

**NOT FINAL UNTIL TIME EXPIRES FOR REHEARING AND, IF FILED, DETERMINED**

**IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PINELLAS COUNTY, FLORIDA  
APPELLATE DIVISION**

**TREMAINE JONES,  
Petitioner,**

**Case No. 13-000060AP-88A  
UCN522013AP000060XXXXCV**

**v.**

**CITY OF ST. PETERSBURG, FLORIDA,  
Respondent.**

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Opinion Filed \_\_\_\_\_

Petition for Writ of Certiorari  
from decision of Hearing Master  
City of St. Petersburg, Florida

Kirsten Clanton, Esq.  
Alice K. Nelson, Esq.  
Attorneys for Petitioner

John C. Wolfe, City Attorney  
Michael J. Dema, Asst. City Atty  
Attorneys for Respondent

**PER CURIAM.**

Petitioner, Tremaine Jones, seeks certiorari review of the decision of the City of St. Petersburg, Florida Hearing Master on the trespass warning appeal for public property. The petition is denied.

**Statement of Case**

On July 25, 2013, Petitioner allegedly remained inside the boundary of Williams Park in the City of St. Petersburg after the 11:00 p.m. closing time in violation of St. Petersburg, Florida, Code of Ordinances, Section 21-40. St. Petersburg Police Officer Lightfield arrested Petitioner for the offense of trespass in a City park in violation of

section 21-40.<sup>1</sup> Additionally, pursuant to St. Petersburg, Florida, Code of Ordinances, Section 20-30,<sup>2</sup> the officer issued a trespass warning to Petitioner. The "City-Owned

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<sup>1</sup> In State v. Jones, CTC13-17107MOANO, Petitioner entered a plea of no contest to trespass in a city park in violation of City Ordinance section 21-40. He was sentenced to ten days in jail, a \$118.00 fine, and costs.

<sup>2</sup> The ordinance states:

**Sec. 20-30. Trespass warnings; authorization to issue trespass warning for public property.**

(a) The City employees or officials, or their designees, having control over a City facility, building, or outdoor area, including municipal parks, are authorized to issue a trespass warning to any individual who violates any City ordinance, rule or regulation, or State law or lawful directive of a City employee or official which violation was committed while on or within a City facility, building, or outdoor area, including municipal parks, (but excluding rights-of-way), for the specific property where the violation occurred.

(b) When no other City employee or official having control over a City facility, building, or outdoor area, including municipal parks, is present, a Police Officer is authorized to issue a trespass warning to any individual who violates any City ordinance or State law which was committed while on or within a City facility, building, or outdoor area, including municipal parks, (but excluding rights-of-way), for the specific property where the violation occurred.

(c) For the purpose of this section, right-of-way shall include those sidewalks which are closest to a paved street, provided that the street side edge of the sidewalk is within 20 feet of the curbline closest to the property.

(d) Trespass warnings shall be issued as follows:

(1) For the first violation, the individual may be issued a trespass warning for a period not to exceed one year.

(2) For a second or subsequent violation, the individual may be issued a trespass warning for a period not to exceed two years.

(e) A copy of the trespass warning shall be provided by mail or hand delivery to the individual and to the City employee or official having control over the City park, facility, building or outdoor area. The written trespass warning shall advise of the right to appeal and the location and telephone number for filing the appeal.

(f) Any person found on or within any City facility, building, or outdoor area, including municipal parks, in violation of a trespass warning may be arrested for trespassing, except as otherwise provided in this section.

(g) The City employee or official having control over a City facility, building, or outdoor area, including municipal parks, may authorize an individual who has received a trespass warning to enter the property or premises to exercise his or her First Amendment rights if there is no other reasonable alternative location to exercise such rights or to conduct necessary municipal business. Such authorization must be in writing, shall specify the duration of the authorization and any conditions thereof, and shall not be unreasonably denied.

(h) This section shall not be construed to limit the authority of any City employee or official to issue a trespass warning to any person for any lawful reason for any City property, including rights-of-way when closed to general vehicular or pedestrian use, when necessary or appropriate in the sole discretion of the City employee or official.

(i) Appeal of trespass warning. A person to whom a trespass warning is issued under this section shall have the right to appeal as follows:

(1) An appeal of the trespass warning must be filed, in writing, within ten days of the issuance of the warning, and shall include the appellant's name, address and phone number, if any. No fee shall be charged for filing the appeal.

(2) The appeal shall be filed at the information desk of the St. Petersburg Police Department located at 1300 First Avenue North.

(3) Appeals shall be heard by a Hearing Master which the City contracts with to provide this service.

(4) Within five days following the filing of the appeal, the Hearing Master shall schedule a hearing. Notice of the hearing shall be provided to the appellant in one of two ways:

a. By leaving or posting the notice at the information desk of the St. Petersburg Police Department; or

b. By telephone if a telephone number has been provided. If appellant cannot be reached by telephone, then notice at the information desk shall be sufficient.

(5) The Hearing Master shall hold the hearing as soon as possible. In no event shall the hearing be held sooner than seven days following the filing of the appeal and no later than 30 days from the filing of the appeal.

(6) Copies of documents in the City's control which are intended to be used at the hearing, and which directly relate to the issuance of the trespass warning to the appellant, shall be made available upon request to the appellant at no cost.

(7) The appellant and the City shall have the right to attend with an attorney, the right to testify, to call witnesses, to cross examine witnesses and to present evidence. The appellant shall have the right to bring a court reporter, at their own expense.

(8) The Hearing Master shall consider the testimony, reports or other documentary evidence, and any other evidence presented at the hearing. Formal rules of evidence shall not apply, but fundamental due process shall govern the proceedings.

(9) The City shall bear the burden of proof by clear and convincing evidence that the trespass warning was properly issued pursuant to the criteria of this section.

(10) If the appellant fails to attend a scheduled hearing, the Hearing Master shall review the evidence presented and determine if the trespass warning was properly issued pursuant to the criteria of this section.

(11) Within five days of the hearing, the Hearing Master shall issue a written decision on the appeal which shall be mailed to the appellant at the address provided. If no address is provided, a copy of the decision shall be posted at the information desk of the St. Petersburg Police Department.

Property Trespass Warning Form" included a line for "Trespasser Acknowledgement Signature." Petitioner had been arrested for the trespass to a City park offense and did not sign the form which contains the notation "ARRESTED/REFUSED TO SIGN."

Through counsel, Petitioner requested an appeal of the trespass warning. A hearing before the Hearing Master was conducted on August 15, 2013, and an order affirming the trespass warning was entered and provided to Petitioner's counsel on August 19, 2013.

### **Petition for Writ of Certiorari**

Petitioner raises the following arguments:

I. "The City failed to provide Petitioner with procedural due process."

(A) The Hearing Master failed to provide an opportunity to be heard regarding the duration of time the trespass warning is to be in effect.

(B) The lack of standards in the ordinance denied Petitioner a meaningful opportunity to be heard.

(1) Lack of standards regarding whether a trespass warning is properly issued

(2) Lack of standards regarding the duration of a trespass warning

(C) The City failed to provide Petitioner with adequate notice of the reasons for the trespass warning

(D) The City failed to provide Petitioner with a meaningful opportunity to be heard prior to the deprivation of his protected liberty interest

In Ledger v. City of St. Petersburg, 22 Fla. L. Weekly Supp. 14a (Fla. 6th Cir. App. Ct. July 25, 2014), this Court rejected these arguments.

II. The City failed to observe the essential requirements of law

(A) Petitioner argues that a denial of due process argued above constitutes a departure of the essential requirements of law.

There has been no denial of due process.

(B) Petitioner also asserts that the ordinance violated Petitioner's right to be free from double jeopardy.

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(12) The decision of the Hearing Master shall be final and the appellant shall be deemed to have exhausted all administrative remedies. Such decision may be subject to judicial review in the manner provided by law by the appellant. The City may not appeal any decision of the Hearing Master.

(13) The trespass warning shall remain in effect during the appeal and review process, including any judicial review. (Code 1992, § 20-30; Ord. No. 718-G, § 2, 3-3-2005; Ord. No. 2-H, §§ 1, 2, 11-3-2011; Ord. No. 26-H, §§ 1, 2, 6-21-2012)

Petitioner asserts that the trespass warning is essentially a criminal punishment for violation of the ordinance. It is argued that since Petitioner already entered a plea and was sentenced by the criminal court, the second municipal proceeding for adjudicating whether Petitioner violated section 21-40 to impose additional punishment violates double jeopardy.

Petitioner's argument is without merit. The issuance of the trespass warning for the violation of section 20-30 is not a criminal punishment. The Second District Court of Appeal has specifically held that "a municipal ordinance violation is not a criminal violation." Pridgen v. City of Auburndale, 430 So. 2d 967, 968 (Fla. 2d DCA 1983); see § 775.08(3), (4), Fla. Stat..

Further, the civil sanction of prohibiting access to the park for one year (or two years for a second violation) is not so inherently punitive to rise to the level of criminal punishment.

Petition for Writ of Certiorari is denied.

**DONE AND ORDERED** in Chambers in Clearwater, Pinellas County, Florida, this 17<sup>th</sup> day of February, 2015. ,      ~

Original Order entered on February 17, 2015 by Circuit Judges Linda R. Allan, Keith Meyer, and Patricia Muscarella.

Copies furnished to:

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