IN THE SUPREME COURT OF FLORIDA

J. LEONARD FLEET, JUDGE,

Petitioner,

v.

CARLOS SERRATO BUSTOS,

Respondent.

CASE NO. 66,587

RESPONDENT'S BRIEF ON THE MERITS

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OTHER AUTHORITIES

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STATEMENT OF THE CASE AND FACTS

The respondent accepts as accurate a statement of the case and facts as set out in Pages 2 thru 4 of PETITIONER'S BRIEF ON THE MERITS.

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QUESTION PRESENTED

The respondent accepts the ISSUE ON APPEAL included in 5a of the PETITIONER'S BRIEF ON THE MERITS presuming that it includes the question certified by the Fourth District Court of Appeals.

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ARGUMENT

In reading the petitioner's brief it becomes quite obvious that the basic thrust of their argument is guided by their claim that the issue to be determined is one of great importance to prevent criminals from manipulating and abusing rules of procedure. On more than one occasion the brief speaks of manipulation and abuse by defendants, and this claim is coupled with the complaint that complicated cases with multiple counts of wrongdoing against multiple individuals will not properly be litigated unless the State has the right to control the litigation. They claim that an individual requesting to be treated as an individual will be in a position to mandate the Court to litigate these issues on a singular basis. Even the quoted citations relative to the RULES OF CRIMINAL PROCEDURE gloss over the fact that burdens are placed upon the trial court as well as the State of Florida in this matter.

The Attorney General's Office seems to imply that it is the responsibility of the defendant to take some affirmative action to insure that he receives the benefit of Rule 3.191, and perhaps this point might be well taken. However, the Rules clearly provide that without any such affirmative action upon the part of an individual he shall be brought to trial within one hundred eighty (180) days from the date he is arrested for a felony offense. The Rule then goes on to provide that if he is not the Court shall forever discharge him from standing to answer for any claimed or alleged criminal activity, but that before granting such a discharge the trial judge is under an obligation to make certain inquiries. In the instant case, unfortunately, these inquiries

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were not made, and the record on appeal is devoid of any such inquiry in open court. As a matter of fact, the trial court simply ruled upon the written motion presented by the defendant's counsel, which motion quite frankly went unanswered by the State. Surely, this is not what is contemplated by the rules relating to SPEEDY TRIAL. No defendant can conceivably manipulate or abuse the process of the court when, as in this case, no process has taken place.

Of even greater importance, however, is the balancing of equities that this Court must address in regards to the claim of the great State of Florida that their right to convenience should override an individual's right to his day in court regardless of whether he finds himself charged along with other people in a complex information or not. After all, the multiple defendant, multiple count, complex litigation which the State complains of is a situation of their own making. It is they who choose the manner by which they will prosecute an individual either alone or in the company of other individuals; their only legitimate complaint in this matter is only as well taken as it is self-directed, for as this Court well knows the entire process of drafting and presenting informations accusing individuals with crimes rests within the sole province of the State Attorney's Office.

The petitioners cite Sherrod v. Franza, 427 So.2d 161 (Fla. 1983) in their brief as indicative of an obligation upon this Honorable Court to treat findings of fact made by the trial court as conclusive. As was previously indicated, there were no such proceedings held by the trial court, and therefore there could not possibly be any findings of fact. It is of interest to note Justice Adkins's statement in Sherrod, supra, wherein he states,

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> "One of the most difficult tasks confronting every judge in criminal prosecutions is to strike a fair balance between the rights of the defendant and the rights of society . . . The purpose of the speedy trial rule is to insure (1) the effective implementation of the defendant's constitutional right to a speedy trial, and (2) the effective and expeditious prosecution of criminal offenses."
>
> Sherrod v. Franza, id.

The issue of the State's claimed right to convenience has previously been addressed in Machado v. State, 431 So.2d 337 (2nd DCA 1983) wherein it was stated,

> "In other words, a defendant's right to speedy trial takes precedence over the mere convenience of the state trying him and his cofendants together."

Basically, the petitioners in their brief are attempting to do nothing more than shirk their responsibility of insuring that citizens are afforded their due accord by the judicial system. Instead, they would have this burden improperly superimposed upon citizens. Such a shifting should be deemed offensive to this Court.

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CONCLUSION

In conclusion the respondent feels compelled to point out the State of Florida's zeal to influence the Court, as indicated by the unprofessional claim that if the Fourth District Court of Appeals decision is not reversed, ". . . OTHERWISE GUILTY DEFENDANTS will continue to receive windfalls from a rule which was designed to prevent them from languishing in jail . . . ". (petitioner's brief on the merits, p. 12) How presumptive of the State to eliminate the need of any litigation to determine the guilt or innocence of one they have chosen to include in a massive and complex multi-count, multi-defendant information. It is respectively suggested that the Fourth District Court of Appeals in this case made a proper determination, as did their brethern in the First District in Westlake v. Miner, and Darby v. State.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Respondent's Brief on the Merits has been furnished by United States Mail this 25th day of March, 1985, to: Andrew Slater, Esquire, Office of the State Attorney, Broward County Courthouse, 201 S.E. 6th Street, Fort Lauderdale, Florida, 33301; Carolyn V. McCann, Assistant Attorney General, Office of the Attorney General, Department of Legal Affairs, Palm Beach County, Regional Service Center, Room 204, 111 Georgia Avenue, West Palm Beach, Florida, 33401.

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