

FILED

IN THE SUPREME COURT
STATE OF FLORIDA

MAY 10 1983

JAMES GUY FERRIS,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

SID J. WHITE
CLERK OF THE SUPREME COURT
W

CASE NO: 63,588

CERTIORARI TO THE DISTRICT COURT OF APPEAL
FIRST DISTRICT

BRIEF IN SUPPORT OF PETITION FOR WRIT OF
CERTIORARI TO REVIEW A DECISION OF THE
DISTRICT COURT OF APPEAL, FIRST DISTRICT

TERRY P. LEWIS
SPECIAL ASSISTANT PUBLIC DEFENDER
POST OFFICE BOX 10508
TALLAHASSEE, FLORIDA 32302
(904) 222-2216
ATTORNEY FOR PETITIONER

TABLE OF CONTENTS

| | <u>Pages:</u> |
|----------------------------------|---------------|
| TABLE OF CONTENTS..... | i |
| TABLE OF CITATIONS..... | i |
| PREFACE..... | 1 |
| STATE OF THE CASE AND FACTS..... | 2 |
| ISSUE..... | 3-4 |
| CONCLUSION..... | 4 |
| CERTIFICATE OF SERVICE..... | 5 |

TABLE OF CITATIONS

Cases:

| | |
|--|-----|
| <u>Neuman v. State</u> , ____ So.2d ____ (Fla. 5th DCA, January 5, 1983)[8 FLW 217]..... | 3 |
| <u>State ex rel Lee v. Harper</u> , 372 So.2d 1012 (Fla. 1st DCA 1979)..... | 3-4 |

Other Authorities:

| | |
|--|-----------|
| Florida Rules of Criminal Procedure 3.191..... | 2 |
| APPENDIX FOLLOWING PAGE 5..... | A-1 - A-5 |

IN THE SUPREME COURT
STATE OF FLORIDA

JAMES GUY FERRIS,
Petitioner,

vs.

CASE NO:

STATE OF FLORIDA,
Respondent.

_____ /

BRIEF IN SUPPORT OF PETITION FOR WRIT OF
CERTIORARI TO REIVEW A DECISION OF THE
DISTRICT COURT OF APPEAL, FIRST DISTRICT

PREFACE

The Petition for Writ of Certiorari has been filed on behalf of JAMES GUY FERRIS who was the Defendant in the original criminal action and the Appellant in the District Court of Appeal. The Petitioner, JAMES GUY FERRIS, will be referred to in this Brief as the Defendant. The Respondent, STATE OF FLORIDA, will be referred to as the State.

STATEMENT OF THE CASE AND FACTS

A Petition has been filed on behalf of the Defendant requesting this Court to issue a Writ of Certiorari based upon its conflict jurisdiction and thereby reverse the decision of the First District Court of Appeal. The Defendant sought in the trial court to be discharged upon grounds of violation of Rule 3.191, Florida Rules of Criminal Procedure, commonly called the speedy trial rule. The pertinent facts were summarized by the District Court of Appeal in its Opinion as follows:

"Appellant was arrested on the day the alleged crime occurred, May 8, 1981. Trial was set for September 29, 1981, however, on September 28, 1981, the State moved for a continuance based on exceptional circumstances for two reasons: (1) an important witness had been injured in an accident and (2) appellant's brother and co-defendant had filed a motion for suggestion of insanity which could not be disposed of by the trial date. The trial judge made a finding of exceptional circumstances and extended the speedy trial period. Orally, the judge stated: 'This will be set for October 30th; that'll be your next plea day in this case.' A written order was subsequently entered which included a finding extending the speedy trial period 'until the next trial week....' The record contains no transcript of the hearing at which a new trial date was set, but the parties represent that on October 30, 1981, trial was reset for February 1, 1982.

Appellant filed a demand for speedy trial on December 2, 1981. On January 27, 1982, and on January 29, 1982 appellant filed motions for discharge alleging that the time had been extended until 'the next trial week' and that the next trial weeks after September 28, 1981, were the weeks of November 23, 1981, and December 14, 1981. At the hearing on the first motion; held on January 28, 1982. it became clear that the written order extending the time inaccurately recorded the judge's ruling, which actually had been to extend the time in order to reset the trial on the next plea day."

ISSUE

WHETHER THE DECISION OF THE FIRST DISTRICT COURT OF APPEAL IN THE CASE OF STATE v. FERRIS, CASE NO: AL-409, RENDERED MARCH 24, 1983, CONFLICTS WITH THE DECISION OF THE FIFTH DISTRICT COURT OF APPEAL IN NEUMAN v. STATE, ____ So.2d ____ (Fla. 5th DCA, January 5, 1983)[8 FLW 217].

The First District Court of Appeal, in the present case, affirmed the ruling of the trial court which denied the Defendant's Motion for Discharge on speedy trial grounds. The First District Court relied upon its previous case of State ex rel Lee v. Harper, 372 So.2d 1012 (Fla. 1st DCA 1979).

In Neuman v. State, ____ So.2d ____ (Fla. 5th DCA, January 5, 1983)[8 FLW 217], the Fifth District Court of Appeal addressed the same issue presented in the present case, and under similar facts and circumstances, and expressly declined to follow the ruling of the First District Court of Appeal in Lee v. Harper, supra.

In Neuman, the defendant was arrested on November 19, 1979. On May 8, 1980, without the Defendant's objection, the trial court stated it would "reset the trial in about 30-45 days". The defendant took the position that the trial court's action added 45 days to May 8, 1980, as the speedy trial time limit and argued that his Motion for Discharge filed July 11, 1980, was erroneously denied.

The Fifth District Court of Appeal agreed with the defendant, specifically declining to follow the ruling of the

First District Court of Appeal in State ex rel Lee v. Harper,
supra. As the Court stated:

"The First District Court of Appeal has held that any extension under Rule 3.191(d)(3)(ii) based on exceptional circumstances defined in Rule 3.191(f) disengages and terminates speedy trial rights, relagating an accused to his constitutional speedy trial rights, without regard to whether the order extends speedy trial limites for a specified period or continues them indefinitely. State ex rel v. Harper, 372 So.2d 1012 (Fla. 1st DCA 1979). That construction has merit where a motion to continue is involved, but where the trial court extends the time for trial a specifical period of time, the better rule is that the enlarged period of time becomes the speedy trial time within which a defendant must be tried."

The conflict between the First District Court of Appeal and the Fifth District Court of Appeal on this issue is clear and express and this Court has jurisdiction to resolve that conflict.

CONCLUSION

For the reasons stated above, the Defendant prays this Court will assume jurisdiction over this cause, issue the Writ of Certiorari to the First District Court of Appeal.

Respectfully submitted,



TERRY P. LEWIS
Special Assistant Public Defender
Post Office Box 10508
Tallahassee, Florida 32302
(904) 222-2216
ATTORNEY FOR PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to RICHARD A. PATTERSON, Esquire, Assistant Attorney General, The Capitol, 1502, Tallahassee, Florida 32301, and to MR. JAMES GUY FERRIS, #083297 B 36, Post Office Box 500, Olustee, Florida 32072, by United States Mail, this 10th day of May, 1983.



ATTORNEY