

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

JULY TERM 2010

STATE OF FLORIDA,

Petitioner,

v.

Case No. 5D10-337

LESLIE I. ESPINOZA,

Respondent.

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Opinion filed August 20, 2010

Petition for Certiorari Review of Order  
from the Circuit Court for Orange County,  
Tim Shea, Judge.

Bill McCollum, Attorney General,  
Tallahassee and Rebecca Rock  
McGuigan, Assistant Attorney General,  
Daytona Beach, for Respondent.

James S. Purdy, Public Defender and  
Rose M. Levering, Assistant Public  
Defender, Daytona Beach, for Appellant.

PER CURIAM.

The State of Florida seeks certiorari review of a circuit court order that authorizes Leslie Espinoza's ("Espinoza") entry into a pretrial intervention program. The State objects to Espinoza's court-ordered placement into the program without its consent and contends that section 948.08(6)(a), Florida Statutes (2009), does not apply to Espinoza because she was not charged with committing one of the enumerated offenses therein.

Espinoza was charged by information with battery on a law enforcement officer, resisting without violence, and trespass on property other than a structure or conveyance. During a case management hearing held on January 21, 2010, the court announced its intention to refer Espinoza to the pretrial intervention program. The State objected, but the court ordered that Espinoza be placed into the program.

Section 948.08(2) provides that any first-time 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 a pretrial intervention program. However, the section requires the consent of the administrator of the program, victim, state attorney, and judge who presided at the initial appearance hearing. Without the State's consent, the court could only place Espinoza in the program if she were charged with one of the offenses enumerated in section 948.08(6)(a), which reads as follows:

(6)(a) Notwithstanding any provision of this section, a person who is charged with a felony of the second or third degree for purchase or possession of a controlled substance under chapter 893, prostitution, tampering with evidence, solicitation for purchase of a controlled substance, or obtaining a prescription by fraud; who has not been charged with a crime involving violence, including, but not limited to, murder, sexual battery, robbery, carjacking, home-invasion robbery, or any other crime involving violence; and who has not previously been convicted of a felony nor been admitted to a felony pretrial program referred to in this section is eligible for voluntary admission into a pretrial substance abuse education and treatment intervention program, including a treatment-based drug court program established pursuant to s. 397.334, approved by the chief judge of the circuit, for a period of not less than 1 year in duration, upon motion of either party or the court's own motion, except:

1. If a defendant was previously offered admission to a pretrial substance abuse education and treatment

intervention program at any time prior to trial and the defendant rejected that offer on the record, then the court or the state attorney may deny the defendant's admission to such a program.

2. If the state attorney believes that the facts and circumstances of the case suggest the defendant's involvement in the dealing and selling of controlled substances, the court shall hold a preadmission hearing. If the state attorney establishes, by a preponderance of the evidence at such hearing, that the defendant was involved in the dealing or selling of controlled substances, the court shall deny the defendant's admission into a pretrial intervention program.

That is not the case here. Espinoza was not charged with purchase or possession of a controlled substance under Chapter 893, prostitution, tampering with evidence, solicitation for purchase of a controlled substance, or obtaining a prescription by fraud. Thus, the trial court exceeded its authority when it placed Espinoza in the program despite the State's objection. Certiorari relief is warranted. See State v. Leukel, 979 So. 2d 292, 296 (Fla. 5th DCA 2008); King v. Nelson, 746 So. 2d 1217 (Fla. 5th DCA 1999).

PETITION GRANTED.

SAWAYA, ORFINGER and LAWSON, JJ., concur.