

075

IN THE SUPREME COURT OF FLORIDA

FILED

SID J. WILSON

JUL 23 1985

CLERK, SUPREME COURT

By [Signature]  
Chief Deputy Clerk

67,399

STATE OF FLORIDA,

Petitioner,

v.

CASE NO. 84-1239

THOMAS JEFFERSON WILSON,

Respondent.

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PETITIONER'S BRIEF ON JURISDICTION

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STATEMENT OF THE CASE AND FACTS

Respondent, Thomas Jefferson Wilson, was a prisoner in a Florida correctional institution before his escape (R. 61). After escaping, he stole a car in Osceola County, Florida (R. 28). On October 21, 1983, respondent was stopped and arrested in the state of Texas, outside of the jurisdiction of the state of Florida, on charges of escape and auto theft (R. 61). Respondent later waived extradition to Florida (R. 9).

An information charging respondent with grand theft was filed in the Circuit Court of Osceola County on October 27, 1983. Approximately 25 days later, respondent was transferred to a correctional institution in Lake Butler, Florida (R. 10). Respondent was later transferred to Marion Correctional Institution and then, on January 3, 1984, to the Seminole County Jail regarding a probation violation. Respondent received a one year sentence on the probation violation in February, 1984, and was returned to Lake Butler (R. 10-12).

On May 17, 1984, respondent filed, pro se, a motion for discharge alleging that his speedy trial rights under Florida Rule of Criminal Procedure 3.191 had been violated (R. 61). This motion was denied by the circuit judge (R. 52).

On June 6, 1984, respondent was arrested on the Osceola County capias in Lake Butler, Florida (R. 13). The public defender was appointed to represent respondent, below, and a second motion for discharge was filed in the circuit court alleging violation of speedy trial rights. After a hearing, this motion was also denied (R. 49).

On August 21, 1985, respondent plead no contest to the grand theft charge reserving the right to appeal the circuit court's denial of respondent's motion for discharge and was sentenced to thirty months imprisonment (R. 25,43,47).

A notice of appeal was filed in the circuit court on August 23, 1984 (R. 41). The Fifth District Court of Appeal entertained said appeal and in an opinion filed May 23, 1985, reversed and remanded the case to the trial court with directions to discharge respondent from the grand theft charge (App. 7). One judge dissented from the opinion by the district court.

The State of Florida timely filed a motion for rehearing to certify conflict. This motion was denied. It is from the reversal of the trial court's decision by the Fifth District Court of Appeal that the petitioner takes this appeal.

### SUMMARY OF ARGUMENT

There is express and direct conflict between the First and Fifth District Courts of Appeal regarding the application of the Florida Speedy Trial Rule to persons who commit crimes in Florida and are later arrested in another state for those crimes. The Fifth District Court of Appeal held that speedy trial begins to run when the perpetrator is arrested in the foreign state. The First District Court of Appeal held that the speedy trial time begins when the perpetrator returns or is returned to the jurisdiction of the court in which the Florida charge is pending and written notice of this fact is filed with the court and served upon the prosecutor--Florida Rule of Criminal Procedure 3.191(b)(1).

POINT ON APPEAL

THE PRESENT DECISION OF THE FIFTH DISTRICT COURT OF APPEAL IS IN EXPRESS AND DIRECT CONFLICT WITH THE DECISION OF THE FIRST DISTRICT COURT OF APPEAL HOLDING THAT FLORIDA RULE OF CRIMINAL PROCEDURE 3.191(b)(1), GOVERNING THE SPEEDY TRIAL RULE AND PERSONS INCARCERATED OUTSIDE THE JURISDICTION OF THIS STATE, SHOULD BE CONSTRUED TO ENCOMPASS PERSONS WHO COMMIT CRIMES IN THIS STATE AND ARE ARRESTED IN OTHER STATES.

ARGUMENT

Citing State v. Bassham, 352 So.2d 55 (Fla. 1977), the trial court denied respondent's motion for discharge thereby holding that respondent was not in custody for purposes of speedy trial consideration under Florida Rule of Criminal Procedure 3.191(a)(1). The Fifth District Court of Appeal subsequently reversed the trial court's order and remanded for discharge of respondent, holding that respondent was "taken into custody" for the purpose of the speedy trial rule when he was arrested in Texas on October 24, 1983, while outside of the jurisdiction of Florida courts, for the crimes of escape and grand theft which had been committed in Florida.

(A. 7). Dissenting from this holding, the Honorable Judge Sharp noted that the Fifth District Court of Appeal's opinion conflicted with that of the First District Court of Appeal on this issue saying:

I agree with the majority in Hawkins v. State, 451 So.2d 903 (Fla. 1st DCA), review denied, 459 So.2d 1040 (Fla. 1984), that subsection (b)(1) controls the running of the speedy trial time in Florida, whether the defendant is arrested in a

different state on Florida charges, or on a mixture of Florida and one or more other state's charges. It is not logical to read (b)(1) as encompassing only persons jailed and held on charges pending in another state.

In the Hawkins case, Marcellus Hawkins had committed a sexual battery in Tallahassee, Florida and returned to his home in Rochester, New York shortly thereafter. He was arrested in New York on January 28, 1981, on a Florida felony warrant. Hawkins was released from his bond on May 7, 1981, by New York authorities when Florida authorities had not transmitted appropriate documents to New York in order to arrange Hawkins' return to Florida. New York authorities rearrested Hawkins on August 20, 1981, by virtue of a warrant requisitioned by the Governor of Florida. Hawkins moved for discharge alleging that his speedy trial rights had been violated as he had not been brought to trial within 180 days of his arrest in New York on January 28, 1981. The trial court denied his motion.

On appeal to the First District Court of Appeal, Hawkins repeated his speedy trial argument and the First District Court of Appeal affirmed the trial court's decision concluding that fugitives arrested outside the state of Florida must look to the provisions of the Florida Rule of Criminal Procedure 3.191(b)(1) for their speedy trial rights under the rule then in effect. Hawkins, supra, at 906. Thus, it is clear that there is express and direct conflict between the First and Fifth District Courts of Appeal on this issue. For this reason, pe-



titioner requests that this honorable court utilize its power of discretionary review to resolve the conflict between the district courts on this question of law.

CONCLUSION

Based on the arguments and authorities presented herein, petitioner respectfully prays this honorable court exercise its discretionary jurisdiction in this cause.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing Petitioner's Brief on Jurisdiction has been furnished by mail to Christopher S. Quarles, Assistant Public Defender, 112 Orange Avenue, Suite A, Daytona Beach, Florida 32014, and counsel for the respondent, this 25 day of July, 1985.

*Kevin K. Carson*

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