

IN THE SUPREME COURT OF FLORIDA

JAMES GUY FERRIS,

Petitioner,

-vs-

STATE OF FLORIDA,

Respondent.

CASE NO. 63,58

FILED

MAY 31 1983 ✓

SID J. WHITE
CLERK SUPREME COURT

Chief Deputy Clerk

RESPONDENT'S BRIEF ON JURISDICTION

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IN THE SUPREME COURT OF FLORIDA

JAMES GUY FERRIS,

Petitioner,

-vs-

CASE NO. 63,588

STATE OF FLORIDA,

Respondent.

_____ /

RESPONDENT'S BRIEF ON JURISDICTION

PRELIMINARY STATEMENT

Petitioner, James Guy Ferris, was the defendant in the Circuit Court in and for Escambia County, Florida, and the appellant in the District Court of Appeal, First District. Respondent, the State of Florida, was the prosecution and the appellee, respectively. The parties will be referred to as they appear before this Court.

ISSUE PRESENTED

THIS COURT DOES NOT HAVE JURISDICTION OF THIS CASE BECAUSE THE OPINION ISSUED BY THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH THE CASE OF NEUMAN V. STATE.

A R G U M E N T

Petitioner contends that the decision of the District Court of Appeal, First District, in the present case expressly and directly conflicts with Neuman v. State, ___ So.2d ___ (Fla. 5th DCA, Case No. 81-357, opinion filed January 5, 1983) [8 F.L.W. 217]. In Neuman v. State, supra, nine days before the speedy trial time period expired, the trial court sua sponte stated that it would reset the defendant's trial date outside the speedy trial time period ("about 30 to 45 days"). Twenty days after the 45 day extension period, the defendant moved for discharge. There was no motion to continue involved. The court stated:

The First District Court of Appeal has held that any extension order under Rule 3.191(d)(3)(ii) based on exceptional circumstances as defined in Rule 3.191(f) disengages and terminates speedy trial rule rights, relegating an accused to his constitutional speedy trial rights, without regard to whether the order extends speedy trial limits for a specified period or continues them indefinitely. State ex rel. Lee v. Harper, 372 So.2d 1012 (Fla. 1st DCA 1979). That construction has merit where a motion to continue is involved, . . .

8 F.L.W. at 217 (emphasis added). In Neuman v. State, supra,

not only was there no motion to continue, but neither were there any exceptional circumstances as defined by Fla.R.Crim.P. 3.191(f).

In the present case, the State moved for a continuance based on exceptional circumstances. The trial judge granted the motion for continuance, made a finding of exceptional circumstances, and extended the speedy trial time period.

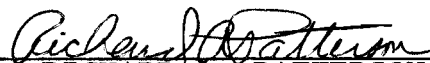
Unlike Neuman v. State, supra, the instant case and State ex rel. Lee v. Harper, 372 So.2d 1012 (Fla. 1st DCA 1979), involve continuances granted for exceptional circumstances. Therefore, it is impossible for the alleged conflict to exist between this case and Neuman v. State, supra.

CONCLUSION

WHEREFORE, based upon the foregoing analysis and authorities, Respondent contends that Petitioner has totally failed to demonstrate that the decision in Petitioner's case expressly and directly conflicts with the case cited for conflict. Respondent, therefore, prays that this Court will enter an order declining to accept jurisdiction in this case.

Respectfully submitted:

JIM SMITH
Attorney General



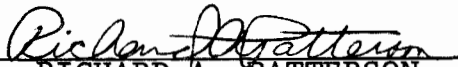
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy hereof has been furnished to TERRY P. LEWIS, Special Assistant Public Defender, Post Office Box 10508, Tallahassee, FL 32302, Counsel for Petitioner, by U. S. Mail this 31st day of May, 1983.



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