

IN THE SUPREME COURT
STATE OF FLORIDA

077
C
FILED
SID J. WHITE

JAN 3 1986

STATE OF FLORIDA,
Petitioner,

CLERK, SUPREME COURT
By
Chief Deputy Clerk

v.

CASE NO. 67,399

THOMAS JEFFERSON WILSON,
Respondent.

PETITIONER'S BRIEF ON THE MERITS

JIM SMITH
ATTORNEY GENERAL

KEVIN KITPATRICK CARSON
ASSISTANT ATTORNEY GENERAL
125 N. Ridgewood Ave.
Fourth Floor
Daytona Beach, Fl. 32014
(904) 252-1067

COUNSEL FOR PETITIONER

TABLE OF CONTENTS

	PAGE:
CITATION OF AUTHORITIES	ii
STATEMENT OF THE CASE AND FACTS	1-3
SUMMARY OF ARGUMENT	4
<u>POINT ON APPEAL</u> <u>ARGUMENT:</u>	
WHETHER FLORIDA RULE OF CRIMINAL PROCEDURE 3.191(b)(1) APPLIES TO A PERSON INCARCERATED OUTSIDE OF THE JURISDICTION OF FLORIDA ON BOTH OUT OF STATE AND FLORIDA CHARGES.....	5-8
CONCLUSION	9
CERTIFICATE OF SERVICE.....	9

CITATION OF AUTHORITIES

CASE:

PAGE:

<u>Hawkins v. State,</u> 451 So.2d 903 (Fla. 1st DCA 1984) <u>review denied,</u> 459 So.2d 1040 (Fla. 1984)	7,8
<u>Wilson v. State,</u> 471 So.2d 96 (Fla. 5th DCA 1985) (Sharp, J., dissenting)	8

OTHER CITATIONS:

Fla. R. Crim. P. 3.191(a)(1)	5
Fla. R. Crim. P. 3.191(b)(1)	5,6,7,8

STATEMENT OF THE CASE AND FACTS

After his escape from a Florida prison, respondent was temporarily residing in the home of an acquaintance in Osceola County (R 28). In the early morning hours of October 16, 1983, respondent stole a car, a wallet containing a Florida driver's license, and a motorcycle registration from his benefactor (R 59).

On October 21, 1983, while driving through Texas, respondent was stopped by the Texas Highway Patrol for having a headlight out (R 8;60). Respondent, using the stolen driver's license, falsely identified himself as Bruce Alan Wilson (R 60). During the course of the stop, the Texas Highway Patrol officers learned respondent's true identity and that he was a prison escapee from Florida (R 59;60;61). Respondent admitted that he had stolen the car (R 61). On the basis of the information from Florida, respondent was arrested in Texas for driving with a non-valid driver's license, escape and auto theft (R 8;56;61). Respondent waived extradition to Florida (R 8-10).

On October 27, 1983, an information charging respondent with grand theft was filed in Osceola County (R 65). On October 31, 1983, a capias was issued for respondent's arrest (R 57). A copy of the warrant was mailed to the Department of Corrections on November 1, 1983 (R 6;18).

Approximately twenty to twenty-five days after his apprehension in Texas, respondent was returned to a prison in Lake Butler, Florida (R 10). Respondent was transferred to a prison in Marion County, Florida and then, on January 3, 1984,

to Seminole County to face probation violation charges (R 10-11). He was sentenced to a year and a day in prison on the probation violation. On March 25, 1984, respondent pled guilty, in Alachua County, to conspiracy to escape, receiving an eighteen month sentence (R 61).

On May 17, 1984, respondent filed, pro se, a motion for discharge alleging that his speedy trial rights had been violated (R 61). This motion was denied by the circuit judge (R 52). On June 6, 1984, respondent was served with the Osceola County capias charging him with grand theft (R 13).

On August 3, 1984, respondent, through his public defender, filed a second motion for discharge (R 50). In his motion, respondent alleged that the state had had knowledge of his arrest in Texas since October 24, 1983, that since his arrest in Texas he had been continuously available to the Osceola County Sheriff's Department, and that since more than 180 days had elapsed since his arrest in Texas, he was entitled to discharge. After a hearing, this motion was also denied (R 49).

On August 21, 1985, respondent pled no contest to the grand theft charge reserving the right to appeal the circuit court's denial of his motion for discharge, receiving a thirty month prison sentence (R 25;43;47).

Respondent appealed his conviction and the Fifth District Court of Appeal, one judge dissenting, reversed and remanded the case to the trial court with directions to discharge respondent from the grand theft charge. Petitioner's motion for a rehearing to certify conflict was denied. It is from the re-

versal of the trial court's decision by the Fifth District Court
of Appeal that the petitioner takes this appeal.

SUMMARY OF ARGUMENT

Florida Rule of Criminal Procedure 3.191(b)(1), should apply to defendants arrested outside of the jurisdiction of Florida, whether on Florida charges or on a combination of Florida charges and charges of another state. The difficulties of extraditing defendants from other states, resolving and sorting out not only the charges of the other state, but other Florida counties upon return to Florida, make this approach the most reasonable.

POINT ON APPEAL

FLORIDA RULE OF CRIMINAL PROCEDURE
3.191(b)(1) APPLIES TO A PERSON IN-
CARCERATED OUTSIDE OF THE JURISDIC-
TION OF FLORIDA ON BOTH OUT OF STATE
AND FLORIDA CHARGES.

ARGUMENT

In reversing the denial by the trial court below of the respondent's motion for discharge, the Fifth District Court of Appeal essentially held that Florida Rule of Criminal Procedure 3.191(a)(1) is applicable to the facts of this case. The petitioner respectfully disagrees.

Rule 3.191(a)(1) provides in pertinent part:

Except as otherwise provided by this Rule, and subject to the limitations imposed under (b)(1) . . . , every person charged with a crime by . . . information shall without demand be brought to trial . . . within 180 days if the crime charged be a felony . . . A person charged with a crime is entitled to the benefits of this Rule whether such person is in custody in a jail or correctional institution of this State or a political sub-division thereof or is at liberty on bail or recognizance. (Emphasis supplied).

Although respondent was charged with grand larceny by information in Osceola County and detained by Texas authorities regarding that charge, as well as a Florida escape charge, it is clear that he was not in custody in any jail or prison in this state or a political subdivision thereof and that he was not at liberty on bail or recognizance. As such, Rule 3.191(a)(1) is inapplicable to the instant case.

On October 21, 1983, after leaving the jurisdiction of Florida, respondent was stopped in Texas for a violation of

Texas law, having a headlight out (R 8,60). Respondent, using a stolen driver's license, falsely identified himself as Bruce Alan Wilson (R 60). During the course of the stop, the Texas Highway Patrol troopers learned respondent's true identity, that he was a prison escapee, and that he had stolen the car (R 56;60; 61).

From the record on appeal, it appears that the respondent was arrested in Texas for driving a car while having a headlight out, driving with a non-valid driver's license, auto theft and escape (R 8;56;61). Although, it is unclear what respondent was charged with by the Texas prosecutor, the reasonable inference is that respondent was incarcerated in Texas regarding the Texas headlight and driver's license offense and for Florida officials on the escape and grand theft charge.

Florida Rule of Criminal Procedure 3.191(b)(1) provides in relevant part:

Prisoners outside jurisdiction. A person who is . . . incarcerated in a jail or correctional institution outside the jurisdiction of this State or a subdivision thereof, and who is charged with a crime by . . . information issued or filed under the laws of this State, is not entitled to the benefit of this Rule until that person returns or is returned to the jurisdiction of the court within which the Florida charge is pending and until written notice of this fact is filed with the court and served upon the prosecutor. (Emphasis supplied).

Clearly, Rule 3.191(b)(1) is the speedy trial provision applicable to the instant appeal. Respondent was charged by information in Osceola County, Florida, on October 27, 1983 (R 65), and incarcerated in a Texas jail on Texas and Florida charges.

In Hawkins v. State, 451 So.2d 903 (Fla. 1st DCA 1984), review denied, 459 So.2d 1040 (Fla. 1984), on facts very similar to the instant appeal, the district court of appeal held that Rule 3.191(1)(b) was the applicable speedy trial provision. In Hawkins, the defendant committed sexual battery in Tallahassee, Florida, on February 2, 1980, and later returned to his home in New York. On January 28, 1981, he was arrested in New York based on information from Florida that there was an outstanding felony warrant in Florida. On May 7, 1981, he was discharged by New York, when New York did not receive appropriate return documents from Florida. On August 20, 1981, he was arrested on the basis of a Florida Governor's warrant. From May 5 to August 20, 1981, the defendant was under no restraints or detention. On October 6, 1981, he was returned to Florida as a result of extradition proceedings. His motion for discharge on speedy trial grounds was denied by the trial court.

The First District Court of Appeal described the defendant's attempts to resist being brought to justice in Florida, but such actions by a defendant were not necessary for the holding of the court. Instead, the appellate court concerned itself with the language of Rule 3.191(b)(1). The court reasoned that since the language, "upon conviction of a crime" had been deleted from the previous speedy trial rule relating to prisoner's outside of Florida, when the rule was amended in 1980, the drafters of Rule 3.191(b) broadened the scope of the rule so that fugitives arrested outside of the state must look to Rule 3.191(b) for their speedy trial rights. Hawkins, supra,

at 905-906.

Petitioner contends, especially in light of the before quoted language of Rule 3.191(a)(1), that the holding of the First District Court of Appeal is the better reasoned approach to Florida's speedy trial rule. Rule 3.191(b)(1), should apply to defendants arrested outside of the jurisdiction of Florida, whether on Florida charges or on a combination of Florida charges and charges of another state. The difficulties of extraditing defendants from other states, resolving and sorting out not only the charges of other states, but other counties in Florida upon return to Florida, make this interpretation most reasonable. Wilson v. State, 471 So.2d 96 (Fla. 5th DCA 1985) (Sharp, J., dissenting). The instant appeal and Hawkins, supra, are perfect examples of the problems which will be otherwise encountered.

Since respondent failed to file with the court and serve upon the prosecutor the notice required under Rule 3.191 (b)(1), when he was returned to Osceola County, Florida, in the Ninth Judicial Circuit, respondent's speedy trial period did not begin to run until he was arrested pursuant to the felony grand theft warrant on June 6, 1984. The trial judge's denial of respondent's motion for discharge was proper.

CONCLUSION

Based on the arguments and authorities presented herein, petitioner respectfully prays this honorable court reverse the decision of the District Court of Appeal of the State of Florida, Fifth District.

Respectfully submitted,

JIM SMITH
ATTORNEY GENERAL

Kevin K. Carson

KEVIN KITPATRICK CARSON
ASSISTANT ATTORNEY GENERAL
125 N. Ridgewood Ave.
Fourth Floor
Daytona Beach, Fl. 32014
(904) 252-1067

COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing Petitioner's Brief on the Merits has been furnished by mail to Christopher Quarles, Assistant Public Defender, 112 Orange Avenue, Suite A, Daytona Beach, Florida 32014, counsel for the respondent, this 2 day of January, 1986.

Kevin K. Carson

KEVIN KITPATRICK CARSON
COUNSEL FOR PETITIONER