

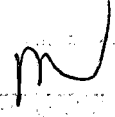
IN THE SUPREME COURT
STATE OF FLORIDA

FILED

SID J. WHITE

JAN 28 1986

CLERK OF COURT

By 

STATE OF FLORIDA,
Petitioner,

v.

CASE NO. 67,399

THOMAS JEFFERSON WILSON,
Respondent.

RESPONDENT'S BRIEF ON THE MERITS

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

CHRISTOPHER S. QUARLES
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ATTORNEY FOR RESPONDENT

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OTHER AUTHORITIES:

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CASE NO. 67,399

THOMAS JEFFERSON WILSON,

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_____ /

RESPONDENT'S BRIEF ON THE MERITS

STATEMENT OF THE CASE AND FACTS

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

SUMMARY OF ARGUMENT

Since Respondent was arrested in Texas on Florida charges, Rule 3.191(a)(1) applies. 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 had notice. The Respondent made himself available for trial throughout the one hundred and eighty day period of time, cooperated fully, and did nothing to thwart state's efforts to return him to Florida to face the charges against him. Under these facts, Respondent's discharge is warranted.

ARGUMENT

RESPONDENT WAS ENTITLED TO DISCHARGE
UNDER FLORIDA'S SPEEDY TRIAL RULE WHERE
OSCEOLA COUNTY WAS NOTIFIED OF HIS
ARREST AND HAD ACTUAL KNOWLEDGE THAT
THE RESPONDENT HAD BEEN RETURNED TO
FLORIDA.

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 and escape. (R61) He waived extradition to Florida the next day and was eventually transferred to a correctional institution in Florida approximately twenty-five days later. (R9-10) 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 situation is clearly distinguishable from Hawkins v. State, 451 So.2d 903 (Fla. 1st DCA), review denied, 459 So.2d 1040 (Fla. 1984), which held that 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. The instant case can be distinguished in part as a result of the Respondent failing to deliberately make himself unavailable for trial which was the case in Hawkins, supra. As in State v. Bivona, 460 So.2d 469 (Fla. 4th DCA 1984), 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 three weeks waiting for the Florida authorities to extradite, just like Bivona.

In the instant case, the District Court relied upon the reasoning of State v. Dukes, 443 So.2d 471 (Fla. 5th DCA 1984). In that case, several warrants for the arrest of Dukes were issued in Volusia County, charging him with armed robbery, robbery, and possession of a firearm in the commission of a felony. Dukes was free on bail in Brevard County pending charges there. On April 23, 1982, Dukes was arrested by Brevard County Sheriff's deputies as a result of the Volusia County warrants. Dukes was retained in Brevard County until the local charges were disposed of, at which time he was released, returned to Volusia County, and booked into Volusia County jail. While in custody in Brevard County, Volusia deputies were refused custody of Dukes because of the pending Brevard County charges. Volusia County was aware of his incarceration in Brevard County based upon the Volusia County arrest warrants and he had been continuously available for trial. Volusia County could have and should have protected its prosecution rights by

applying for an extension of speedy trial because of the existence of this exceptional circumstance. Id. See also Perkins v. State, 457 So.2d 1053 (Fla. 1st DCA 1984).

Respondent disagrees with the opinion set forth in the dissent of the instant case. Respondent submits that it is logical to read Fla.R.Crim.P. 3.191(b)(1) as encompassing only persons jailed and held on charges pending in another state. The dissent contends that, in such cases, Florida charges would never have any logical impact. Respondent submits that in such cases, it is incumbent upon the state to move for an extension of the speedy trial period based upon exceptional circumstances.

Since Respondent was arrested in Texas on Florida charges, Rule 3.191(a)(1) applies. 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 had notice. The Respondent made himself available for trial throughout the one hundred and eighty day period of time, cooperated fully, and did nothing to thwart state's efforts to return him to Florida to face the charges against him. Under these facts, Respondent's discharge is warranted.

CONCLUSION

Based upon the arguments and authorities presented herein, Respondent respectfully prays that this Honorable Court affirm the decision of the District Court of Appeal of the State of Florida, Fifth District.

Respectfully submitted,

JAMES B. GIBSON
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CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that a true and correct copy of the foregoing has been hand delivered to the Honorable Jim Smith, Attorney General, in his basket at the Fifth District Court of Appeal, and mailed to Mr. Thomas Jefferson Wilson, 6523 Hillside Avenue North, Seminole, Florida 33542, this 22nd day of January, 1986.



CHRISTOPHER S. QUARLES
ASSISTANT PUBLIC DEFENDER