IN THE SUPREME COURT OF FLORIDA

MICHAEL ROBERT KRONZ,

Petitioner,

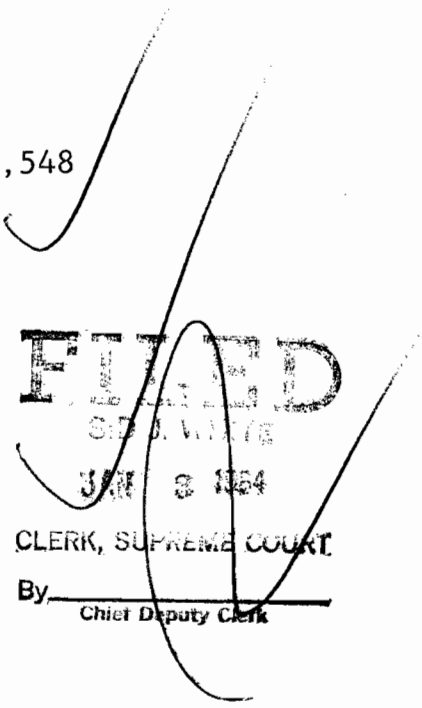
-v-

CASE NO. 64,548

STATE OF FLORIDA,

Respondent.

_____/



RESPONDENT'S BRIEF ON THE MERITS

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TABLE OF CITATIONS

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RESPONDENT'S BRIEF ON THE MERITS

PRELIMINARY STATEMENT

Petitioner was the defendant and respondent was the prosecution in the trial court. On appeal, petitioner was the appellant and respondent was the appellee. Any reference to the appendix submitted by petitioner will be made by use of the symbol "A" followed by appropriate page number.

ARGUMENT

ISSUE

WHETHER DEFENDANT IS ENTITLED TO CREDIT FOR JAIL TIME SERVED WHILE INCARCERATED IN AN OUT-OF-STATE JAIL PURSUANT TO A FLORIDA DETAINER OR WARRANT.

Petitioner urges this court to find that he was entitled to jail time credit for time he spent in a foreign jurisdiction fighting Florida extradition procedures. He argues that from inside, all jails are alike, and thus that the refusal to allow such jail time credit is merely a penalty imposed on his right to contest extradition.

The state disagrees. Initially, it must be said that the various opinions on this subject in Florida are split. The First District Court of Appeal has said that such credit shall not be allowed. Kurlin v. State, 302 So.2d 147 (Fla.1st DCA 1974), Steele v. Wainwright, 419 So.2d 652 (Fla.1st DCA 1982). The Second and Fourth District Courts of Appeal have allowed such credit with the provision that it be specifically documented. Zulla v. State, 404 So.2d 202 (Fla.2d DCA 1981), Rehfuss v. State, 432 So.2d 639 (Fla.4th DCA 1983). See Southard v. State, 363 So.2d 178 (Fla.4th DCA 1978), (disallowance of jail time credit for insufficient proof).

The First District Court of Appeal correctly construed Section 921.161, F.S., in saying that time spent in a foreign jurisdiction fighting extradition proceedings is not allowable under the Florida statute. Section 921.161 provides:

> A sentence of imprisonment shall not begin to run before the date it is imposed but the court imposing a sentence shall allow a defendant credit for all of the time he spent in the county jail before sentence. And the credit must be for a specified period of time and shall be provided for in the sentence.

Petitioner admits that the statute does not specifically include jail time served in a foreign jurisdiction. But he does analogize foreign time to Florida jail time, saying that there is no logical reason to distinguish between the two. However, the State of Florida must take exception to that statement. A person who served time in a foreign jurisdiction may have been held under local charges, or may have a sentence of imprisonment in the foreign jurisdiction. Whether the person was held strictly under the Florida charges becomes a difficult question for a sentencing judge since many times the extradition proceedings begin only after an arrest on local charges. The Fourth District Court of Appeal made this distinction in Southard v. State, supra.

> Appellant has failed to demonstrate either in the trial court or before this court that he was, in fact, incarcerated in California pursuant to a Florida detainer. The record is void of any official reference to any incarceration in California, whether it be pursuant to a Florida detainer or California charges. It being the burden of the appellant to demonstrate error, we therefore find that he has failed to sustain the burden.

Id. at 179.

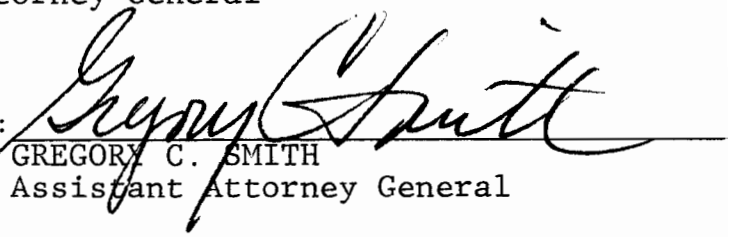
It is therefore clear that there are substantial public policy reasons why the Florida statute does not include county jail time served in a foreign jurisdiction. Petitioner will

not be protected from the "hard choice" he must make in order to challenge the extradition proceedings in the State of Florida. This court must construe the statute to mean what it plainly says: Jail time credit is to be allowed for the days served in Florida's county jails. This court must affirm the ruling made by the First District Court of Appeal below.

CONCLUSION

For the above and foregoing reasons, this court must affirm the ruling made by the First District Court of Appeal below.

JIM SMITH
Attorney General

By: 
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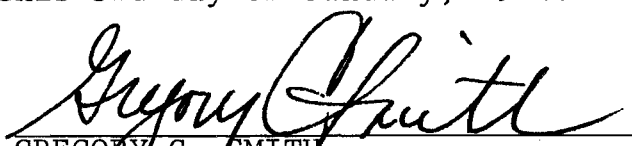
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have furnished a copy of the foregoing Respondent's Brief on the Merits to Mr. Terry P. Lewis, Special Assistant Public Defender, Post Office Box 10508, Tallahassee, Florida 32302, by U.S. Mail, this 3rd day of January, 1984.



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of Counsel