



STATE OF FLORIDA
SEVENTH JUDICIAL CIRCUIT
Flagler, Putnam, St. Johns & Volusia Counties
Volusia County Courthouse
251 North Ridgewood Avenue
Daytona Beach, FL 32114

RAUL A. ZAMBRANO
CIRCUIT JUDGE

Phone: (386) 239-7791
Fax: (386) 239-7894

September 19, 2019

Michael J. Chitwood
Sheriff
123 West Indiana Avenue
DeLand, FL 32721-01569

Dear Sheriff Chitwood:

I am in receipt of your letter dated September 18, 2019, in which you ask that I “overturn Judge Hutcheson’s decision...” in the case of State of Florida v. Mark Fugler. As you may know, the duties associated with the Office of Chief Judge are outlined in the Rules of Judicial Administration and are mostly administrative in nature. Contrary to what many believe, a chief judge does not have the authority to overturn rulings made by other judges. Rather, if a litigant believes that a judge has ruled improperly, he/she may file an appropriate motion and request a hearing before the assigned judge. If that does not achieve the desired result, he/she may seek a remedy before an appellate court. Your request of me would be akin to me asking you to overturn a decision made by a local Chief of Police.

Furthermore, as a judge, I am ethically prohibited from commenting on a pending case, or the decisions made by other judges. Nevertheless, it is my firm belief that all judges of the Seventh Judicial Circuit Court uphold and interpret the law to the best of their abilities. Of that, I am certain; and Judge Hutcheson is no exception. Judge Hutcheson has faithfully served the citizens of Volusia County and the Seventh Judicial Circuit for over 35 years and has presided over thousands of cases – the overwhelming majority of them criminal. I know that Judge Hutcheson is, and always has been guided by the law itself. If any of the parties in this case believe that Judge Hutcheson has misapplied or misconstrued the law, then they may file a motion and/or appeal his ruling.

It appears that you may be more upset about the fact that the law allows a convicted individual to be released from incarceration pending an appeal. Such a law has been in existence since at least 1956. It stems from the Florida Supreme Court case of *Younghans v. State*. The law, in sum allows bail under certain conditions after an individual has been found guilty by a jury and sentenced by the court (see §§ 903.131-903.133, Florida Statutes).

A hallmark of our great nation is respect for the rule of law. President John Adams said it best when he said “we are a nation of laws and not of men.” Judges are often called upon to make difficult and sometimes unpopular decisions. Occasionally we make mistakes. I know I have made my share of them. But in every instance, upholding the law was foremost in my mind. I am confident that all of our judges are guided by this same principle.

Sincerely,

Raul A. Zambrano - Chief Judge

903.131 **Bail on appeal, revocation; recommission.**—If a person admitted to bail on appeal commits and is convicted of a separate felony while free on appeal, the bail on appeal shall be revoked and the defendant committed forthwith.

903.132 **Bail on appeal; conditions for granting; appellate review.**—

(1) No person may be admitted to bail upon appeal from a conviction of a felony unless the defendant establishes that the appeal is taken in good faith, on grounds fairly debatable, and not frivolous. However, in no case shall bail be granted if such person has previously been convicted of a felony, the commission of which occurred prior to the commission of the subsequent felony, and such person's civil rights have not been restored or if other felony charges are pending against the person and probable cause has been found that the person has committed the felony or felonies at the time the request for bail is made.

(2) An order by a trial court denying bail to a person pursuant to the provisions of subsection (1) may be appealed as a matter of right to an appellate court, and such appeal shall be advanced on the calendar of the appellate court for expeditious review.

(3) In no case may an original appearance bond be continued for the appeal. To reflect the increased risk and probability of longer time considerations, there shall be a new undertaking of a bond for the appeal.

903.133 **Bail on appeal; prohibited for certain felony convictions.**—

Notwithstanding the provisions of s. 903.132, no person adjudged guilty of a felony of the first degree for a violation of s. 782.04(2) or (3), s. 787.01, s. 794.011(4), s. 806.01, s. 893.13, or s. 893.135, or adjudged guilty of a violation of s. 794.011(2) or (3), shall be admitted to bail pending review either by posttrial motion or appeal.

Sheriff

MICHAEL J. CHITWOOD

OFFICE
(386) 736-5961



VOLUSIA COUNTY SHERIFF'S OFFICE

123 WEST INDIANA AVE • P.O. BOX 569 • DELAND, FLORIDA 32721-0569
(386) 822-5074 (FAX) • WWW.VOLUSIASHERIFF.ORG

September 18, 2019

Chief Judge Raul A. Zambrano
Seventh Judicial Circuit
251 N. Ridgewood Ave.
Room 287
Daytona Beach, FL 32114

Dear Judge Zambrano,

The decision to release Mark Fugler on bond is a gross miscarriage of justice and a slap in the face to our young victim and her family. The impact and devastation caused by Mark Fugler on this family will be felt in their lives forever. It shocks one's conscience to believe that after being convicted of despicable and sickening acts on a child, he was convicted by a jury of his peers and sentenced to 15 years in prison. With the irresponsible stroke of a pen, that verdict was nullified and he was allowed to remain free on bond, pending appeal. This is nothing more than a legal attempt to delay the inevitable. By the time all of Fugler's appeals are exhausted, the new argument will be that he is too old and infirm to serve any jail time. Sadly, it seems that the system is too concerned with Fugler's rights and not concerned enough with the young, innocent victim and her family. The court should be more concerned with restoring the innocence and childhood of our victim. Instead, this ruling further victimizes the family and its child.

I implore you to correct this wrong, overturn Judge Hutcheson's decision, remand Fugler into custody and restore this family and our community's faith in our criminal justice system.

Respectfully,


Mike Chitwood
Sheriff

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