IN THE SUPREME COURT OF FLORIDA

CASE NO. 68,401

THE HONORABLE PHILLIP BLOOM

Petitioner,

vs.

CHARLES MCKNIGHT,

Respondent.

* *

ON CERTIFIED QUESTION

* *

BRIEF OF PETITIONER ON THE MERITS

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PREFACE

The Respondent, Charles McKnight, was the Petitioner in the District Court of Appeal and the defendant in the trial court. The Petitioner, The Honorable Phillip Bloom, was the Respondent in the District Court of Appeal and the trial judge, in the trial court. In this brief, the parties will be referred to as the Defendant and Judge Bloom, respectively. The opinion of the District Court of Appeal herein is reported at McKnight v. Bloom, 11 FLW 468 (Fla. 3d DCA February 18, 1986) and is contained in the Petitioner's Appendix attached hereto at A1-A2.

The following symbol is used in this brief:

(R) For the Record-on-Appeal transmitted by the Third District Court of Appeal consisting of pages R1-R79.

I

STATEMENT OF THE CASE

The Defendant was arrested in this cause on August 24, 1984 for robbery and on August 29, 1984 for theft. See, A1-A2; R2. On January 1, 1985, while these causes were pending, Rule 3.191(i)(4), Florida Rules of Criminal Procedure, became effective. See, The Florida Bar Re: Amendments to Rules of Criminal Procedure, 462 So.2d 386 (Fla. 1984). Rule 3.191(i)(4) substantially provides that a defendant shall be discharged upon a timely and proper motion and hearing and then only after the State has been afforded a ten (10) day period in which to bring him to trial. See, id.

On March 1, 1985, the Defendant filed a motion for discharge claiming that under the former Rule 3.191, Florida Rules of Criminal Procedure (1984), he was entitled to immediate discharge because 184 days had elapsed since his arrest. See, R19-R22. On March 5, 1985, after hearing extensive argument, Judge Bloom denied the motion for discharge upon the ground that the present causes were governed by the present provisions of Rule 3.191(i)(4), opining thus:

> "[By the Court]: Well, I'm going to deny your motion to discharge and I'm doing that for the following reasons: Number one, the new Supreme Court Rule, Rule 3.191 in subdivision A1 states, a person charged with the

crime is entitled to the benefits of this rule, whether such person is in custody, in a jail or correctional institution of this State or a political subdivision or is at liberty, et cetera, et cetera. This section shall cease to apply whenever a person files a demand for speedy trial, but I think that rule indicates it's to apply to all proceedings.

"In addition, the material handed to me relating to -- I can't tell from where it appears, I guess it's from the Florida Law Weekly.

MS. WARD: It's Volume 9, Florida Law Weekly.

"THE COURT: Volume 9, number 48, I guess, it's Florida Law Weekly and this language to me is pretty strong. It says by Justice Atkins, it says the following amendment or additions to the Florida Rules of Civil Procedure are hereby adopted and shall govern all proceedings within their scope after 12:01 a.m. January 1, 1985.

"Now, I read that differently from the way you do, Ms. Ward. It seems to me that says that these amendments govern all proceedings after January 1, 1985. Well, we're in a proceeding now. It doesn't say new proceedings and it doesn't necessarily say old proceedings. It says all proceedings. So I read that language by Justice Atkins to mean that that new rule shall apply to all proceedings after January 1, 1985, and it does not mean those proceedings just commenced and new or where arrests have taken place. As a matter of fact, I don't even know if an arrest is a proceeding, so I think it applies to all proceedings after January 1, 1985, and we're in a proceeding, so I believe that the rule applies to this Court and these proceedings as well.

"In addition, I'm sort of persuaded by what Mr. Musto has said that about the Third District Court. Even though it was

> not a speedy trial case as you pointed out, never the less, this case seems to be on point. Rights were accrued and the rules were changed and those rights were taken away. Granted, they were not speedy trial rights or constitutional rights, but they were never the less rights; and, finally, I do understand that there is a distinction between substantive and procedural speedy trial rights and my belief is that Rule 3.191 is a procedural right to speedy trial, not a substantive right, so, therefore, I am going to treat your Motion for Discharge under the new rule and, therefore, I have had a hearing on it. I made a ruling on it within five days and, therefore, I'm going to order a trial within the next ten days."
>
> R46-R48.

Subsequently, the Defendant agreed to continue this cause in order to seek review of the trial court's order through a petition for prohibition in the Third District Court of Appeal.

On or about May 31, 1985, the Defendant filed his Petition for a Writ of Prohibition, seeking to prevent his trial in this cause upon the ground that he should be discharged under the provisions of former Rule 3.191. See, R1-R8. On or about July 22, 1985, at the request of the District Court, Judge Bloom submitted his response to the petition. R62-R69. On February 18, 1986, the District Court agreed that the Defendant should be discharged but certified the question as to the application of the present Rule 3.191, to wit:

> "Based on the authority of State v. Green, 473 So.2d 823 (Fla. 2d DCA 1985), we grant the petition for a writ of prohibition filed by the petitioner, defendant below, Charles McKnight, on the basis that the said petitioner has been denied his right to a speedy trial below and is entitled to discharge under Fla. R.Crim.P. 3.191(a)(1) which was in effect at the time of his arrest (August 24 and 29, 1984). We specifically hold, as did the Second District in Green, that Fla.R. Crim.P. 3.191(i)(4) (effective after 12:01 A.M., January 1, 1985) -- giving the state a so-called 10-day grace period to bring a defendant to trial after a speedy trial violation has been found -- has no application to cases where the arrest, as here, took place prior to the effective date of the amendment. The fact that the hearing on the motion for discharge took place after the effective date of the above amendment does not change this result.
>
> Should the respondent seek further review of this cause, we certify, pursuant to Article V, Section 3(b)(4) of the Florida Constitution, that this decision passes on a question of great public importance, to wit: whether Fla.R.Crim.P. 3.191(i)(4) is applicable to a criminal case wherein the defendant is taken into custody prior to January 1, 1985, 12:01 A.M., the effective date of the above-stated rule."
>
> R78-R79.

The present proceeding follows pursuant to a timely Notice of Intent to seek further review. The District Court has also stayed its mandate pending review by this Court. See, A3.

II

QUESTION PRESENTED

WHETHER RULE 3.191(i)(4), FLORIDA RULES OF CRIMINAL PROCEDURE (1985), IS APPLICABLE TO PROHIBIT THE AUTOMATIC DISCHARGE OF A DEFENDANT, WHERE THE DEFENDANT WAS ARRESTED PRIOR TO THE EFFECTIVE DATE OF SAID RULE.

III

SUMMARY OF ARGUMENT

Rule 3.191(i)(4), Florida Rules of Criminal Procedure (1985), as a rule of procedure applies to all pending cases.

IV

ARGUMENT

RULE 3.191(i)(4), FLORIDA RULES OF CRIMINAL PROCEDURE (1985), IS APPLICABLE TO PROHIBIT ANY AUTOMATIC DISCHARGE OF THE DEFENDANT NOTWITHSTANDING THAT THE DEFENDANT WAS TAKEN INTO CUSTODY PRIOR TO THE EFFECTIVE DATE OF SAID RULE.

The central issue in the Defendant's present petition is whether the ten-day "grace" period under Rule 3.191(i)(4), which became effective on January 1, 1985, applies to pending cases, such as that presently before the Court. It is, of course, well settled that substantive remedies apply prospectively only and procedural rules apply to all pending matters. See, e.g., Dobbert v. Florida, 432 U.S.282, 97 S.Ct. 2290, 53 L.Ed.2d 344 (1977); State v. Jackson, 478 So.2d 1054 (Fla. 1985); Rubin v. State, 390 So.2d 322 (Fla. 1980); Warwick v. State, 443 So.2d 188 (Fla. 3d DCA 1983); Batch v. State, 405 So.2d 302 (Fla. 4th DCA 1981); Johnson v. State, 371 So.2d 556 (Fla. 2d DCA 1979); see also Senfield v. Bank of Nova Scotia Trust Co., 450 So.2d 1157 (Fla. 3d DCA 1984).

A statutory speedy trial rule is solely a rule of procedure rather than a substantive constitutional right. See, Blackstock v. Newman, 461 So.2d 1021 (Fla. 3d DCA 1985); cf, State v. Jenkins, 389 So.2d 971 (Fla. 1980). Thus, in Julian

v. Lee, 473 So.2d 736 (Fla. 5th DCA 1985), cited with approval, Obrien v. State, 478 So.2d 497 (5th DCA 1985)(en banc), the petitioner had claimed that the former juvenile speedy trial rule, Rule 8.180(a), Florida Rules of Juvenile Procedure (1984) required their discharge from dependency proceedings. The Julian court rejected the petitioners' claims upon an application of a new rule, Rule 8.720(f), effective January 1, 1985, which provides for a longer speedy trial period. The Court reasoned that since Rule 8.720(f) was a rule of procedure and it took effect before the motions for discharge were filed, it was applicable and controlled disposition of the causes:

> "Rules of court designed to implement constitutional or statutory speedy trial rights are rules of procedure which such rights are enforced in this state, and are a proper exercise of the Florida Supreme Court's constitutional power to promulgate rules of practice and procedure. State ex rel. Maines v. Baker, 254 So.2d 207 (Fla. 1971). See also Sherrod v. Franza, 427 So.2d 161 (Fla. 1983). In State v. Garcia, 229 So. 2d 236 (Fla. 1969) the court distinguished between substantive and procedural rules in this manner:
>
> > 'The rules adopted by the Supreme Court are limited to matters of procedure, for a rule cannot abrogate or modify substantive law. In some instances it is difficult to determine whether a rule relates to a matter that is substantive or a matter that is procedural....
> >
> > * * *
> >
> > 'Procedural law is sometimes referred to as "adjective law" or "law of remedy" or "remedial law" and has been described as the legal machinery by which substantive law has been defined as that part of the

> law which creates, defines, and regulates rights, or that part of the law which courts are established to administer.
>
> * * *
>
> "As related to criminal law and procedure, substantive law is that which declares what acts are crimes and prescribes the punishment therefor, while procedural law is that which provides or regulates the steps by which one who violates a criminal statute is punished. [Citation omitted].
>
> * * *
>
> "The rules of procedure in effect at the time of trial or other proceedings control the conduct of those proceedings. Kocsis v. State, 467 So.2d 384 (Fla. 5th DCA 1983). Because the rules in effect when the motions for discharge were filed provided for a 180-day "speedy trial" period in dependency proceedings, and because only 97 days and 96 days, respectively, had elapsed since D.L.J. and J.J. were taken into custody, the motions were properly denied."
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> 473 So.2d at 738, 739.

Similarly, in Kanter v. State, 265 So.2d 742 (Fla. 3d DCA 1972), the court rejected a claim that the retrospective application of the 1971 amendment to the speedy trial rule violation ex post facto law prohibitions. Accord, Patterson v. State, 277 So.2d 587, at 592 (Fla. 4th DCA 1973)(citing Kanter). Under Julian and the foregoing authority, the trial court's application of Rule 3.191(i)(4) to the instant motion for discharge, was therefore entirely correct.

The District Court's reliance upon State v. Green, 473 So. 2d 823 (Fla. 2d DCA 1985) and the Defendant's reliance in his

Petition upon the various decisions in Jackson v. Green, 402 So.2d 553 (Fla. 1st DCA 1981); Arnold v. State, 429 So. 2d 819 (Fla. 2d DCA 1983); Fulk v. State, 417 So.2d 1121 (Fla. 5th DCA 1982) and Holmes v. Leffler, 411 So.2d 889 (Fla. 5th DCA 1982) are misplaced. In Fulk, without any analysis, the Court cites Holmes for the proposition that procedural rules are only given prospective application unless otherwise specified. 417 So.2d at 1123, n1. Holmes in turn, without discussion or analysis, cites Jackson for the same proposition. 411 So.2d at 891-892. Green, Jackson and Arnold in turn, but again without discussion or analysis, cite Poyntz v. Reynolds, 37 Fla. 533, 19 So. 649 (1896) for such a rule.

In Poyntz, supra, the appellee had filed motions to dismiss, contending that three new appellate rules, Rules 12, 13, and 20 Fla.R.App.P. (1895), requiring the preparation of certain appellate documents in order to perfect an appeal, were not prepared by the appellants. 19 So. at 650-651. The appellees reasoned therefore that the cases should be dismissed as a sanction for failing to comply with the rules. See, id. In construing the 1895 appellate rules enacted by the Supreme Court, the Poyntz declined to apply two of its rules, Rules 12 and 13, to the pending case because the Court's enactment of Rules 12 and 13 did not say that it specifically applied to pending cases. On the other hand, the Poyntz court

applied Rule 20 to the cause, because the Court's enactment of Rule 20 said that it would be applied to all pending cases. In applying the meaning of the rules, which it drafted, the Poyntz court noted in its syllabus that:

> " The rules of practice for the government of the supreme court adopted at its June term, 1895, did not go into effector become operative until the 15th day of October, 1895, and do not apply to or affect any cause brought to the supreme court prior to that date, except in those instances and in those respects wherein said rules themselves in express terms provide for thier application to causes brought here prior to that date."
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> Id, at 649.

From the foregoing specific statements, which undoubtedly was made only as it applied to the 1895 appellate rules, the Green, Jackson and Arnold courts erroneously created a broad rule of statutory construction, blindly followed by the courts in Fulk, Holmes and the present District Court opinion. The "rule" thus created by Green, Arnold and Jackson flies into the face of sound constitutional and statutory construction as reflected in Julian above. If this "rule" is correct, then this Court's recent opinion in Jackson, applying the subsequent enactments in the sentencing guidelines approved by this Court to all pending cases, is incorrect. Similarly, the application of the death penalty rules of procedure in Dobbert v. Florida, is incorrect under state law as decided by Green, Arnold and Jackson. To the contrary, the settled notion that any statutory right to a speedy trial

is only a rule of procedure, Julian v. Lee, and the well settled doctrine that rules of procedure will be applied to pending cases, State v. Jackson, absolutely precludes the result of the "rule" in Green, Jackson and Arnold. Furthermore, the Court in Poyntz also never intended such a result. Even assuming the court in Poyntz intended such a rule in 1895, subsequent statutory and constitutional analysis has overruled it sub silentio. Therefore the present decision must be reversed.

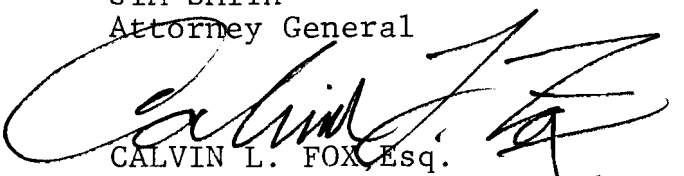
V

CONCLUSION

WHEREFORE, upon the foregoing, the Petitioner, the Honorable PHILLIP BLOOM, Judge of the Eleventh Judicial Circuit, prays that this Honorable Court will issue its judgement reversing the judgement of the Third District Court of Appeals.

RESPECTFULLY SUBMITTED, on this 31st day of March, 1986 at Miami, Florida.

JIM SMITH
Attorney General



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VI

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct copy of the foregoing Brief of Petitioner, was caused to be served by mail upon Karen Gotlieb, Assistant Public Defender, 1351 N.W. 12th Street, Miami, Florida, 33125, on the 31st day of March, 1986.

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Assistant Attorney General