IN THE SUPREME COURT OF FLORIDA

ROBERT STEPHEN WALLACE,
a/k/a STEPHEN B. WALLACE,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

CASE NO.: 68,100

APPEAL FROM THE DISTRICT COURT
OF APPEAL, FIFTH DISTRICT

INITIAL BRIEF OF PETITIONER

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PRELIMINARY STATEMENT

The Petitioner, ROBERT STEPHEN WALLACE, was the appellant, and the Respondent, State of Florida, was the appellee in the appeal heard before the District Court of Appeal, Fifth District, of the State of Florida.

In the brief, the parties will be referred to as "Petitioner" and "Respondent". Petitioners exhibits will be appropriately noted and incorporated within the brief.

STATEMENT OF THE CASE AND OF THE FACTS

1. Petitioner was charged with burglary (one count), grand theft (three counts), and dealing in stolen property (one count) in case number 83-3603-BB. See Petitioner's Exhibit 1, attached and incorporated herein by reference.

2. In appearing before the Circuit Court of Volusia County, Seventh Judicial Circuit, on the above charges, Petitioner pled guilty to one count of burglary, and two counts of grand theft.

3. As a result of his pleas, Petitioner was sentenced on April 27, 1984, to three years on each count, all three to run concurrently. See Petitioner's Exhibit 2, attached and incorporated herein by reference.

4. The Circuit Court originally awarded Petitioner one hundred eighty-seven (187) days of jail time credit on the first count for which he was sentenced, but did not allow credit on the two remaining concurrent sentences for grand theft. See Petitioner's Exhibit 2, pages 3 through 5.

5. Petitioner filed a pro se motion requesting the court to correct the amount of time awarded and to allow such credit to be awarded on each concurrent sentence. See Petitioner's Exhibit 3, attached and incorporated herein by reference.

6. The Honorable C. McFerrin Smith, Circuit Judge, granted Petitioner's motion to correct the amount of days credited from one hundred eighty-seven (187) to one hundred ninety-eight (198)

days, but denied the motion on the question of jail time credits on each concurrent sentence. See Petitioner's Exhibit 4, attached and incorporated herein by reference.

7. Florida Institutional Legal Services, Inc. filed a Motion for Rehearing on Petitioners behalf dated January 15, 1985. See Petitioner's Exhibit 5, attached and incorporated herein by reference.

8. A hearing was held on Petitioner's Motion for Rehearing on July 15, 1985.

9. As a result, Petitioner's Motion for Rehearing was denied in an order dated August 15, 1985. See Petitioner's Exhibit 6, attached and incororated herein.

10. Notice of Appeal was filed in Petitioners behalf on September 4, 1985.

11. The decision of the circuit court in denying the concurrent jail time credits was per curiam affirmed in an Order dated September 26, 1985. See Petitioner's Exhibit 7, attached and incorporated herein by reference. Wallace v. State, 478 So.2d 1092 (Fla. 5th DCA 1985).

12. Petitioner filed a Motion for Rehearing in the Fifth District Court of Appeal on September 30, 1985.

13. Petitioner's Motion for Rehearing was denied in an Order dated December 12, 1985. However, the District Court of Appeal, Fifth District of Florida, recognized the split of authority among the District Courts of Appeal and certified the

following question to this Honorable Court as a matter of great public importance:

> IN CREDITING JAIL TIME SERVED ON CONCURRENT SENTENCES, MUST TIME SERVED BE APPLIED IN FULL TO EACH CONCURRENT SENTENCE?

See Petitioner's Exhibit 8, attached and incorporated herein by reference. Wallace v. State, 478 So.2d 1092 (Fla. 5th DCA 1985).

SUMMARY OF ARGUMENT

The right to credit for pre-sentence jail time under Section 921.161(1) Fla. Stat. (1985) constitutes a protected liberty interest as evidenced by the legislative intent under which this statute was amended in 1973. Said amendment made it mandatory, as opposed to discretionary, that credit for all jail time incurred while awaiting trial and conviction be applied in full to a sentence of imprisonment.

This legislative intent is contravened by the imposition of multiple concurrent sentences in which only one sentence reflects the credit for time served prior to trial. Such practice effectively negates the spirit of justice under which Section 921.161(1) Fla. Stat. (1985) was promulgated.

Under the guidance of this legislative intent, Petitioner asserts, as a matter of fundamental statutory construction, that this section of Florida law be construed strictly in favor of the person to whom criminal sanctions are to be applied. Ferguson v. State, 377 So.2d 709 (Fla. 1979).

Further, rejecting Respondent's interpretation of this statute would be consistent with another fundamental rule of statutory construction which states that: "Construction of a statute which would lead to an unreasonable result or would render a statute purposeless should be avoided." State v. Webb, 398 So.2d 820 (Fla. 1981). Such is the result when mandatory jail time credits are negated by the sentencing court through the

imposition of concurrent sentences wherein only one sentence reflects credit for time served.

ARGUMENT

IN CREDITING JAIL TIME SERVED ON CONCURRENT SENTENCES, TIME SERVED MUST BE APPLIED IN FULL TO EACH CONCURRENT SENTENCE.

The First, Second and Fourth District Courts of Appeal require that credit for jail time served must be applied in full to each concurrent sentence, Vasquez v. State, ____ So.2d ____, 10 F.L.W. 2363 (Fla. 1st DCA 1985) (Opinion filed October 17, 1985), Mott v. State, 458 So.2d 1206 (Fla. 1st DCA 1984), Martin v. State, 452 So.2d 938 (Fla. 2nd DCA 1984); Blackwell v. State, 449 So.2d 1296 (Fla. 2nd DCA 1984), and Daniels v. State, ____ So.2d _____, 10 F.L.W. 1443 (Fla. 4th DCA 1985) (Opinion filed June 12, 1985) [Supreme Court of Florida review granted in an Order dated November 20, 1985, Case No. 67,357].

The Third and Fifth District Courts of Appeal have no such requirement. Hopkins v. State, 463 So.2d 521 (Fla. 3rd DCA 1985), Shepard v. State, 459 So.2d 460 (Fla. 3rd DCA 1984), Green v. State, 450 So.2d 1275 (Fla. 5th DCA 1984), and Amlotte v. State, 453 So.2d 249 (Fla. 5th DCA 1983), affirmed on other grounds , 456 So.2d 448 (Fla. 1984).

Traditionally, it has long been recognized that, absent an applicable statute, a defendant does not have a fundamental right to credit for time spent incarcerated prior to trial and sentence. Miles v. State, 214 So.2d 101 (Fla. 2nd DCA 1968).

However, if express statutory provisions exist, this Honorable Court has held that defendants are entitled to credit for such pre-trial custody. Baker v. Wainwright, 327 So.2d 8 (Fla. 1976).

Section 921.161(1) Fla. Stat. (1985) provides that:

> A sentence of imprisonment shall not begin to run before the date it is imposed, but the court imposing a sentence shall allow a defendant credit for all of the time he spent in the county jail before sentence. The credit must be for a specific period of time and shall be provided for in the sentence.

While it is now mandatory under Section 921.161 Fla. Stat. (1985) that "jail time" be credited towards an ultimate sentence, it is at least equally true in Florida's Third and Fifth District Courts of Appeal, that such credit can be negated by the imposition of concurrent sentences. Hopkins v. State, supra, and Amlotte v. State, supra.

The Florida Legislature revised Section 921.161 Fla. Stat. (1985) in 1973 for the specific purpose of requiring that pre-sentence incarceration be credited towards the sentence imposed. Prior to this, such credit was available only at the discretion of the trial judge. The legislative intent behind this change came as a result of the recognition that the backlog in our state courts had resulted in many defendants enduring long periods of incarceration while awaiting trial.

A House Committee on Criminal Justice Memorandum on House Bill 693 (proposed revision of §921.161 Fla. Stat. (1973), dated

May 1, 1973) noted various problems under the old version of this statute:

> Staff is of the opinion that this bill would do much to further justice in our criminal justice system. Because of the backlog in our courts, many defendants spend months awaiting trial and then additional time awaiting sentence after conviction.
>
> To sentence an offender and not give credit for any prior time spent awaiting trial and/or sentencing seems to be doubly punitive. Though present statute allows credit to be given, staff is of the opinion that credit should be mandatorily given.

(Petitioner's Exhibit 9)

"It is a fundamental rule of statutory construction that legislative intent is the polestar by which a court must be guided, and this intent must be given effect . . ." Webb v. State, supra, at 824.

Clearly, it is the legislature's intent that a defendant actually receive credit for the time he spends in jail. Such an intent is in parallel accord with the constitutional requirements enunciated in North Carolina v. Pearce, 395 U.S. 711, 89 S.Ct. 2072, 23 L.Ed.2d 656 (1969), wherein the Supreme Court of the United States held that the constitutional prohibition against double jeopardy required that ". . . punishment already exacted must be fully 'credited' in imposing sentence. . .". Id. at 2076.

Under the auspices of this constitutional guaranty, North Carolina v. Pearce, supra, requires that one reconvicted after

retrial be credited for all the time he had already served on his original sentence. In this way, the time originally served as a result of the illegal conviction is "returned" to him via the credit on his next sentence. Under this same reasoning, the time spent in jail after arrest but before sentencing must be "returned" to a defendant, who is ultimately found guilty and sentenced, by crediting him with that time against the sentence imposed. Such an interpretation would be consistent with a fundamental rule of statutory construction promulgated by this Honorable Court "that criminal statutues are to be construed strictly in favor of the person against whom a penalty is to be imposed." Ferguson v. State, supra, at 711; See also, Reino v. State, 352 So.2d 853 (Fla. 1977).

This same reasoning has resulted in a majority of Florida's District Courts of Appeal reaching the logical conclusion that credit for time served must be given on concurrent sentences. See, Vasquez v. State, supra; Martin v. State, supra, and Daniels v. State, supra.

In Jenkins v. Wainwright, 285 So.2d 5 (Fla. 1973), this Honorable Court was confronted by a prisoner's claim that he was entitled to credit for jail time served on concurrent sentences. Like the facts of Petitioner's case, the trial court in Jenkins had granted credit on one sentence, but had failed to do so on the other. While more of an ambiguity in sentencing as opposed to an order, this Honorable court interpreted this silence to

require that the prisoner be given credit on each concurrent sentence. The rationale appears to be grounded on a realization that failure to grant equal credit on concurrent sentences results in an effective denial of any credit whatsoever. Such reasoning appears sound since a contrary holding would have required the defendant to serve the longer sentence, computed without credit for time served, even after the shorter sentence with credit had expired. As was so aptly noted by Justice Ervin:

> To conclude [that] the sentencing judge only intended to grant Petitioner credit time on the first concurrent sentence and not on the other would necessarily result in Petitioner serving the longer sentence on Count II and in not having the benefit of the credit time granted by the trial court. To adopt the interpretation of the Respondent would be tantamount to granting the Petitioner credit time and then taking it away, in short a meaningless act, resulting in no credit time whatsoever. We are not persuaded by such an absence of logic.

Id. at 6.

The reasoning employed by this Honorable Court in interpreting the intent of the trial judge in Jenkins v. Wainwright, supra, should likewise be employed in interpreting the intent of the Florida Legislature under Section 921.161(1) Fla. Stat. (1985), since the legislative committee was "of the opinion that credit should be mandatorily given", (Petitioner's Exhibit 9, at page 2). Further, "construction of a statute which would lead to an absurd or unreasonable result or would render a statute purposeless should be avoided". Webb v. State, supra at

824. This is exactly what occurs when jail time credits are not applied to all concurrent sentences, as in the instant case.

The "shorter of two concurrent sentences is naturally subsumed within the longer". Baughan v. Wainwright, 476 So.2d 792, 793 (Fla. 1st DCA 1985). Thus awarding full credit for time actually served in confinement obviously reaches the fairest result. To allow the state to deny credit in this context is to allow it to exact more than the specified penalty which the legislature has enacted.

CONCLUSION

Petitioner prays this Honorable Court to reverse the decision of the Fifth District Court of Appeal denying him full jail time credit on each of his concurrent sentences.

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