willful, or determination as to whether there were reasonable conditions of pretrial release; disapproving, [Ricks v. State, 961 So.2d 1093](#).

Decision approved.

West Headnotes

**[1] Habeas Corpus 197**  **224.1**

[197](#) Habeas Corpus

[197I](#) In General

[197I\(A\)](#) In General

[197I\(A\)2](#) Necessity and Effect of Writ;

Mootness and Prematurity

[197k224](#) Petitioner Released or Discharged; Expired Sentences

[197k224.1](#) k. In general. [Most Cited](#)

[Cases](#)

Supreme Court would accept jurisdiction over defendant's habeas challenge to order requiring that he be held without bond after he failed to appear for a court date on a felony charge of driving under the influence (DUI), even though District Court of Appeal had granted habeas petition, trial court had reconsidered its decision to detain defendant in light of the

opinion of the District Court of Appeal, trial court had determined that defendant could be released on his own recognizance, and trial court had granted defendant's motion to discharge on speedy trial grounds, thus rendering defendant's case moot, as issue was capable of repetition yet might evade review. [U.S.C.A. Const.Amend. 6](#).

**[2] Criminal Law 110**  **308**

[110](#) Criminal Law


[110XVII](#) Evidence

[110XVII\(B\)](#) Presumptions and Inferences

[110k305](#) Presumptions

[110k308](#) k. Innocence. [Most Cited Cases](#)

The criminal justice system is based on the presumption that every person charged with a crime is innocent until proven guilty. [West's F.S.A. Const. Art. 1, § 14](#).

**[3] Bail 49**  **42**

[49](#) Bail

[49II](#) In Criminal Prosecutions

[49k41](#) Right to Release on Bail

[49k42](#) k. In general. [Most Cited Cases](#)

Trial court lacked authority to order pretrial detention of defendant without bond for failure to appear for a court date on a felony charge of driving under the influence (DUI), absent finding that defendant's failure to appear was willful, or a determination as to whether there were reasonable conditions of pretrial release; evidence at bond hearing established that defendant attempted to attend a misdemeanor DUI court date, but was told that the case had been nolle prossed, he never received notice that case had been refiled as a felony DUI or of a new court date, and defendant testified that he used his ex-wife's address because of his job as a road worker precluded him from maintaining a stable address; disapproving, [Ricks v. State, 961 So.2d 1093](#). [West's F.S.A. Const. Art. 1, § 14](#); [West's F.S.A. § 907.041\(4\)\(c\)\(7\)](#); [West's F.S.A. RCrP Rule 3.131](#). [Carey Haughwout](#), Public Defender, and [John M. Conway](#), Assistant Public Defender, Fifteenth Judicial Circuit, West Palm Beach, FL, for Petitioner.

39 So.3d 1190, 35 Fla. L. Weekly S311  
(Cite as: 39 So.3d 1190)

[Bill McCollum](#), Attorney General, Tallahassee, Florida, [Celia Terenzio](#) and [Myra J. Fried](#), Assistant Attorneys General, West Palm Beach, FL, for Respondent.

PER CURIAM.

This case is before the Court for review of the decision of the Fourth District Court of Appeal in [Blair v. State](#), 15 So.3d 758 (Fla. 4th DCA 2009). The district court certified that its decision is in direct conflict with the decision of the Fifth District Court of Appeal in [Ricks v. State](#), 961 So.2d 1093 (Fla. 5th DCA 2007), as to whether a trial court may order pretrial detention based solely on a finding that the defendant's failure to appear was willful without determining whether conditions of release are appropriate as delineated in [section 907.041, Florida Statutes \(2008\)](#). We have jurisdiction. See [art. V, § 3\(b\)\(4\), Fla. Const.](#)

#### FACTS

[1] The facts of the underlying case are set out in the Fourth District's opinion in [Blair](#):

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).

[Id. at 759](#). The Fourth District then certified conflict between its decision in [Blair](#) and the Fifth District's decision in [Ricks](#). We accepted jurisdiction.<sup>FN1</sup> The issue posed in the present case constitutes a pure question of law and is subject to the de novo standard of review. [Insko v. State](#), 969 So.2d 992, 997 (Fla.2007).

[FN1](#). By the time this case reached this Court, the issue was moot. Blair filed a petition for a writ of habeas corpus after the trial court ordered pretrial detention. The Fourth District granted Blair's petition for writ of habeas corpus by order on June 29, 2009. [Blair](#), 15 So.3d at 760 n. 1. On July 9, 2009, the trial court reconsidered its decision to detain Blair in light of the Fourth District's opinion and determined that Blair could be released on his own recognizance. Moreover, on August 17, 2009, the trial court granted Blair's Motion to Discharge on speedy trial grounds. A separate State appeal of the order of discharge is currently pending in the Fourth District. However, the mootness doctrine does not destroy our jurisdiction in this case. Because this issue is capable of repetition, yet may evade review, we have the authority to retain jurisdiction and decide the issue on the merits under the public exception doctrine. See [Cook v. City of Jacksonville](#), 823 So.2d 86, 87 (Fla.2002); [Gregory v. Rice](#), 727 So.2d 251 (Fla.1999).

#### LAW AND ANALYSIS

[2][3] Our criminal justice system is based on the presumption that every person charged with a crime is innocent until proven guilty. See, e.g., [Coffin v. United States](#), 156 U.S. 432, 453, 15 S.Ct. 394, 39 L.Ed. 481

39 So.3d 1190, 35 Fla. L. Weekly S311  
(Cite as: 39 So.3d 1190)

(1895). [Article I, section 14 of Florida's Constitution](#) gives effect to the presumption of innocence and addresses pretrial detention and release:

Unless charged with a capital offense or an offense punishable by life imprisonment and the proof of the guilt is evident or the presumption is great, every person charged with a crime of violation of municipal or county ordinance shall be entitled to pretrial release on reasonable conditions. If 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, the accused may be detained.

*Id.* This sentiment also resonates in [Florida Rule of Criminal Procedure 3.131](#), which states in relevant portion:

(a) *Right to Pretrial Release.* Unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime or violation of municipal or county ordinance shall be entitled to pretrial release on reasonable conditions.... If 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, the accused may be detained.

[Fla. R.Crim. P. 3.131\(a\)](#). Based on the above, it is clear that there is a presumption in favor of release. In keeping with the presumption in favor of release, Florida's Legislature provided comprehensive guidelines for when an original application for bail may be denied as codified in [section 907.041, Florida Statutes \(2008\)](#). Before a trial court may order pretrial detention, one of the statutory bases must be filed. [Section 907.041\(4\)\(c\)\(7\)](#) lists criteria that must be used in making a pretrial detention determination, which, in relevant portion, provides:

(c) The court may order pretrial detention if it finds a substantial probability, based on a defendant's past and present patterns of behavior, the criteria in s. 903.046, and any other relevant facts, that any of the following circumstances exists:

....

7. The defendant has violated one or more condi-

tions of pretrial release or bond for the offense currently before the court and the violation, in the discretion of the court, supports a finding 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.

[§ 907.041\(4\)\(c\)\(7\), Fla. Stat.](#) (2008). Additionally, [section 907.041](#) also prescribes a set of procedures relating to pretrial detention. Some of those procedures have also been codified in [Florida Rule of Criminal Procedure 3.132](#), which states in relevant portion, "The court's pretrial detention order shall be based solely on evidence produced at the hearing and shall contain findings of fact and conclusions of law to support it. The order shall be made either in writing or orally on the record." [Fla. R.Crim. P. 3.132\(c\)\(2\)](#). However, there is no suggestion in either [section 907.041](#) or in the procedural rule that a trial court's finding of the defendant's willful failure to appear alone is sufficient to order pretrial detention.

In the past, Florida courts generally held that "if there is a failure to appear, the court may simply commit a defendant to custody without determining whether conditions of release are appropriate. However, implicit in the rule is that the failure to appear occurred after reasonable notice, and was willful." [Wilson v. State, 669 So.2d 312, 313 \(Fla. 5th DCA 1996\)](#). Similarly, the Fourth District applied this general rule [Bradshaw v. Jenne, 754 So.2d 109 \(Fla. 4th DCA 2000\)](#).

In recent years, this Court has receded from the general rule that a trial court may order pretrial detention based solely on the defendant's willful failure to appear. In [State v. Paul, 783 So.2d 1042 \(Fla.2001\)](#), we accepted discretionary review to address whether a trial court has the inherent authority to deny a subsequent application for bail after a defendant breaches a bond condition, or whether the trial court's discretion to deny a subsequent application for bail is circumscribed by the parameters established by the Legislature in [section 907.041](#). We adopted the Fourth District's reasoning as explained in [Paul v. Jenne, 728 So.2d 1167 \(Fla. 4th DCA 1999\)](#), stating:

[T]he court's authority to deny bond pending trial is circumscribed by the provisions of [Florida Statute section 907.041](#). The legislature has specifically delineated and narrowly limited those circum-

39 So.3d 1190, 35 Fla. L. Weekly S311  
(Cite as: 39 So.3d 1190)

tances under which bond may be denied. We have no difficulty divining the legislative intent to curtail the court's power to deny bail, except in certain instances, in light of the constitutionally guaranteed right to bail. To effectuate its express policy of assuring the detention of "those persons posing a threat to the safety of the community or the integrity of the judicial process," the legislature enacted a pretrial detention statute which sets forth a comprehensive list of conditions that will qualify a defendant for detention without bail. By providing clear and reasonable guidelines for courts to follow in considering denial of this basic and fundamental right, the legislature may very well have been motivated by a desire to achieve uniformity and fairness in judicial determinations of bail entitlement, as well as to provide trial courts with a means of identifying persons whose criminal histories and patterns of behavior signal a danger to society.

[Paul](#), 783 So.2d at 1051 (quoting [Paul v. Jenne](#), 728 So.2d at 1171-72).

Notwithstanding our decision in [Paul](#), the Fifth District recently opined that a trial court may commit a defendant to custody based solely on the defendant's failure to appear without determining whether conditions of release are appropriate. See [Ricks v. State](#), 961 So.2d 1093 (Fla. 5th DCA 2007). The facts of [Ricks](#), as set out in the Fifth District's opinion, are as follows:

The trial court issued a capias for petitioner's arrest after he failed to appear for his pre-trial conference. The capias provided that petitioner was to be held without bond. Petitioner subsequently surrendered himself voluntarily to the Orange County Jail. Petitioner then filed a motion to set aside the bond forfeiture and to reinstate the previously posted bond or, in the alternative, a motion to set a new bond. In his motion petitioner alleged "his non-appearance was not the product of a willful decision on his part to disobey the directive by this Court, but rather the product of an oversight and poor communication with the Office of the Public Defender." This motion, as well as petitioner's renewed motion to set a new bond, was denied without a hearing. The trial court's written order included the notation "multiple prior F.T.A.'s."

[Id.](#) at 1093. As a result, Ricks filed a petition for habeas corpus in the Fifth District. The Fifth District

failed to rely on or even acknowledge existing precedent as set out in this Court's decision in [Paul](#). Instead, the Fifth District relied on [Wilson](#).<sup>FN2</sup> "Generally, if there is a failure to appear, the court may simply commit a defendant to custody without determining whether conditions of release are appropriate." [Ricks](#), 961 So.2d at 1093 (citing [Wilson](#), 669 So.2d at 313). "However, if a defendant alleges 'a legitimate issue as to whether [his] failure to appear was knowing and willful,' a trial court is required to conduct a hearing to determine that issue." [Ricks](#), 961 So.2d at 1093 (quoting [Wilson](#), 669 So.2d at 313). The Fifth District concluded that Ricks' allegations did not present any legitimate issue-as to whether his failure to appear was willful or knowing-that would require the trial court to conduct a hearing. As a result, the Fifth District denied Ricks' petition for habeas corpus. [Id.](#) at 1094.

<sup>FN2</sup>. Our decision in [Paul](#) did not specifically refer to the Fifth District's decision in [Wilson](#). Rather, it referred to the cases as "pre-[Paul](#)." However, [Paul](#) in effect overruled [Wilson](#).

In the instant case, the Fourth District properly relied on our decision in [Paul](#). The Fourth District found that the trial court failed to make a finding that Blair's failure to appear was willful and further found as follows:

[T]he 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).

[Blair](#), 15 So.3d at 759. In its opinion, the Fourth District explained:

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

39 So.3d 1190, 35 Fla. L. Weekly S311  
 (Cite as: 39 So.3d 1190)

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](#).

[Blair](#), [15 So.3d at 760](#). We agree with the Fourth District's conclusion that the trial court failed to find that Blair's failure to appear was willful. After a careful review of the bond hearing transcript, it does not appear that the trial court ever made such a determination, either expressly or impliedly. Although the trial court did conduct a bond hearing, it failed to determine whether there were reasonable conditions of pretrial release. The evidence presented at the bond hearing established that Blair attempted to attend the misdemeanor DUI court date, but was told that the case had been nolle prossed. He never received notice that the case had been refiled as a felony DUI or of the new court date. Blair also testified that he used his ex-wife's address because his job as a road worker precluded him from maintaining a stable address. The trial court simply surmised, “Address on the PC is 129 Swain Boulevard. The address on the booking sheet is 129 Swain Boulevard. Be held without bond. That's where the notices were sent. Now we need another date.” The bond hearing transcript is devoid of any language, either express or implied, indicating that the trial court's decision to order pretrial detention in this case was based on the statutory criteria as codified in [section 907.041](#) and as required by our decision in [Paul](#).

Accordingly, we approve the Fourth District's decision in [Blair](#), and disapprove the Fifth District's contrary holding in [Ricks](#).

It is so ordered.

[QUINCE](#), C.J.,  
 and [PARIENTE](#), [LEWIS](#), [CANADY](#), [POLSTON](#), [L ABARGA](#), and [PERRY](#), JJ., concur.  
 Fla.,2010.  
 State v. Blair  
 39 So.3d 1190, 35 Fla. L. Weekly S311

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