

IN THE SUPREME COURT OF FLORIDA

CASE NO. 64,401

THE STATE OF FLORIDA,

Petitioner,

vs.

R.B., a juvenile,

Respondent

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Reply
BRIEF OF PETITIONER ON THE MERITS

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INTRODUCTION

The Petitioner, the State of Florida was the Appellant in the Third District Court of Appeal and the prosecution in the trial court. The Respondent R.B., was the Appellee in the District Court and the defendant in the trial court. The parties will be referred to as they stand before this Court. The symbol "R" will designate the record on appeal and the symbol "T" will designate the transcript of proceeding. All emphasis has been supplied unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

A petition for delinquency was filed in Case No. 82-02490FJ03 in the Circuit Court for the 11th Judicial Circuit in and for Dade County, Florida, Juvenile and Family Division. (R. 1). The petition was filed on April 23, 1982. (R. 1).

On May 11, 1982, the respondent moved for a continuance because the State had amended discovery. (T. 2). Over the State's objection, the continuance was charged to the State. (T. 3).

On June 2, 1982, the respondent moved to dismiss the petition because it did not allude to a written instrument as required by §831.02, Florida Statutes, and did not in-

corporate a copy of the written instrument. (R. 14). The petition was dismissed on that basis. (R. 16). The State attempted to refile the petition and to have the respondent served in open court to appear for a sounding, but was unsuccessful. (R. 16).

On June 14, 1982, the respondent did not appear for a sounding on the refiled petition. (T. 6). Service was unsuccessful at the address that the respondent was originally served. (T. 7). It was discovered that the respondent changed his address. (T. 7, 9). The case was reset. (T. 10).

On June 30, 1982, the State asked the court to toll the speedy trial period because the State had reason to believe that the respondent left the jurisdiction. (T. 13, 14). The State needed additional time to obtain service on the respondent. (T. 15). The court agreed to toll the speedy trial period on that basis. (T. 15).

On July 6, 1982, the State asked for an extension of the speedy trial period and explained the problems it was having trying to serve the respondent. (T. 22). The court acknowledged that Judge Ferguson had tolled the speedy trial period. (T. 24). Even if the period was not tolled, it expired on July 21, 1982. (T. 24; R. 1). The court, on its own motion, dismissed the case. (T. 25).

In a written order the court stated that it moved to dismiss the case in view of the speedy trial rule date. (R. 20). A timely notice of appeal was filed. (R. 21).

In the Third District, Respondent moved to dismiss the appeal on the grounds that the State has no right to appeal in juvenile cases. The Court granted the motion, but certified conflict with State v. W.A.M., 412 So.2d 41 (Fla. 5th DCA) rev. denied, 419 So.2d 1201 (Fla. 1982). The State sought review by this Court and pursuant to Court Order this brief is being filed.

POINT INVOLVED ON APPEAL

WHETHER THE TRIAL COURT ERRED IN
DISMISSING THE CASE ON SPEEDY TRIAL
GROUNDS WHERE THE SPEEDY TRIAL RULE
PERIOD HAD NOT EXPIRED?

SUMMARY OF THE ARGUMENT

The trial court dismissed the case on speedy trial grounds before the speedy trial period expired. It applied the wrong law to the facts thereby departing from the essential requirements of law.

ARGUMENT

THE TRIAL COURT ERRED IN DISMISSING
THE CASE ON SPEEDY TRIAL GROUNDS
WHERE THE SPEEDY TRIAL RULE PERIOD HAD
NOT EXPIRED.

The initial petition for delinquency was filed on April 23, 1982. (R. 1). The respondent had to be brought to an adjudicatory hearing without demand within 90 days, which was to expire on July 21, 1982 (R. 1; T. 24). See Fla.R.Juv.P. 81180.

The speedy trial period was tolled because the State was having difficulty serving the respondent. (T. 25, 15). However, even if the period had not been tolled, it is clear that the trial court erred by dismissing the case before the speedy trial period had expired. On July 6, 1982, the trial court dismissed the case in view of the speedy trial rule period even though the period would not expire, at the very earliest, until July 21, 1982. (T. 24, 25; R. 20).

A motion for discharge for a speedy trial rule violation should not be granted when it is filed prematurely. State v. Jansson, 384 So.2d 700 (Fla. 2d. DCA 1980). Schuty v. State, 281 So.2d 507 (Fla 1st DCA 1973); Clawson v. Baker, 245 So.2d 223 (Fla. 1981). In the instant case the trial court, on its own motion, dismissed the case prematurely. The order of


dismissal should be reversed, since the trial court did not follow the proper procedure and applied the wrong law to the facts, its action departed from the essential requirements of law. Jones v. State, 10 F.L.W. 565 (Fla. October 17, 1985) Boyd, C.J. concurring specially.

CONCLUSION

Based upon the foregoing points and citations of authority, the State respectfully submits the Order of the Third District Court of Appeal refusing to treat the instant appeal as a petition for writ of certiorari should be quashed and the cause remanded to the Third District for consideration on the merits.


Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing BRIEF ON THE MERITS was furnished by mail to Beth C. Weitzner, Attorney for Respondent, 1351 N. W. 12th Street, Miami, Florida 33125 on this 15 day of November, 1985.


MICHAEL J. NEIMAND
Assistant Attorney General
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