

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT IN AND
FOR LEON COUNTY, STATE OF FLORIDA

THE NEW YORK TIMES
COMPANY,

Plaintiff,

v.

CASE NO: 03-46-CA

FLORIDA DEPARTMENT
OF JUVENILE JUSTICE,
W.G. "BILL" BANKHEAD,
and CURTIS RANUM,

Defendants.

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GENERAL COUNSEL

FINAL JUDGMENT

This cause came to be heard on March 6, 2003, upon the Plaintiff's Complaint, by which it sought to compel the Defendants to provide public records under article I, section 24 of the Florida Constitution, and section 119.07, Florida Statutes (2002). The Defendants moved to dismiss the Complaint with prejudice, arguing that the subject records were made exempt from public inspection by section 985.04(4), Florida Statutes (2002). With the concurrence of the parties, but without ruling on the Defendants' motion to dismiss, the Court proceeded to the merits of Plaintiff's public records claim, thereby precluding the need for further proceedings.

By their pleadings and representations in court, the parties have agreed to all of the facts pertinent to resolution of this case: Lionel Tate (DOB: 1/30/87) was indicted by a grand jury for the 1999 first-degree murder of Tiffany Eunick, his six-year-old playmate. Following a January 2001 trial in adult court, Tate was convicted of first-degree murder and was subsequently sentenced as an adult to life in prison under section 985.225(3), Florida Statutes. Under section 985.417, Tate was transferred from the custody of the Florida Department of Corrections to the custody of the Defendant (Department of Juvenile Justice, "DJJ"), and is being held at its Okeechobee Juvenile Offender Correction Center.

On December 20, 2002, the Plaintiff made a written public records request for DJJ records regarding Tate's incarceration, specifically referencing records of any disciplinary action taken against Tate during his incarceration. On December 27, 2002, DJJ refused to disclose the requested records, citing in its response that portion of section 985.04 providing that "records in the custody of the Department of Juvenile Justice regarding children are not open to inspection by the public."

The Plaintiff contends that DJJ's reliance upon the statutory exemption in section 985.04 is misplaced, and that Tate's age is not dispositive of the issue. Rather, the Plaintiff cites section 985.225(1) and (4) providing that when a child of any age is indicted by a grand jury and is found to have committed a crime punishable by death or life imprisonment, such child shall thereafter be handled "in every respect as if an adult." The issue, then, is whether this "handling" includes matters related to DJJ's custody of Lionel Tate. Plaintiff argues that whether DOC or DJJ is responsible for Tate's

incarceration is irrelevant, and that section 985.225 mandates that he not be considered a child for any purpose. As such, Plaintiff contends that DJJ records regarding him are not records regarding "a child" within the meaning of the section 985.04 exemption.

Public records issues are subject to a two-step analysis. First, it must be determined whether the documents at issue are, in fact, public records. Second, if the documents are public records, it must be determined whether they are exempt from public disclosure as a result of a constitutional or statutorily created exemption. Media General Convergence, Inc. v. Chief Judge of the Thirteenth Judicial Circuit, 28 Fla. L. Weekly S129 (Fla. Feb. 13, 2003); Hill v. Prudential Ins. Co., 701 So.2d 1218 (Fla. 1st DCA 1997), rev. denied, 717 So.2d 536 (Fla. 1998).

Article I, section 24, Fla. Const., provides in pertinent part:

- (a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or person acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution.

Section 119.011(1), Fla. Stat. (2002), defines "public records" as "all documents . . . made or received pursuant to law . . . or in connection with the transaction of official business by any agency." Under this definition, DJJ documents concerning an individual in its custody are clearly "public records."

To determine whether these records are otherwise exempt from disclosure, the following language from section 985.04(4)(a), Florida Statutes (2002), is dispositive:

"Records in the custody of the Department of Juvenile Justice regarding children are not open to inspection by the public." Tate is clearly a "child" under the definition provided in section 985.03(6); that is, he is an "...unmarried person who is charged with a violation of law occurring prior to the time that person reached the age of 18 years." Consequently, DJJ records regarding Tate are exempt.

Although section 985.04(4)(a) authorizes DJJ's Secretary to release exempt records upon being shown a "sufficient reason" for the release, the Plaintiff has not pursued this avenue. Nor has the Plaintiff challenged the constitutionality of section 985.04(4)(a). Rather, the Plaintiff asserts that the statute is inapplicable to Tate's records, relying instead upon section 985.225.

The Plaintiff's reliance upon section 985.225 is misplaced. The statute, which governs the indictment of juveniles, provides in pertinent part:

(1) . . . When such indictment is returned, the petition for delinquency, if any, must be dismissed and *the child must be tried and handled in every respect as an adult:*

(a) On the offense punishable by death or by life imprisonment;
and

(b) On all other felonies or misdemeanors charged in the indictment which are based on the same act or transaction as the offense punishable by death or by life imprisonment or on one or more acts or transactions connected with the offense punishable by death or by life imprisonment.

. . . .
(4)(a) Once a child has been indicted pursuant to this subsection and has been found to have committed any offense for which he or she was indicted as a part of the criminal episode, *the child shall be handled thereafter in every respect as if an adult for any subsequent violation of state law*, unless the court imposes juvenile sanctions under s. 985.233.

(Emphasis added). Similar language pertains to juveniles subjected to adult prosecution by other means. See § 985.226(4)(a), Fla. Stat. (involuntary waiver); § 985.227(3)(a), Fla. Stat. (direct file).

Section 985.225 says nothing about records or the public's right to inspect them. The provision stands for the unremarkable proposition that once a juvenile is subjected to adult prosecution and punishment due to his or her extensive past criminal history or the seriousness of the presenting offense, the threshold has forever been crossed; no longer may he or she return to juvenile court. This statute neither states nor suggests that such a person is transformed into an "adult" for every purpose, and is thus no longer a "child" within the meaning of the more pertinent provision addressing the public's right to inspect records.

The cases cited by the Plaintiff are not on point. In State v. Olivo, 759 So.2d 647 (Fla. 2000), the Florida Supreme Court construed the statutory predecessor to section 985.225 to require that a child prosecuted in adult court would not have the benefit of the juvenile speedy trial rule. Ritchie v. State, 670 So.2d 924 (Fla. 1996), provided the supreme court's construction of an earlier statute to require an adult sentence for a juvenile who was indicted for a crime punishable by death or life imprisonment but convicted of a lesser offense. These cases merely confirm that a child tried and convicted in adult court is subject to the corresponding procedures and sentencing alternatives that apply. They do not compel or suggest a particular result in the instant case.

The Plaintiff correctly notes that courts are required to apply a liberal construction in favor of open government "to the extent possible." Downs v. Austin, 559 So.2d 246,

247 (Fla. 1st DCA), rev. denied, 574 So.2d 140 (Fla. 1990). However, sections 985.04(4)(a) and 985.225 are not in conflict, and cannot reasonably be construed to produce any ambiguity when read together.

Even if one were to give section 985.225 the expansive reading urged by the Plaintiff, and require that Tate be "handled as an adult" for more than simply prosecution and sentencing purposes, it would not undo the exemption. Tate came into DJJ custody under the rather extraordinary provisions of section 985.417, Florida Statutes. One need not look past the title of section 985.417 to see that Tate and others similarly situated remain "children:" "Transfer of *children* from the Department of Corrections to the Department of Juvenile Justice." The statute goes on to state:

(1) When any *child* under the age of 18 years is sentenced by any court of competent jurisdiction to the Department of Corrections, the Secretary of Juvenile Justice may transfer such *child* to the department for the remainder of the sentence, or until his or her 21st birthday, whichever results in the shorter term.


....

(5) Any *child* who has been convicted of a capital felony while under the age of 18 years may not be released on probation without the consent of the Governor and three members of the Cabinet.

§ 985.417, Fla. Stat. (emphasis added). Juveniles transferred from DOC to DJJ under this statute are not "handled" in the same manner as other juveniles convicted and sentenced as adults: subsection (2) provides that a child sentenced to a term of years may be relieved "from further reports" if DJJ determines that the "child" has "attained satisfactory rehabilitation" and that it would be in the child's and society's best interests. Subsection (3) further allows DJJ to recommend that "clemency be extended to the child"

when he or she has conducted himself or herself in such a manner as to "deserve a pardon, a commutation of sentence, or the remission in whole or in part of any fine, forfeiture, or penalty...". Although section 985.225 expresses the Legislature's will that indicted juveniles be handled as adults for any subsequent prosecution, section 985.417 describes a unique type of custody for any juvenile tried and sentenced as an adult, but later transferred to DJJ. Thus, although section 985.225 requires the imposition of an adult prison sentence and a commitment to DOC, as it did for Tate, section 985.417 provides a specific opportunity for avoidance of incarceration at DOC when the child is transferred by the Secretary of DJJ. The statute not only allows for an unusual result; it is unequivocal in treating these offenders as "children." If a DOC incarcerative sentence can be avoided by operation of section 985.417, then it is not at all inconsistent to find that records pertaining to juveniles in DJJ custody under section 985.417 come squarely within the exemption described in section 985.04.

The Court is not persuaded by the Plaintiff's reliance upon Attorney General Opinion 97-28 pertaining to court records of juveniles prosecuted in adult court. AGO 97-28 stands for the proposition that, like any other adult court records, the court records of a juvenile prosecuted in adult court are open to public inspection. The instant case does not involve court records.



Thus, for the reasons outlined above, it is

ORDERED AND ADJUDGED that final judgment is entered in favor of the Defendants and against the Plaintiff and the Plaintiff shall take nothing on its claim.