IN THE SUPREME COURT OF FLORIDA

RONALD EDWARD HILL,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

Case No.

DISCRETIONARY REVIEW OF DECISION OF THE DISTRICT COURT OF APPEAL, SECOND DISTRICT OF FLORIDA

BRIEF OF PETITIONER ON JURISDICTION

JERRY HILL
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

PAUL C. HELM
Assistant Public Defender
Chief, Appellate Division

Hall of Justice Building
455 North Broadway Avenue.
Bartow, Florida 33830
(813) 533-1184 or 533-0931

ATTORNEYS FOR PETITIONER

STATEMENT OF THE CASE AND FACTS

The following statement of the case and facts is taken from the decision of the District Court of Appeal, Second District, rendered on October 7, 1983. The decision is set forth in full in the Appendix.

Petitioner and five other inmates escaped from Polk Correctional Institution on June 9, 1982, assaulting a correctional officer and driving a dump truck through the compound fence in the process. Petitioner was recaptured the next day, placed in administrative confinement, advised of his Miranda rights, and questioned. While the record presents conflicting testimony as to whether Petitioner was formally arrested or apprised of the charges against him after his recapture, a prison official present during questioning concluded that Petitioner clearly "knew that he was charged with escape" during this administrative detention and interrogation. Under these circumstances, the State concedes that the 180-day speedy trial period commenced on June 10, 1982, when Petitioner was taken into custody as a result of the criminal episode giving rise to the crimes charged. Like his cohorts, Petitioner was charged by information with escape, assault by a prisoner, and criminal mischief on August 17, 1982, and assigned to receive representation by the public defender's office on September 9, 1982.

At a pretrial conference on November 2, 1982, Assistant Public Defender Robert Antonello moved to withdraw as defense counsel for all six inmates on the basis of a conflict created

by the prisoners' differing degrees of involvement in the escape and diverse defense strategies. Antonello explained that his withdrawal came at this juncture of the proceedings--nearly two months after his appointment and one week before trial--because his initial hope of resolving all six cases by pleas had been thwarted by four inmates' recent decisions to go to trial. Antonello further stated that it was the policy of his office to "stay with the case until a real conflict [arose]." The court granted Antonello's motion, informed each defendant that substitute counsel would be appointed, and continued each case until November 23, 1982, the next pretrial date. The court did not enter any order extending the original speedy trial period, nor did the parties stipulate to such an extension.

On November 5, 1982, the court appointed attorney Dan Brawley to represent Petitioner. Brawley moved for Petitioner's discharge on December 7, 1982, alleging that Petitioner had been taken into custody on June 10, 1982, and held in custody, continuously available for trial, for more than 180 days.

The trial court held an evidentiary hearing on Petitioner's motion for discharge on December 8, 1982, and ultimately denied it after finding that it had been "imminently necessary" to reschedule Petitioner's trial and that Petitioner could not "possibly have gone to trial as scheduled." Had this been a "gross case," however, where the delay in bringing Petitioner

to trial "was grossly over the limits," the court stated that it would have granted Petitioner's motion. Having previously accepted Petitioner's nolo contendere plea contingent upon the denial of his motion for discharge, the trial court adjudicated Petitioner guilty of escape and the reduced charge of aggravated assault[1/] and sentenced him to concurrent terms of ten years and five years imprisonment.

On appeal to the District Court of Appeal, Second District, Petitioner argued that the trial court erred by denying his motion for discharge because more than 180 days had elapsed since he was taken into custody, he was continuously available for trial, never requested a continuance, and no valid order extending the speedy trial time had been entered. The District Court held that the failure to hold trial within the speedy trial period was attributable to defense counsel's withdrawal and the continuance necessitated by it, so petitioner had waived the protection of the 180 day speedy trial rule. The District Court affirmed Petitioner's judgments and sentences.

Petitioner filed a timely notice invoking this Court's discretionary jurisdiction.

1/ The State agreed to nolle prosequi Petitioner's criminal mischief charge in exchange for his nolo contendere plea on the charges of escape and aggravated assault, a stipulated lesser included offense of the charged offense of assault by a prisoner.

ARGUMENT

THE DECISION OF THE DISTRICT COURT OF APPEAL, SECOND DISTRICT, EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF ANOTHER DISTRICT COURT OF APPEAL ON THE SAME POINT OF LAW.

The decision of the District Court of Appeal, Second District, rendered on October 7, 1983, (Appendix 1-8) expressly and directly conflicts with the decision of the District Court of Appeal, Fifth District, in Ehn v. State, 426 So.2d 570 (Fla. 5th DCA 1983)(Appendix 9-12). Both this case and Ehn involve the same question of law: Is a criminal defendant entitled to discharge where the State fails to hold trial within the 180 day time limit of the speedy trial rule, Fla.R.Crim.P. 3.191(a)(1), after the defendant's court-appointed counsel withdraws at the pretrial conference, new counsel is appointed, and the case is redocketed for a later date? The Fifth District answered this question in the affirmative, issued a writ of prohibition, and ordered Ehn's discharge. The Second District answered this question in the negative and affirmed Petitioner's judgments and sentences.

The Second District sought to distinguish this case from Ehn on the ground that no trial date had been set at the time Ehn's original counsel withdrew, while a trial date had been set at the time Petitioner's original counsel withdrew. This purported distinction should make no difference in the result. In Ehn, the withdrawal occurred at pretrial conference some seven weeks before the speedy trial rule time expired.

In the present case, the withdrawal also occurred at pretrial conference about five weeks before the speedy trial rule time expired. In neither case did substitute counsel seek a continuance or cause any delay after his appointment. In both cases the real reason for the failure to comply with the speedy trial rule was the State's failure to monitor the cases and prevent redocketing beyond the expiration of the speedy trial rule time limit.

This Court should exercise its discretion to grant review of the decision of the District Court of Appeal, Second District, in order to maintain uniformity in the application of the speedy trial rule throughout the state. It would be particularly unjust and a denial of equal protection of the law to allow Petitioner's convictions and sentences to stand when he would have been discharged had the same facts and argument been presented to the District Court of Appeal, Fifth District.

CONCLUSION

Because the decision of the District Court of Appeal, Second District, expressly and directly conflicts with the decision of the District Court of Appeal, Fifth District, in Ehn v. State, 426 So.2d 570 (Fla.5th DCA 1983), on the same question of law, Petitioner respectfully requests this Honorable Court to grant review of the decision in this case and to quash the decision of the Second District.

Respectfully submitted,

JERRY HILL
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

BY: Paul C. Helm
PAUL C. HELM
Assistant Public Defender
Chief, Appellate Division

Hall of Justice Building
455 North Broadway Avenue
Bartow, Florida 33830-3798
(813)533-0931 or 533-1184

COUNSEL FOR PETITIONER