IN THE SUPREME COURT OF THE STATE OF FLORIDA

DANIEL SPARKMAN,
APPELLANT,

V.

CASE NO. BE-92

THE HON. CHARLES McCLURE, JR.
AS COUNTY JUDGE OF THE COUNTY
COURT, IN AND FOR LEON COUNTY,
APPELLEE,

REPLY BRIEF OF APPELLANT

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SUMMARY OF ARGUMENT

The 90 day speedy trial period begins when the order denying discharge is first given, pronounced or announced, and a memorial of such ruling appears in the record.

Appellee's remarks concerning Appellant are either irrelevant or describe some action which does not toll the speedy trial time.

POINT I

WHETHER THE TIME FOR COMMENCEMENT OF TRIAL IS MEASURED FROM THE POINT WHEN THE ORDER IS ANNOUNCED IN OPEN COURT OR THE DATE WHEN THE WRITTEN ORDER IS ENTERED, AFTER A DENIAL BY A COURT OF A MOTION TO DISCHARGE PURSUANT TO FLA. R. CRIM. P. 3.191(d)(3)

Appellee is correct that discretionary review does not require acceptance of said case by this Court. However, the Court could accomplish a great deal of good and clarify the Rules of Criminal Procedure by hearing and ruling upon this case, for the manner in which the trial court judge has handled the matter has cast the integrity of the rule itself into question.

The clear fact from the record is that the trial court judge ruled on Appellant's motion in open court over 90 days before the case came to trial. The Clerk of the lower court recorded this ruling, as did a Court reporter, into the official records kept by the court. At the point 90 days after this oral ruling, no discovery was underway, no written or recorded order extending the period for speedy trial had been entered by the trial court, as required by Fla. R. Crim. P. 3.191(d)(2), and Appellant's Motion for Discharge was timely served under the provisions of Fla. R. Crim. P. 3.191(d)(3), if one accepts the fact that the trial court's oral ruling of July 30, 1984, triggered the 90 day speedy trial period averred to in Fla. R. Crim. P. 3.191(d)(3), whcih of course is the issue at hand.

Appellee has yet to produce any authority to challenge Appellant's position except two note cases grounded in the ruling found in State v. Wells. 326 So.2d 175 (Fla., 1976). This ruling is: "No order or judgment of a trial court is appealable until reduced to writing and filed with the trial court clerk." State v. Wells. 326 So.2d 175, at 176 (Fla., 1976), rehearing denied.

The appealability of Judge McClure's ruling is not the issue in this case: the issue is whether this trial court judge's oral ruling, which was recorded into the court's official records, began the running of the speedy trial period described in Fla. R. Crim. P. 3.191(d)(3). Thus the State's reliance on the cases it cites is error, since that ruling does not respond to the question before this Court.

A case more responsive to the true issue in this matter is Briseno v. Perry. 417 So.2d 813 (Fla. 5th DCA. 1982). In that case, a trial court judge orally ruled in favor of a motion to extend the speedy trial period, shortly before it had run. Written order was entered after both the running of the speedy trial period and the accused's timely motion for discharge. The issue in the case was whether the judge's oral ruling extending the speedy trial period had any effect when written order was entered following a timely Motion for Discharge. The District Court of Appeal of Florida, Fifth District, held:

> . . . a judgment or order is rendered and is valid and binding when it is orally given, pronounced or announced, although the only competent evidence of that judicial act is a memorial or record in the form of a later written and signed order or judgment.

Briseno v. Perry, 417 So.2d 813, (Fla. 5th DCA 1982), at 813-814. The court thus found the oral order of a trial court rather than the written order, determinative of speedy trial period closing date, which led to a finding that the speedy trial period had been validly extended by oral order. The court denied the writ at that time.

As to the advisability of oral orders initiating speedy trial periods, Appellant sees no great public interest arguements against his position. The obvious intent of a speedy trial rule like Fla. R. Crim. P. 3.191 (d)(3) is to speed trial. Allowing a judge the latitude of nearly half the speedy trial period from his previous oral ruling to enter a written order repeating what he had previously ruled is unreasonable. To begin with, oral orders are not preferred of a trial court; they should be reduced to writing as soon as possible. Jamason v. State, 455 So.2d 380 (Fla., 1984), at 381. Appellant was bound by the trial court judge's oral ruling. Ibid. Both the State and Appellant were bound by the same ruling, according to Fla. R. Crim. P. 3.191 (c). Therefore, except for exceptional circumstances, the trial cannot be delayed. Ibid.

Having disposed of the principal question, above, Appellant would like to respond to some statements contained in Appellee's "Statement of the Case and Facts." As to the alleged non-appearances by Appellant at trial, Appellant submits that the July 27, 1984, non-appearance is irrelevant to issue at hand, since the time for speedy trial to run had not begun to run as Appellant's motion had not been denied at that time. The August 24, 1984, non-appearance is even easier to explain.

There is no explanation on Appellant's official Notice as to what this hearing was about. At the particular date of this appearance, Appellant had two pre-trial motions in front of the court which had been there for several months. One of these motions was heard three weeks before this appearance date, the other had been scheduled to be heard at the same date three weeks prior to this alleged missed trial date, but only finally was heard over one month after this alleged missed appearance date. It seems highly unlikely to Appellant, just as it did then, that trial was meant to be held on August 24, 1984. Appellant's pay records indicate that he worked the date of this appearance, and Appellant knows that the trial court was fully apprised of Appellant's work address and telephone number. Appellant worked within three blocks of the court at issue.

Appellant filed only one motion during the 90 day period he has described above. In that other previously filed motions remained unruled upon during the period when the motion filed during this period was filed and ruled upon, this motion did not delay the court. All other motions were filed before or after the speedy trial period previously deliniated, and so they are irrelevant to the issue at hand.

As to Appellant's belated discovery motions, they were not being pursued at the expiration of the period during which speedy trial was taking place, so they do not divest appellant from his right to discharge. Henshaw v. State, 390 So.2d 793 (Fla. 3rd DCA, 1980), at 795. Appellant was always available for trial. He took the case as he found it from prior counsel with the Public Defender's office. The state managed to persuade the trial court judge to ex-

clude most of the additions Appellant sought to have included. It can hardly claim prejudice from what was admitted. Appellant was always ready and available for trial.

As to the State's assertion that Prohibition is an inappropriate writ in this instance, Appellant would remind the Court that the lower tribunal was without jurisdiction once the 90 day period had run. Prohibition is an entirely adequate remedy in a speedy trial situation. Sherrod v. Franza, 427 So.2d 161 (Fla., 1983), rehearing denied. Prohibition is also a proper remedy where a court is acting without jurisdiction or in excess of jurisdiction. Harrison v. Murphy, 181 So. 386, 132 Fla. 579, (Fla.. 1938). The trial court was acting without jurisdiction in a speedy trial situation. Thus prohibition is clearly indicated in this case. Appellant asks for no relief ungrantable under the pending appeal: this appeal in prohibition is both valid and will save the Court much time in poring through a long and detailed record.

CONCLUSION

The certified question should be answered, as the answer will affect the Rules of Court. The answer should indicate that the time for trial mentioned in Fla. R. Crim. P. 3.191(d)(3) begins when the trial court judge rules upon it in open court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Reply Brief of Appellant has been forwarded to Mark C. Menser, Department of Legal Affairs, the Capitol, Tallahassee, FL , this 12th day of February, 1986, by hand delivery.

Daniel H. Sparkman

Daniel H. Sparkman, Pro Se