

0/a 5-10-84

**FILED**

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IN THE SUPREME COURT  
STATE OF FLORIDA

CLERK, SUPREME COURT.

By \_\_\_\_\_  
Chief Deputy Clerk

JAMES GUY FERRIS,  
Petitioner,

vs.

CASE NO: 63,588

STATE OF FLORIDA,  
Respondent.

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PETITIONER'S REPLY BRIEF ON THE MERITS

OFFICE OF THE PUBLIC DEFENDER  
SECOND JUDICIAL CIRCUIT  
POST OFFICE BOX 671  
TALLAHASSEE, FLORIDA 32302  
(904) 488-2458

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

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## ARGUMENT

### ISSUE I

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

The Respondent first argues that certiorari was improvidently granted because there was no express and direct conflict with Neuman v. State, 431 So.2d 168 (Fla. 5th DCA 1983). The Petitioner would submit that it is hard to imagine how the Fifth District Court of Appeal could have made it more clear that its opinion was contrary to the opinion and reasoning of the First District Court of Appeal on this exact issue. Whereas the First District Court of Appeal specifically held that an extension of time under Rule 3.191, Florida Rules of Criminal Procedure, for exceptional circumstances, takes the case out of the time restraints of the speedy trial rule, the Court in Neuman, held directly to the contrary that:

"(T)he better rule is that the enlarged period of time becomes a speedy trial time within which the defendant must be tried."

471 So.2d at 167.

The heart of the Respondent's argument on the merits is that, once the State has granted a continuance, the strict speedy trial limits of the rule are replaced with a reasonable time under the Constitution. (Respondent's Brief, p. 6). This argument, however, ignores the very basic fact in this case and the distinction made in the relevant cases between a continuance for an indefinite time and an order extending the

time to a date certain. It is the latter situation which characterizes the present case.

The case of Jacobs v. State, 396 So.2d 1113 (Fla. 1981), cert.denied, 454 U.S. 933, cited by the Respondent, is, in fact, authority for the Petitioner's argument. In Jacobs, the continuance for extension, similar to the situation in the other cases cited by the Respondent, was "for a reasonable period of time after the appellate court filed its opinion...". 396 So.2d at 1116. In contrast, in the present case, as in Neuman v. State, *supra*, the trial court specifically extended the case to an event or a date certain. Thus, the cases relied upon by the Respondent are distinguishable and inapplicable to the present case.

It is interesting to note that the Respondent does not address the argument that the language of the rule itself and the committee notes to that rule suggest very clearly that an extension of time for a specific period or to a specific date is contemplated. The Respondent does argue that acceptance of the Petitioner's argument is illogical and would mean that a defendant could control the trial court's discretion by never asking for a continuance, and that the State would always be forced to bring the defendant to trial within the time limits of the speedy trial rule regardless of whether an exceptional circumstance existed. The Respondent asks rhetorically what would happen if another exceptional circumstance occurred or

the same one lasted longer than had been originally anticipated, where an extension for a specific period of time had previously been granted. The Petitioner would respond that the State would be required to do what it is required to do when exceptional circumstances arise initially under the rule. The State would file a motion for continuance based upon exceptional circumstances. If the exceptional circumstances persisted, or if new circumstances arose, which required additional time to bring the defendant to trial, the burden would be upon the State to come back to the trial court and move for an additional extension of time. There is nothing magical or mystical about such a procedure.

On the other hand, the Respondent argues that once a continuance is granted to the State because of an exceptional circumstance, the State need not concern itself with any time limitations under the rule. Rather, the only consideration would be of a constitutional nature. The Petitioner would submit that if this were the intent of Rule 3.191(f), Florida Rules of Criminal Procedure, then the rule should state words to the effect that a continuance granted for exceptional circumstances makes inapplicable the time periods of the rule. Obviously, the rule does not so state. Instead, the rule speaks of an "extension of the time periods provided under this rule where exceptional circumstances are shown to exist." Also, as indicated, the committee notes to the rule point out that:

"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.

(Emphasis added).

The Petitioner would also submit that the purpose and intent of the speedy trial rule is to, in effect, codify what would generally be regarded as constitutional mandates of a speedy trial. Petitioner would submit that the intent of these types of procedural rules is to set forth specifically what is required so that a case by case balancing act will not be necessary. Towards this goal, it is submitted that policy and logic dictates that the time limitations set forth in the rule should be strictly adhered to and that any ambiguity as to whether a specific time period should apply should be resolved in favor of the application of the time period, rather than a reversion to a more vague constitutional standard of what constitutes a speedy trial.


This very problem is evident in the present case when the second prong of the Petitioner's argument is considered. Specifically, the Petitioner argues that, even under the constitutional standard, he was not brought to trial within a reasonable time and was denied his right to a speedy trial. The Respondent, of course, argues directly to the contrary. The District Court and now this Court must, necessarily, on this issue, apply the criteria in Barker v. Wingo, 407 U.S. 514 (1972) to the facts in the present case. The Petitioner has argued in his initial brief the facts and the case law which is submitted

requires reversal of the District Court of Appeal and those arguments will not be repeated here except to point out that all of the factors set forth in Barker v. Wingo, supra, must be evaluated and balanced.

CONCLUSION


WHEREFORE, for the above stated reasons, the decision of the First District Court of Appeal should be quashed and this case remanded to the trial court with directions that the Defendant be discharged.

Respectfully submitted,

  
TERRY P. LEWIS  
Special Assistant Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Petitioner's Reply Brief on the Merits has been furnished to LAWRENCE A. KADEN, 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 10<sup>th</sup> day of April, 1984.

  
ATTORNEY