IN THE SUPREME COURT
STATE OF FLORIDA

MICHAEL ROBERT KRONZ,

Petitioner,

v. CASE NO: 64,548

STATE OF FLORIDA,

Respondent.
_____/

ON APPEAL FROM THE FIRST DISTRICT
COURT OF APPEAL
NO. AR-320

INITIAL BRIEF ON MERITS ON BEHALF OF PETITIONER

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TABLE OF CITATIONS

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PRELIMINARY STATEMENT

The Petitioner was the Defendant in the trial court below and the Appellant in the District Court of Appeal, and will be referred to in this Brief as the Defendant. The Respondent was the State in the trial court, the Appellee in the District Court of Appeal, and will be referred to as the State in this Brief.

STATEMENT OF THE CASE AND FACTS

The District Court of Appeal affirmed an Order of the trial court denying Defendant's Motion to Correct Sentence and then certified that the Opinion conflicted with rulings in other District Courts of Appeal. The Supreme Court has accepted jurisdiction.

The facts, which are not in dispute, were summarized by the District Court of Appeal as follows:

> "Defendant appeals an order dneying his motion to correct sentence. We affirm and certify conflict to the Florida Supreme Court.
>
> Defendant pleaded guilty to the charge of escape, was adjudicated guilty of the December 28, 1979 escape, and was sentenced to one year with credit for 27 days jail time. Defendant subsequently requested amendment of his judgment and sentence to reflect credit for the period March 2, 1982 to May 23, 1982, the period during which he was held in a South Carolina jail on a fugitive warrant for the Florida escape charge and during which he unsuccessfully attempted to block extradition. The trial court denied this motion based on Kurlin v. State, 302 So.2d 147 (Fla. 1st DCA 1974)."

The District Court of Appeal upheld the trial court on the basis of Kurlin but certified a conflict. As the court stated:

> "In Kurlin this court declined to construe §921.161(1), Florida Statutes, which requires credit for time spent in county jail prior to sentencing, as applicable to periods of time a defendant is incarcerated in other states. Although we affirm the denial of defendant's motion to correct sentence, relying on Kurlin, we certify that Kurlin conflicts with Zulla v. State, 404 So.2d 202 (Fla. 2nd DCA 1981), and Rehfuss v. State, 432 So.2d 639 (Fla. 4th DCA 1982) on the issue of whether a defendant is entitled to credit on a Florida sentence for time incarcerated in an out-of-state jail pursuant to a Florida detainer or warrant."

A copy of the Opinion of the District Court of Appeal appears in the Appendix to this Brief.

ARGUMENT

ISSUE I

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

As the First District Court of Appeal recognized in Kurlin v. State, 302 So.2d 147 (Fla. 1st DCA 1974), in quoting from the dissenting Opinion of Justice Boyd in State ex rel Argensinger v. Hamlin, 236 So.2d 442, 444 (Fla. 1970):

"From the inside all jails look alike."

Also, in Adams v. Wainwright, 275 So.2d 235 (Fla. 1973), this Court recognized that a criminal defendant should not be confined even one day beyond expiration of his sentence. Certainly it should make no difference what penal institution the defendant is incarcerated in. He should not be penalized for exercising his right not to waive extradition.

The recent cases of Zulla v. State, 404 So.2d 202 (Fla. 2nd DCA 1981), Osteen v. State, 406 So.2d 1239 (Fla. 2nd DCA 1981), Jimenez v. State, 421 So.2d 192 (Fla. 4th DCA 1982), and Rehfuss v. State, 432 So.2d 639 (Fla. 4th DCA 1982), have declined to follow the ruling in Kurlin, supra, and have held that a criminal defendant is entitled to credit on a Florida sentence for time spent in jails in other states, pursuant to Florida detainers or warrants. These cases are more in line and more consistent with the principle articulated in Argensinger, and Adams, supra. Nor is it in line with the obvious intent,

principle and spirit of Florida Statute §921.161 which 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." [Emphasis added].

The Statute does not specifically exclude time spent in county jails in other states and the obvious intent is to give to the person who is convicted of a crime credit for the time he has already served waiting for disposition of his case. There is no logical reason to distinguish between the time spent in a Florida jail and time spent in another state's jail. This is especially true where, as in the present case, the delay is because of the exercise of a constitutional right of a defendant not to waive extradition. The ruling of the First District Court of Appeal in effect punishes the Defendant for exercising that right.

CONCLUSION

WHEREFORE, for the above stated reasons, the Defendant prays this Court will quash the Order of the First District Court of Appeal, and remand this case to the trial court for reconsideration of the sentence so that credit for time spent in the South Carolina jail can be given.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Initial Brief on Merits on Behalf of Petitioner has been furnished to GREGORY C. SMITH, Esquire, Assistant Attorney General, The Capitol, 1502, Tallahassee, Florida 32301, and to MR. MICHAEL ROBERT KRONZ, #043079, Post Office Box 777, Lake City, Florida 32056, by United States Mail, this 12th day of December, 1983.

ATTORNEY