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IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

vs.

THOMAS JEFFERSON WILSON,

Respondent.

Case No. 67,399

APPEAL FROM THE CIRCUIT COURT
IN AND FOR OSCEOLA COUNTY
STATE OF FLORIDA

RESPONDENT'S BRIEF ON JURISDICTION

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

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ATTORNEY FOR RESPONDENT

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	)	
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	)	

RESPONDENT'S BRIEF ON JURISDICTION

STATEMENT OF THE CASE AND FACTS

Respondent accepts the statement of the case and facts as set forth in Petitioner's Brief on Jurisdiction.

SUMMARY OF ARGUMENT

No express and direct conflict exists between the First and Fifth District Courts of Appeal regarding the application of the Florida speedy trial rule. Even though the Fifth District Court of Appeal held that speedy trial begins to run when the perpetrator is arrested in the foreign state, the respondent's speedy trial period would have expired even if computed from the date of his return to Florida of which the Osceola County authorities were aware. Unlike Hawkins, the respondent made himself available for trial throughout the 180 day period of time, cooperated fully, and did nothing to thwart the state's efforts to bring him back to Florida to face the charges against him.

ARGUMENT

THIS COURT SHOULD NOT EXERCISE ITS DISCRETIONARY JURISDICTION IN THIS CASE SINCE IT DOES NOT CONFLICT WITH THE CASE OF HAWKINS V. STATE, 451 SO.2D 903 (FLA. 1st DCA 1984).

Petitioner contends that there is direct and express conflict with the opinion issued by the district court in the instant case and the opinion set forth by the majority in Hawkins v. State, 451 So.2d 903 (Fla. 1st DCA), review denied, 459 So.2d 1040 (Fla. 1984). Respondent begs to differ. This Honorable Court should not exercise its discretionary jurisdiction in the instant case since it is clear that even if the respondent was not taken into custody for purposes of the speedy trial rule until he was returned to Florida, the time for speedy trial would have expired prior to the filing of the motion for discharge. This becomes clear when one realizes that Respondent was arrested in Texas on October 21, 1983, for auto theft. (R 61) He waived extradition to Florida the next day and was eventually transferred to a correctional institution in Florida approximately 25 days later. (R 9-10) It is clear from the record on appeal and the opinion of the district court that Osceola County was notified of his arrest and did have actual knowledge that he was returned to the state. Even if the speedy trial period is computed from the date that the respondent was returned to Florida, the district court is still correct in its holding since the speedy trial period would have expired in May of 1984. This clearly does not conflict with Hawkins, supra, which held that the speedy trial time began to run on the date that the defendant

was returned to custody in Florida rather than the date he was arrested on the Florida charge in New York. Therefore, it is clear that no conflict exists.

There are other distinguishing factors as well. As in State v. Bivona, 460 So.2d 469 (Fla. 4th DCA 1984) the respondent did not deliberately make himself unavailable for trial during a portion of the 180 day period of time, unlike Hawkins. Like Bivona, the respondent cooperated fully with the arresting authorities, awaited extradition, and did nothing to thwart the state's efforts to bring him to Florida to face the charges against him. The respondent was forced to wait over 3 weeks waiting for the Florida authorities to extradite, just like Bivona.

The opinion of the district court in the instant case is not in direct and express conflict with Hawkins v. State, supra, and is also in accord with State v. Bivona, supra, State v. Dukes, 443 So.2d 471 (Fla. 5th DCA 1984), and Perkins v. State, 457 So.2d 1053 (Fla. 1st DCA 1984). As the district court's opinion suggested, if other charges were pending against the respondent or he was being required to serve time on other convictions, the state should have moved for an extension of time. See also Lewis v. State, 357 So.2d 725 (Fla. 1978) and State v. Dukes, supra.

CONCLUSION

Based upon the foregoing cases, authorities and policies, Respondent respectfully requests that this Honorable Court decline to exercise its discretionary jurisdiction in this cause.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been mailed to the Honorable Jim Smith, Attorney General, 125 N. Ridgewood Avenue, Fourth Floor, Daytona Beach, Florida 32014 and to Mr. Thomas J. Wilson, Inmate No. 741555, Polk C. I., 3876 Evans Road, Polk City, Florida 33868 this 14th day of August, 1985.

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ASSISTANT PUBLIC DEFENDER