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No Request Case

IN THE SUPREME COURT
STATE OF FLORIDA

FEB 21 1967

CLERK, SUPREME COURT
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STATE OF FLORIDA,
Petitioner,

v.

CASE NO. 67,399

THOMAS JEFFERSON WILSON,
Respondent.

_____ /

PETITIONER'S REPLY BRIEF
ON THE MERITS

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POINT ON APPEAL

IN REPLY TO RESPONDENT'S ASSERTION THAT
HE IS ENTITLED TO DISCHARGE UNDER THE
FLORIDA SPEEDY TRIAL RULE.

ARGUMENT

Respondent first asserts that he is entitled to discharge because "Osceola County" was notified of his arrest in Texas and had actual knowledge that respondent was returned to Florida. Although he suggests that the record on appeal and opinion of the District Court of Appeal is clear in this respect, a review of the record and the opinion, below, demonstrates that the alleged clarity is quite unclear. There is nothing in the record demonstrating awareness by "Osceola County" of the nature of the charges which were actually filed against respondent by Texas officials or when respondent was returned to Florida. Deputy Chuck Arnold filled out a report indicating that he had been advised by Texas authorities that respondent had been found in possession of the victim's stolen car, but there is no mention of an arrest (R 59-60). In fact, it appears that Arnold checked the box indicating "complaint", rather than the "arrest report" box, on the report (R 59). Notably, respondent points to no part of the record or lower court opinion supporting his "knowledge" argument. Likewise, there is nothing in the record to indicate that respondent was "forced to wait" (Answer brief of respondent, p.4), for extradition by Florida officials.

The issue in this appeal is the applicability of Florida Rule of Criminal Procedure 3.191(b)(1), to fugitives who are

incarcerated or held outside of the State of Florida on the basis of Florida charges and charges in the foreign jurisdiction. Although respondent asserts that the district court of appeal in Hawkins v. State, 451 So.2d 903 (Fla. 1st DCA 1984), review denied, 459 So.2d 1040 (Fla. 1984), "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" (Answer brief of respondent, p.3); this only represents half of the holding. The crucial point in Hawkins, was that persons who commit crimes in Florida and then leave Florida, when apprehended, incarcerated, and held in another jurisdiction solely on the basis of the Florida charges, must look to the provisions of Florida Rule of Criminal Procedure 3.191(b)(1), for their speedy trial rights (Id., at 905). The Hawkins rationale should, likewise, be applied to fugitives incarcerated in foreign jurisdictions on charges pending in Florida and the foreign jurisdiction.

Under Rule 3.191(b)(1), a fugitive incarcerated outside the jurisdiction of Florida is not entitled to the benefits of the Florida Speedy Trial Rule until he returns or is returned to the jurisdiction of the court within which the Florida charge is pending and files written notice of his return with that court and serves said notice upon the prosecutor. "[A] defendant is incarcerated when he is confined in a governmental institution and his liberty is circumscribed to the extent that he is not free to leave without official permission." Sims v. State, 369 So.2d 431, n.2. (Fla. 2d DCA 1979). See also, section

907.041(1), Florida Statute (1983), providing for pretrial release from post arrest and pretrial detention as a method of reducing the costs for incarceration of persons with pending charges who are not considered a danger to the community. Only upon compliance with the notice requirements of Rule 3.191(b)(1), do the time periods in Florida Rule of Criminal Procedure 3.191(a)(1), begin.

Petitioner, in its initial brief on the merits, erroneously asserted that speedy trial, for Rule 3.191(b)(1) purposes, would begin upon execution of the arrest warrant on June 6, 1984. (Initial brief of petitioner, p.8). Actually, the fact of an arrest is irrelevant under Rule 3.191(b)(1). Nevertheless, should this court determine that Rule 3.191(a)(1) is applicable, the only clear evidence of when the respondent was taken into custody for Rule 3.191(a)(4) purposes was when respondent was arrested on June 6, 1984, on the Osceola County warrant.

It is not clear from the record upon which charges respondent was arrested and incarcerated in Texas. This also demonstrates the problems of dealing with persons who commit crimes in Florida and are located in other jurisdictions and that the rationale of the court in Hawkins and the dissent in Wilson v. State, 471 So.2d 96 (Fla. 5th DCA 1985), in applying Rule 3.191(b)(1), is the most reasonable approach to the instant appeal. Our rules of criminal procedure were designed to be interpreted to secure simplicity in procedure. Fla. R. Crim. P. 3.020 (1983).

Respondent's reliance on State v. Dukes, 443 So.2d 471 (Fla.

5th DCA 1984) and Perkins v. State, 457 So.2d 1053 (Fla. 1st DCA 1984) is misplaced. Both cases involved defendants who were in jail only in Florida and were subsequently arrested on Florida charges. The provisions of Rule 3.191(a)(1) were fully applicable to those cases.

Reliance on State v. Bivona, 460 So.2d 469 (Fla. 4th DCA 1984) review granted, State v. Bivona, No. 66,435 (Fla. 1985) is also misplaced since, for purposes of Rule 3.191(b)(1), an arrest and, as a result, any cooperation stemming therefrom is irrelevant. Contrary to the assertion of the district court of appeal in Bivona, a ruling that persons incarcerated outside of Florida on Florida charges must look to Rule 3.191(b)(1) for their speedy trial rights will not render Rule 3.191(a)(4) meaningless. Persons who remained within the jurisdiction of Florida and were arrested for their crimes will still be subject to its provisions. The application of Rule 3.191(b)(1), in the instant case and in Hawkins will cause that class of persons incarcerated outside of the jurisdiction of Florida to be treated equally and contribute to the simplicity in procedure and fairness in administration that our rules of criminal procedure were designed to provide. See, Fla. R. Crim. P. 3.020 (1983).

A defendant's constitutional right to speedy trial remains undisturbed. Barker v. Wingo, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d. 101 (1972).

CONCLUSION

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

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing Petitioner's Reply Brief on the Merits has been furnished by mail to Christopher S. Quarles, Assistant Public Defender, 112 Orange Avenue, Suite A, Daytona Beach, Florida 32014, counsel for the respondent, this 11 day of February, 1986.

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