IN THE SUPREME COURT OF FLORIDA

CASE NO. 63,614

THE STATE OF FLORIDA,

Petitioner,

vs.

R.H., a juvenile,

Respondent.

* *

ON CONFLICT JURISDICTION FROM THE DISTRICT COURT OF APPEAL

* *

~~REPLY~~ BRIEF OF PETITIONER ON THE MERITS

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INTRODUCTION

The State of Florida, was the Petitioner in the trial court. R.H., a juvenile, was the Juvenile Respondent in the lower court. In this brief, the parties will be referred to as they appear before this Court. The symbol "R" will be used to designate the Record on Appeal. The symbol "TR" will be used to designate the transcript of proceedings below. All emphasis has been supplied unless the contrary is indicated.

STATEMENT OF THE CASE

R.H. was charged with a delinquent act, to wit, carrying a concealed firearm, in July of 1982. (R. 1). The date of the alleged crime was July 12, 1982. (R. 1). On July 13, 1982 the trial court signed an order detaining the youth, pending a hearing. (R. 2). This order was subsequently set aside and the child was ordered to appear in court on September 2, 1982. He failed to appear. (R. 4, 9).

On December 7, 1982 the child filed a Motion to Discharge pursuant to the "speedy trial" provisions of Rule 8.180 Fla.R.J.P.[1] (R. 9). The court granted the motion

[1]The rule provides in pertinent part:

"(b) Dismissal. If an adjudicatory has not commenced within ninety (90) days, upon motion timely filed with the

after brief legal argument. (R. 11). And the State of Florida appealed. (R. 12). This appeal was dismissed by the district court solely on authority of State v. C.C., 449 So.2d 280 (Fla. 3d DCA 1983) en banc, approved (Fla. Case No. 64,354). The Petitioner, State of Florida, was granted discretionary review by this court and ordered to address the merits of the case on October 21, 1985. This brief is filed in response to that order.[2]

STATEMENT OF THE FACTS

R.H. was arrested on July 12, 1982. (R. 1, 9). After entry of a plea of denial, (R. 2) the child was released from detention with notice to appear in court September 2, 1982. (R. 4, 9). However, he failed to show for trial. (The defense also conceeded an earlier failure to appear in its motion to discharge)(R. 9). The case was then set down for a calendar call on September 27, 1982. On that day a trial date of November 16, 1982 was set. (R. 9).

On November 16, 1982 the State was not ready for trial and requested a continuance until December 1, 1982. (R. 9).

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court and served upon the prosecuting attorney the petition shall be dismissed with prejudice; provided the court before granting such motion shall make the required inquiry under subsection (d) of this Rule."

[2]A previous brief addressed the procedural and jurisdictional aspect of this case and its consolidated companion case. See State v. J.M. et al., Case No. 64,395-403. Brief of Petitioner filed November 21, 1983.

This request was granted. However, on December 1, 1982 the defense filed its motion to discharge, claiming speedy trial ran on November 24, 1982 - ninety days from the September 27 calendar call. (R. 9)(TR. 4-5). The defense argument was that the pre-September 27th time period was not relevant to calculation of the ninety day rule. The State Attorney disagreed and directed the trial court to the August 18, 1982 failure to appear and the September 2, 1982 failure to appear. (TR. 3-4). In the State's view these actions waived discharge under Rule 8.180 (b).[3]

After reviewing the motion the trial court granted the motion and discharged R.H.

[3]No demand for speedy trial was ever filed pursuant to Rule 8.180 (f).

SUMMARY OF ARGUMENT

Given the undisputed fact that R.H. twice failed to appear for an adjudicatory hearing after his arrest on July 12, 1982, the trial court's granting of a motion to discharge was in clear violation of the essential requirements of the law on juvenile speedy trial. Rule 8.180 (b) allows for discharge only after a mandatory review and application of Rule 8.180 (d). In this case the trial court ignored his obligation and failed to enforce subsection (d)(4)(i) which precludes discharge if the child has failed to appear for a previously scheduled hearing. This decision is clearly in violation of the essential requirements of law.

POINT ON APPEAL

WHETHER THE TRIAL COURT'S ORDER DISCHARGING THE JUVENILE CONSTITUTED A SUFFICIENT ABUSE OF ITS JURISDICTION OR THE ESSENTIAL REQUIREMENTS OF LAW SO AS TO MANDATE THE ISSUANCE OF A WRIT OF CERTIORARI BY THE APPROPRIATE REVIEWING COURT?

ARGUMENT

THE TRIAL COURT ORDER DISCHARGING THE JUVENILE CONSTITUTED A SUFFICIENT ABUSE OF ITS JURISDICTION OR OF THE ESSENTIAL REQUIREMENTS OF LAW SO AS TO MANDATE THE ISSUANCE OF A WRIT OF CERTIORARI BY THE APPROPRIATE REVIEWING COURT.

It is undeniably clear that the action of the trial court in discharging R.H. from prosecution was a departure from the mandatory requirements imposed upon Juvenile Judges by Rule 8.180, Fla.R.J.P. (1985):

> Rule 8.180. Speedy Trial.
>
> (a) Time. If a petiton has been filed alleging a child to have committed a delinquent act, the child shall be brought to an adjudicatory hearing without demand within ninety (90) days of the earliest of the following dates:
>
> (1) The date the child was taken into custody.
>
> (2) The date the petition was filed.
>
> (b) Dismissal. If an adjudicatory hearing was not commenced within ninety (90) days, upon motion timely filed with the court and served upon the prosecuting attorney the petition shall be dismissed with prejudice; <u>provided, the court before granting such motion shall make the required inquiry under subsection (d) of this rule</u>.
>
> (c) Commencement. A child shall be deemed to have been brought to trial if the adjudicatory hearing

> begins before the judge within the time provided.
>
> (d) Motion to Dismiss. If the adjudicatory hearing is not commenced within the periods of time established, a motion to dismiss shall be granted by the court, unless:
>
> (1) The child has voluntarily waived his right to speedy trial;
>
> (2) An extension of time has been ordered under (e); or
>
> (3) The failure to hold an adjudicatory hearing is attributable to the child, a co-respondent in the same adjudicatory hearing, or their counsel; or
>
> (4) The child was unavailable for the adjudicatory hearing. A child is unavailable if:
>
> (i) The child or his counsel fails to attend a proceeding when their presence is required; or
>
> (ii) The child or his counsel is not ready for the adjudicatory hearing on the date it is scheduled.
>
> (Emphasis added).

After his arrest, R.H. failed to appear in court on two occasions for a hearing. This was conceeded in the trial court by the defense. (R. 9) (TR. 3-5). Regardless of this concession and the mandatory terms of the above-mentioned rule, R.H. was allowed to go free.

The State contends that this ruling is so far afield of the essential requirements of law as to require the issuance

of a writ of certiorari. In the case of State v. Smith, 260 So.2d 489 (Fla. 1972) this honorable court directed the district court of appeal to grant a writ of certiorari in a situation wherein the trial court had granted a motion compelling a witness to submit to a physical examination. In reversing that order this court noted that such an action was beyond the scope of judicial authority under common law and the rules of criminal procedure. Such action was construed to be a departure from the essential requirements of law. Smith at 491. Likewise, the Fourth District Court of Appeal found a pre-trial order compelling the State to stipulate to the admission of the result of a polygraph test administered to the accused departed from established legal precedent and issued a writ to quash the order in State v. Horvatch, 413 So.2d 469 (Fla. 4th DCA 1982). These cases illustrate the general scope of review by certiorari afforded to litigants in this state and provide the court with factual situations analogous to the one set out sub judice. As the Chief Justice recently noted in his specially concurring opinion in State v. Hollis Jones, ___So.2d____ (Fla. Case No. 64,042 October 17, 1985) certiorari is particularly suited to situations wherein trial courts flaunt, abuse or ignore the rules of procedure set down by this court for the various trial court jurisdictions.

The focus of review is not upon legal error but, rather upon a question of whether the proceeding suffered from some

"essentially irregular" procedure imposed by the trial court. Basnet v. City of Jacksonville, 18 Fla. 523, 526-27 (1882). Given this standard and the undisputed facts of this case, it is the Petitioner's view that a writ should issue to the trial court. Rule 8.180 is clear in its requirements and clear in its intent to limit the availability of such a harsh and final resolution to situations falling into a limited category. Unless and until this process is utilized in a correct fashion the current order must be quashed.

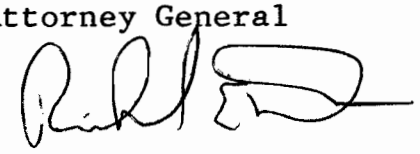
The Petitioner relies upon State v. Smith, to assert the position that this court quash the district court's order and instruct it to enter an order granting the writ.

CONCLUSION

Based upon the above-cited legal authority the Petitioner prays this court quash the order of the district court with instructions to grant a writ of certiorari.

Respectfully submitted,

JIM SMITH
Attorney General



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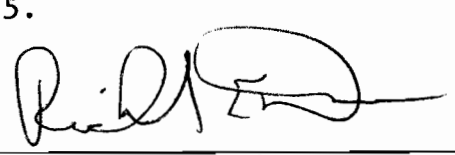
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing REPLY BRIEF OF PETITIONER ON THE MERITS was furnished by mail to BRUCE ROSENTHAL, Assistant Public Defender, 1351 N. W. 12th Street, Miami, Florida 33125, on this 14TH day of November, 1985.



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