

IN THE SUPREME COURT OF FLORIDA

ed7

STATE OF FLORIDA
FEB 22 1988
CLERK, SUPREME COURT
By [Signature]
Chief Deputy Clerk

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

Petitioner,

vs.

CASE NO. 68,100

STATE OF FLORIDA,

Respondent.

RESPONDENT'S BRIEF ON THE MERITS

JIM SMITH
ATTORNEY GENERAL

ELLEN D. PHILLIPS
ASSISTANT ATTORNEY GENERAL
125 N. Ridgewood Avenue
Fourth Floor
Daytona Beach, Florida 32014
(904) 252-2005

COUNSEL FOR RESPONDENT

TOPICAL INDEX

	<u>PAGE(S)</u>
<u>AUTHORITIES CITED</u> -----	ii
<u>STATEMENT OF THE CASE AND FACTS</u> -----	1
<u>SUMMARY OF ARGUMENT</u> -----	2
<u>ARGUMENT</u>	
<u>QUESTION CERTIFIED: IN CREDITING JAIL TIME SERVED ON CONCURRENT SENTENCES, MUST TIME SERVED BE APPLIED IN FULL TO EACH CONCURRENT SENTENCE?</u> -----	3-4
<u>CONCLUSION</u> -----	5
<u>CERTIFICATE OF SERVICE</u> -----	5

AUTHORITIES CITED

CASES

PAGE(S)

Kronz v. State,
462 So.2d 450 (Fla. 1985) 4

Kurlin v. State,
302 So.2d 147 (Fla. 1st DCA 1974) 4

OTHER AUTHORITIES CITED

§ 921.161(1) Fla. Stat. (1969) 3

§ 921.161(1) Fla. Stat. (1973) 4

§ 921.16 Fla. Stat. (1979) 3

STATEMENT OF THE CASE AND FACTS

Respondent accepts the Statement of the Case and Facts presented by petitioner.

SUMMARY OF ARGUMENT

Unless specifically required by statute or governing constitutional principles, the decision to allow pre-sentence jail time is discretionary with the trial judge. Nothing in section 921.161, Florida Statutes (1983), mandates that credit be given on multiple counts, thus the application of credit remains within the court's discretion, as long as credit is awarded.

ARGUMENT

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

As noted by petitioner, nothing in Florida or federal constitutional law requires that a defendant be given credit on his sentence for any time spent in jail awaiting disposition of his case.¹ There is no reason to assume that by amending section 921.161(1), Florida Statutes (1969), the legislature intended to require shorter sentences where concurrent sentences for multiple charges are involved. In some cases, for example consecutive sentences will be presumed for multiple charges, unless the trial court specifies otherwise, see, section 921.16, Florida Statutes, (1979); in all cases consecutive sentences are permissible. When the state files charges against a defendant, it is basically immaterial whether that defendant is already incarcerated, out on bond, or free of other charges entirely. His location does not affect the number or seriousness of the state's charges, or the possible penalties. Assuming two defendants are charged with theft and sentenced to one year for that charge, the defendant who happened to be in jail on another charge at the time of arrest should not be released from the new theft charge any

¹ With the exception, however, that detaining a defendant because of his indigency cannot result in his serving time in excess of the statutory maximum. See, *Cooper v. State*, 379 So.2d 199 (Fla. 5th DCA 1980); *Gelis v. State*, 287 So.2d 368 (Fla. 2d DCA 1973) [receding from *Miles v. State*, 214 So.2d 101 (Fla. 2d DCA 1968)]. Petitioner's comment regarding the state exacting more than the legislative maximum is therefore not quite correct. (Brief of Petitioner, p. 12).

sooner than a previously free defendant. Crimes are not cheaper by the dozen. The state is entitled to exact two full penalties for two crimes.

Nothing in section 921.161(1)(1973) requires a different result. Credit must be given for county jail time on a particular charge; the statute, being in contravention of common law, should not be read to mandate more credit than it says. See, Kronz v. State, 462 So.2d 450 (Fla. 1985); accord, Kurlin v. State, 302 So.2d 147 (Fla. 1st DCA 1974). Any further award or allocation of credit is discretionary with the trial judge. Accord, Kronz.

CONCLUSION

The certified question should be answered in the negative,
and the cause affirmed.

Respectfully submitted,

JIM SMITH
ATTORNEY GENERAL

Ellen D. Phillips

ELLEN D. PHILLIPS
ASSISTANT ATTORNEY GENERAL
125 N. Ridgewood Avenue
Fourth Floor
Daytona Beach, Florida 32014
(904) 252-2005

COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above
and foregoing has been furnished by mail to the Florida
Institutional Legal Services, Inc., Richard A. Belz, 2614 S.W.
34th Street, Gainesville, Florida 32608, this 14TH day of
February, 1986.

Ellen D. Phillips

Of Counsel
Ellen D. Phillips