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IN THE SUPREME COURT
STATE OF FLORIDA

JAMES GUY FERRIS,
Petitioner,

vs.

CASE NO. 63,588

STATE OF FLORIDA,
Respondent.

INITIAL BRIEF ON THE MERITS
ON BEHALF OF PETITIONER

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PRELIMINARY STATEMENT

The Petitioner was the Defendant in the trial court below and the Appellant in the District Court of Appeal, and will be referred to in this Brief as the Defendant. The Respondent was the State in the trial court and the Appellee in the District Court of Appeal, and will be referred to as the State in this Brief.

The pertinent facts are appropriately summarized in the opinion of the First District Court of Appeal which is attached as an appendix to this Brief.

STATEMENT OF THE CASE AND FACTS

The District Court of Appeal affirmed an Order of the trial court denying the Defendant's Motion for Discharge on Speedy Trial Grounds. 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, 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."

The Defendant subsequently filed a petition requesting this Court to issue a Writ of Certiorari based upon its conflict jurisdiction. Jurisdiction was accepted by this Court by Order dated February 2, 1984, and this Brief on the Merits is submitted by the Defendant pursuant to said Order.

ARGUMENT

ISSUE I

WHETHER THE TRIAL COURT ERRED IN DENYING THE DEFENDANT'S MOTION FOR DISCHARGE ON SPEEDY TRIAL GROUNDS.

The Defendant contends that it was error to deny this Motion for Discharge on Speedy Trial Grounds for two reasons:

1. The Order of the trial court extending the speedy trial time was for a date certain and, since the Defendant was not brought to trial by the State, he was therefore entitled to a discharge.

2. Alternatively, if the trial court's ruling had the effect of extending the speedy trial period for an indefinite time, the Defendant was not brought to trial within a reasonable period of time and was thus entitled to be discharged.

The applicable section of this speedy trial which are involved in this case are Florida Rules of Criminal Procedure 3.191 (d)(2) and (f). The former section provides that the time periods under the Rule may be extended under certain circumstances, including "exceptional circumstances", and the latter section defines exceptional circumstances. Section (f) specifically provides that:

"As permitted by (d)(2) of this Rule, the Court may order an extension of the time periods provided under this Rule where exceptional circumstances are shown to exist."

It is noteworthy that neither of these sections of the Rule speak in terms of waiver or tolling or suspension of the Rule or of the speedy trial time. The committee notes to subsection

(d)(2) state:

"The terms waiver, tolling or suspension have no meaning within the context of the section as amended. The section addresses extensions for a specified period of time."

It would seem apparent from the wording of both of these sections and the committee note to subsection (d)(2), that what was contemplated by this Rule was an extension for a specified period of time. There is no suggestion in the language or in logic that an extension of time pursuant to Section (f) of the Rule would otherwise make the time limits elsewhere provided in the Rule inapplicable to the case. To the contrary, the committee notes specifically observed that the section addresses extensions for a specified period of time. In other words, it was contemplated that should an extension of time be appropriate under the various circumstances set forth in the Rule, the extension should be for a specified period of time which would not otherwise be violative of a Defendant's constitutional right to speedy trial.

There is thus nothing to support the First District Court of Appeal's interpretation of the Rule that an extension granted by the trial court on the grounds of exceptional circumstances operated to remove the case from the operation of Florida Rules of Criminal Procedure 3.191. There is, on the other hand, authority from this Court and other District Courts of Appeal that support the interpretation that an extension of the speedy trial time under the Rule is to be for a specified period of time.

In State v. Jenkins, 389 So.2d 971 (Fla. 1980),

this Court considered the issue that concerned the proper application of the speedy trial rule in the event of an interlocutory appeal by the State. In Jenkins, the State filed an interlocutory appeal upon the trial court's granting of a pretrial motion to suppress evidence and specifically requested and was granted a six month extension on the time for speedy trial. Although the State was successful in the appellate court, the mandate from the appellate court was issued six months after the date of the extension order. This Court ruled that, under the terms of the trial court's order, it was the State's responsibility to secure an additional extension prior to the expiration of the six month period. Failure to do so mandated discharge of the Defendant because of the clear violation of the terms of the specific order. 389 So.2d 975-976.

Although the Jenkins case dealt with a different section of the Rule, the same principles should apply. Where, as in the present case, the trial court has extended the speedy trial time period for a specific time period, it is the State's responsibility to seek additional time if necessary and proper.

In Neuman v. State, 431 So.2d 168 (Fla. 5th DCA 1983), the court specifically declined to accept the reasoning and ruling of the First District Court of Appeal in State ex rel. Lee v. Harper, 372 So.2d 1012 (Fla. 1st DCA 1979). The First District Court of Appeal had ruled in that case that any extension order under Rule 3.191 based on exceptional circumstances 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. The court in Neuman, held that:

"That construction has merit where a motion to continue is involved, but where the trial court extends the time for trial for a specific period of time, the better rule is that the enlarged period of time becomes a speedy trial time within which the Defendant must be tried." 471 So.2d 167.

The Fifth District Court of Appeal had made a similar distinction in Sowers v. State, 395 So.2d 576 (Fla. 5th DCA 1981) In Sowers, the court held that the Defendant was not denied a speedy trial where the extension of the speedy trial period was for an indefinite time.

The Second District Court of Appeal has ruled similarly to the effect that a continuance for a specified period of time has the effect of enlarging the speedy trial period for that specified period. State v. Wilson, 362 So.2d 140 (Fla. 2nd DCA 1978); State v. Kubesh, 378 So.2d 121 (Fla. 2nd DCA 1980).

Presumably under rulings of the 2nd and 5th District Courts of Appeal, a trial court would be authorized under Rule 3.191 (f) to extend the speedy trial time period for an indefinite term, but that where the speedy trial time period is extended for a specified period, trial must be had within that time period. The Defendant would contend that the language in Rule 3.191(d)2, and (f), contemplates and logic dictates that an extension of the speedy trial time periods as provided by these sections should be for a specified period of time, and that such delay should be consistent with the constitutional rights of the Defendant to a speedy trial. Under either construction, however, it certainly

should not be proper to extend the period of time for a date certain but yet not require the trial of the Defendant on or before that date.

Assuming arguendo that the trial court's ruling had the effect of extending speedy trial because of exceptional circumstances for an indefinite time, the Defendant still was not brought to trial within a "reasonable time" under constitutional standards. The delay in the present case of 126 days from the continuance was unreasonable and a denial of the Defendant's constitutional right to a speedy trial in the Sixth Amendment of the United States Constitution under Article 1, Section 16 of the Constitution of the State of Florida.

What constitutes a reasonable time under the speedy trial rule and under the above-cited constitutional revisions is a relative issue to be determined by the facts in each particular case. Butler v. Cullen, 253 So.2d 861 (Fla. 1971); Singletary v. State, 322 So.2d 551 (Fla. 1975).

The factors to be considered in determining whether or not a Defendant was denied his constitutional right to a speedy trial include (1) the length of delay, (2) the reason for the delay, (3) the Defendant's assertion of his right, and (4) any prejudice to the Defendant because of the delay. Barker v. Wingo, 407 U.S. 514 (1972); Chester v. State, 298 So.2d 529 (Fla. 3rd DCA 1974).

In the present case, the Defendant never asked for nor received any continuance. The continuance in this case was solely at the request of the state. The length of the delay from the

date of the State's request for continuance until trial was 126 days. From the date of his arrest to his trial, the Defendant suffered the anxiety of incarceration for a total of 269 days. A review of some analogous cases leads to the inescapable conclusion that this delay was unreasonable and denied the Defendant his constitutional right to a speedy trial.

In Negron v. State, 306 So.2d 104 (Fla. 1974), this Court noted that from January 17, 1973, the date of the State's last continuance, until May 3, 1973, the date of the trial, the Defendant neither saw nor obtained a continuance or delay. The Court found that this period of delay of 100 days was an unconstitutional denial of Defendant's right to speedy trial. The Court did not note any other unusual circumstances other than the delay.

Similarly, in State v. Forsten, 401 So.2d 1160 (Fla. 3rd DCA 1981), the Court upheld a discharge by the trial court on motion of Defendant where there had been a delay of 120 days from the date of the State's last continuance.

In Meredith v. Glickstein, 377 So.2d 27 (Fla. 4th DCA 1979) and State v. Reece, 359 So.2d 33 (Fla. 4th DCA 1978), the Court found an unreasonable delay where more than 90 days elapsed after the last continuance requested by the State.


The Defendant was entitled to be tried within a reasonable time, although it was within the Court's discretion to reschedule trial upon the finding of exceptional circumstances that required a continuance. However, without some justifiable reason and finding thereof on record, a delay of 126 days before granting the Defendant a trial was unreasonable and constituted an unconstitu-

tional denial of speedy trial.

CONCLUSION

WHEREFORE, for the above-stated reasons, the Defendant prays this Court will quash the Order of the District Court of Appeal and remand to the trial court with directions that the Defendant be discharged.

Respectfully submitted,

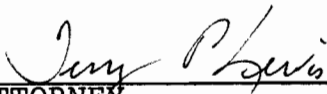


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Initial Brief on Merits on Behalf of Petitioner has been furnished to GREGORY C. SMITH, Esquire, Assistant Attorney General, The Capitol, 1502, Tallahassee, Florida 32301, and to JAMES GUY FERRIS, #083297-F67, P.O. Box 500, Olustee, Florida 32072, by United States Mail, this 22 day of February, 1984.



ATTORNEY