IN THE SUPREME COURT OF FLORIDA

CASE NO. 68,849

THE STATE OF FLORIDA,

Petitioner,

vs.

ROBERT PARVIS,

Respondent.

* *

ON CERTIFIED QUESTION FROM THE
DISTRICT COURT OF APPEAL OF FLORIDA,
THIRD DISTRICT

* *

REPLY BRIEF OF PETITIONER ON THE MERITS

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TABLE OF CONTENTS

TABLE OF CITATIONS

TABLE OF CITATIONS
(Continued)

CASES — PAGE

OTHER AUTHORITY

I

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.

II

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 Defendant at page four and five of his answer brief contends that every district court, which has addressed the present issue, has applied the speedy trial rule in effect when a defendant was arrested, rather than any subsequent amendment or new rule. Then as anticipated in the State's initial brief, the Defendant cites the usual litany of: State v. Green, 473 So.2d 823 (Fla. 2d DCA 1985); Arnold v. State, 429 So.2d 819 (Fla. 2d DCA 1983); Fulk v. State, 417 So.2d 1121 (Fla. 5th DCA 1982); Holmes v. Leffler, 411 So.2d 889 (Fla. 5th DCA 1982), rev. den., 419 So.2d 1200 (Fla. 1982) and Jackson v. Green, 402 So.2d 553 (Fla. 1st DCA 1981). As reflected in the State's initial brief, each of these decisions without any discussion or analysis, either rely upon each other or cite Poyntz v. Reynolds, 37 Fla. 533, 19 So. 649 (1896), for such a conclusion.

The additional decisions cited by the Defendant in Keehn v. Evans, 11 FLW 1536 (Fla. 2d DCA July 9, 1986); LaPorte v.

Coe, 475 So.2d 732 (Fla. 2d DCA 1985); Hood v. State, 415 So. 2d 133 (Fla. 5th DCA) and State v. Freeman, 412 So.2d 452 (Fla. 5th DCA 1982) add nothing to this Court's present consideration [1]. In Keehn and LaPorte, without discussion or analysis the courts cite State v. Green as authority [2]. Similarly, in Hood and Freeman, without discussion or analysis, the courts cite Holmes as authority. As noted in the State's initial brief, Holmes cites Jackson as authority and Jackson and Green each cite Poyntz v. Reynolds. In sum, none of these courts has ever actually analyzed the issue and this Court has not been properly presented with this precise issue prior to

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1 Curiously, the Defendant also adds the present district court case as "authority" and McKnight v. Bloom, 11 FLW 468 (Fla. 3d DCA February 18, 1985), in which the district courts have certified the question for this Court's review.

2 At footnote "1" of his brief the Defendant complains that the State in Keehn conceded that the speedy trial rule prior to 1985 was the effective rule for the court's consideration. Within the limits of the jurisdiction of the Second District Court of Appeal, that concession was correct in view of the binding precedent in State v. Green.

the present certified questions in this cause and McKnight v. Bloom [3].

The only relevant analysis herein is therefore whether the court in Poyntz v. Reynolds in 1896 intended the present broad rule as grafted by the foregoing courts upon the present day speedy trial rule. It obviously did not. This Court in its most recent analysis has consistently held that the State's speedy trial rule is a rule of procedure and not a substantive constitutional right. See, State v. Jenkins, 389 So.2d 971 (Fla. 1980). As a rule of procedure, any changes in the rule are to be applied in any pending cause. Cf, State v. Fletcher, Case No. 67,275 (Fla. July 17, 1986); State v. Jackson, 478 So. 2d 1054, at 1056 (Fla. 1985).

There also exists prevailing policy considerations, which clearly warrant the present statutory construction sought by the State. A violation of Florida's speedy trial rule does not involve any notion of fundamental fairness. See, e.g., Davis v. Wainwright, 547 F.2d 261 (5th Cir. 1977); Williams v. State, 452 So.2d 657 (Fla. 2d DCA 1984). Indeed, the automatic discharge of a defendant because an artificially selected

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[3] The Defendant notes that in 1982 this Court denied review of the Holmes opinion. Such an event is, of course, without any precedential persuasion whatsoever. See, e.g., Pezzella v. State, 390 So.2d 97 (Fla. 3d DCA 1980), rev. den., 399 So. 2d 1146 (Fla. 1981), overruled in, Carlton v. State, 449 So. 2d 250 (Fla. 1984). This Court has therefore not yet considered this precise cause.

period of time has expired was rejected by the United States Supreme Court as contrary to society's interest in prosecuting those responsible for a crime. See, Barker v. Wingo, 407 U.S. 514, 33 L.Ed.2d 101, 92 S.Ct.2182 (1972). As reflected in the analysis in Barker v. Wingo, the automatic discharge of a defendant simply because of the expiration of a set period of time is completely disfavored by the concept of "public justice" and society's compelling interest in bringing those charged with serious crime, as in the case at bar, to trial on the merits of the cause against them. See, 33 L.Ed.2d at 112. This Court's enactment of the present Rule 3.191, which precludes automatic discharge, is judicial endorsement of the foregoing long held public belief that the "justice" of a speedy trial claim should lie with the right of a trial on the merits rather than a discharge irrespective of guilt. Therefore, the "justice" of this cause requires that this Court apply the present rule precluding automatic discharge.

III

CONCLUSION

WHEREFORE, upon the foregoing, the Petitioner, THE STATE OF FLORIDA, prays that this Honorable Court will issue its judgement reversing the judgement of the Third District Court of Appeal.

RESPECTFULLY SUBMITTED, on this 25th day of August, 1986, at Miami, Dade County, Florida.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing REPLY BRIEF OF PETITIONER ON THE MERITS was caused to be served by mail upon HOWARD BLUMBERG, Assistant Public Defender, 1351 N.W. 12th Street, Miami, Florida 33125, on this 25th day of August, 1986.

CALVIN L. FOX, Esq.
Assistant Attorney General

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