O/A 3-3-87 12-7-86

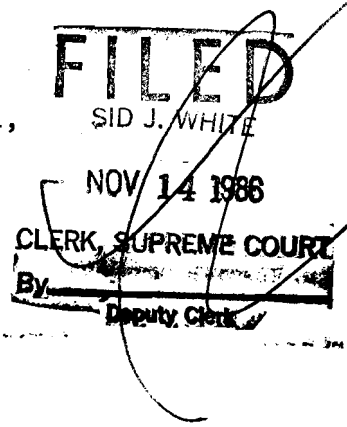
IN THE SUPREME COURT OF FLORIDA

CASE NO. 69,211

THE STATE OF FLORIDA,
Petitioner,

vs.

WILLIE FIELDS,
Respondent.



PETITIONER'S INITIAL BRIEF ON
THE MERITS

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LIST OF CITATIONS

PRELIMINARY STATEMENT

Petitioner was the Appellant in the District Court of Appeal, Fourth District, and the prosecution in the Criminal Division of the Circuit Court of the Seventeenth Judicial Circuit, in and for Broward County, Florida.

The Respondent was the Appellee in the Fourth District and the defendant in the trial court.

In the brief, the parties will be referred to as they appear before this Honorable Court except that Petitioner, may also be referred to as the State.

The following symbols will be used:

"R" Record on Appeal

"PA" Petitioner's Appendix

All emphasis has been added by Petitioner unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

On January 20, 1982, Willie Fields was charged by information with committing an aggravated assault on January 4, 1982, in violation of §784.021, Florida Statutes (1981). (Vol. II, R. 14). At that time a warrant was issued for the arrest of Willie Fields but was not served on Respondent until August 7, 1985. (Vol. II, R.15).

On August 26, 1985, Respondent appeared in court and entered a not guilty plea. (Vol. II, R.14). Respondent subsequently filed a motion for discharge based upon the expiration of this statute of limitations. (Vol. II, R.22). At the hearing on December 13, 1985, before the Honorable Mark A. Speiser of the Circuit Court, the court found that Respondent had resided at the same address for the past five (5) years, that the state knew of Respondent's address, and that no attempt was made to execute the capias on Respondent until August 7, 1985. (Vol. I, R. II, Vol. II, R.23). The trial court granted the motion to discharge. (Vol. II, R.23).

On appeal, the Fourth District Court of Appeal affirmed the trial court's order and held that the prosecution was untimely where it was not "commenced" within the applicable three year statute of limitations period pursuant to §775.15 Florida Statutes (1985). With regard to the word "commenced", the Fourth District did not find that the issuance and delivery for execution of an arrest warrant commences the prosecution; but rather, found that execution required service of the warrant on

the Respondent within the statute of limitations period for a prosecution to be timely commenced. (PA 1-3). In its written opinion, the Fourth District acknowledged that its decision appears to be in conflict with the Third District in Warren v. Wainwright, ____So.2d____, 11 F.L.W. 508 (Fla. 3d DCA February 25, 1986), and State v. Chacon, 479 So.2d 229 (Fla. 3 DCA 1985) and refused to apply the rule enunciated by this Court in Sturdivan v. State, 419 So. 2d 300 (Fla. 1982). (P.A. 2-3).

Petitioner filed its notice to invoke discretionary review on August 19, 1986, and on October 30, 1986, this Honorable Court accepted jurisdiction and issued its briefing schedule.

SUMMARY OF THE ARGUMENT

The trial court and Fourth District Court of Appeal erred in holding that the prosecution was not timely commenced within the statute of limitations period. Construing the statute so as to require the serving of a capias or warrant within the applicable limitations period leads to the result that if the information was filed or warrant issued close to the end of the limitations period, but the warrant was not served on the defednant until after the limitations time period expired, the delay might not be viewed as unreasonable because it is shorter. However, if as in this case, the information was filed and capias issued shortly after the offense occurred, a greater delay results which may be viewed as unreasonable. Thus, the Fourth District's decision encourages prosecutors to file charges in a dilatory manner and defeats the purpose of the statute of limitations in encouraging prompt prosecution.

POINT ON APPEAL

WHETHER THE TRIAL COURT ERRED IN GRANTING RESPONDENT'S MOTION TO DISCHARGE WHEN THE PROSECUTION WAS COMMENCED WITHIN THE STATUTE OF LIMITATION PERIOD?

POINT INVOLVED

THE TRIAL COURT ERRED IN GRANTING RESPONDENT'S MOTION TO DISCHARGE WHEN THE PROSECUTION WAS COMMENCED WITHIN THE STATUTE OF LIMITATIONS PERIOD.

Petitioner submits that the Fourth District Court of Appeal erred when it found that the prosecution was not timely commenced where although an information was filed and a warrant issued within the applicable three-year statute of limitations period, the warrant was not served on Respondent until after the statute of limitations period expired.

§775.15, Florida Statutes (1985) provides in relevant part that:

> (2)(b) A prosecution for any other felony must be commenced within three years after it is committed.
>
> (5) A prosecution is commenced when either an indictment or information is filed, provided the capias, summons, or other process issued on such indictment or information is executed without unreasonable delay. In determining what is reasonable, inability to locate the defendant after diligent search or the defendant's absence from the state shall be considered.

In the instant case, the offense occurred on January 4, 1982. (Vol. II, R.14). The State filed an information charging Respondent with this offense on January 30, 1982. (Vol. II, R.14). The trial court found that a capias was also issued for Respondent's arrest on January 20, 1982. (Vol. II, R. 23). However, the capias was not served on Respondent until August 7, 1985, some three and one-half years later. (Vol. II, R.23).

Petitioner submits that the prosecution was commenced within the three-year period where the information was filed and the capias was issued sixteen days after the offense was committed. The Fourth District's refusal to apply this Court's decision in Sturdivan v. State, 400 So.2d 300 (Fla. 2982) to the case sub judice was totally inappropriate. In Sturdivan at 301, this Court held that for the purposes of the statute of limitations, a prosecution has commenced when a warrant has been issued and placed in the hands of a proper official for execution. This Court found that the issuing of a warrant and its delivery for execution constitute circumstances which do toll the statute of limitations. Sturdivan at 302. However, the Fourth District rejected this Court's decision in Sturdivan, supra, and found support for its rationale in State ex. rel Welch v. Escambia County, ___So.2d___, 11 F.L.W. 854 (Fla. 1 DCA April 9, 1984). Thus, both the Fourth District and First District have refused to apply Sturdivan.

Petitioner submits that the correct results was reached by the Third District in Warren v. Wainwright, ___So.2d___, 11 F.L.W. 508 (Fla. 3d DCA February 25, 1986), and State v. Chacon, 479 So.2d 229 (Fla. 3d DCA 1985). Although the Fourth District acknowledged that their opinion was in conflict with Chacon, supra, and Warren, supra, the Fourth District presumed that the Third District was not aware of the change of law in the statute of limitations because the Third District relied upon Sturdivan:

> Two recent cases, Warren v. Wainwright, 11 F.L.W. 508 (Fla. 3d DCA February 25, 1986), and State v. Chacon, 479 So.2d 229 (Fla. 3d DCA 1985), appear to be in conflict with that which we now hold. They also rely on the statement in Sturdivan; however, that mere issuance and delivery for execution of an arrest warrant commences the prosecution. Neither of these cases cites or appears to consider the impact of §775.15(5), Florida Statutes, and that is why we come to the opposite result. (P.A. 2-3).

Petitioner submits that the above-cited language presumes that the Third District was not aware of the change in law in the statute of limitations and did not consider its impact. Petitioner maintains that the dates of decisions for Warren, supra, and Chacon, supra, rebut this presumption. Certainly, an Appellate Court is aware of statutory changes. Former §932.05 Florida Statutes (1965) was revised in 1974 and the statute as rewritten appears in §775.15, Florida Statutes (1974 Supp.). Thus, §775.15(5) has been the law in Florida for eleven years prior to the decisions in Chacon, supra, and Warren, supra.

In Chacon, supra, an information was filed on May 22, 1981 charging the defendant with grand theft. The crime was alleged to have taken place between November 8-12, 1980. On May 12, 1981, an arrest warrant was issued and placed in the hands of the proper official for service. However, the defendant was not arrested until October 25, 1984. The Third District, relying on this Court's decision in Sturdivan, supra, found that the prosecution was plainly begun on May 12, 1981 when an arrest warrant was issued and placed in the hands of the Dade County Public Safety Department for service. Similarly, in Warren, supra, the court rejected the petitioner's argument that the prosecution was not timely commenced. The court found

that the arrest warrant was issued and delivered for execution well within the statute of limitations period, thereby tolling the statute of limitations.

Petitioner further submits that the history of the statute of limitations and the legislative changes to this statute do not indicate that the legislature intended to change the well-developed case law espoused in Sturdivan. The Fourth District's rationale underlying its conclusion that Sturdivan is inapplicable is inconsistent with this Court's recognition that the intent of the legislature is controlling over the literal interpretation of the words of the statute. See, State v. Ramsey, 475 So.2d 671, 673 (Fla. 1985).

Both the Fourth District and First District's conclusion that a reading of the statute of limitations suggests that Sturdivan is no longer applicable is erroneous in that these decisions fail to yield to legislative intent as Ramsey and Richardson contemplate. It is Petitioner's position that the legislature, in rewriting the statute of limitations provisions, did not intend to nullify this Court's precedent as set forth in Sturdivan.

Between 1970 and 1975, the statute of limitations was codified in §932.465 and provided:

> (1) A prosecution for any offense punishable by death may be commenced at any time.

(2) Prosecution for offenses not punishable by death must be commenced within two years after commission, but if an indictment, information, or affidavit has been filed within two years after commission of the offense and the indictment, information, or affidavit is dismissed or set aside because of a defect in its content or form after the two-year period has elapsed, the period for commencing prosecution shall be extended three months from the time the indictment, information, or affidavit is dismissed or set aside.

(3) Offenses by state, county, or municipal officials committed during their terms of office and connected with the duties of their office shall be commenced within two years after the officer retires from the office.

A reading of the language in §932.465(2) arguably suggests that the "commencement of prosecution" to satisfy the period of limitations is the filing of an indictment, information or affidavit. Despite this wording, the Supreme Court of Florida refused to construe the statute to preclude tolling of the statute, when a warrant has been issued.

> It is settled law in Florida that for purposes of the statute of limitations, prosecution has commenced when a warrant has been issued and placed in the hands of the proper official for execution.

Sturdivan v. State, 419 So.2d 300, 301 (Fla. 1982).

The predecessor to §932.465, was §932.05 and §932.06, which provided:

> 932.05 Limitations of prosecutions. - All offenses not punishable with death, save as hereinafter provided, shall be prosecuted within two years after the same shall have been committed. There shall be no limitations for offenses punishable with death. In all offenses not punishable with death where an indictment has been found or an information filed within two years after the commission of the offense and

> such indictment or information, because of any defect, omission or insufficiency in the contents or form thereof, is subsequently quashed or set aside after said two year period has elapsed, in that event further indictments may be found or informations filed for such offense within three months after the entry of the order of the court quahsing or setting aside the indictment or information, and prosecution thereunder shall proceed as if the same were commenced within two years after the commission of the offense.
>
> 932.06 Same; state, county and municipal officials. - All offenses by state, county or municipal officials, committed during their term or terms of office, in any way whatsoever connected with the discharge of the duties of their different offices, shall be prosecuted within two years after the said officer shall retire from such office.

Florida Statutes (1969). As a comparison of §932.465 and §932.05-06 indicates, the latter statute also arguably suggests prosecution may be commenced only by the filing of an information or indictment. Cases construing §932.05, also held that despite the wording of the statute, the legislature intended to provide that a warrant for arrest, placed into the hands of a proper officer for service, tolled the statute of limitations. State v. Emanuel, 153 So.2d 839 (Fla. 2d DCA 1963); State v. Hickman, 180 So.2d 254 (Fla. 2d DCA 1966). The rationale for such a construction was obvious when the purpose of the statute of limitations was examined. As the Hickman, supra, decision noted:

> The only purpose of a Statute limiting the time within which a criminal charge may be prosecuted is to protect every person from being interminably under the threat or

> cloud of possible criminal prosecution, which otherwise might be indefinitely delayed until the time when defense witnesses might die, disappear or otherwise become unavailable, judges would change office, or innumerable other time hazards might develop, which could conceivably defeat, or at least hamper an otherwise good defense.
>
> At common law there was no limitation of time within which a criminal prosecution was permitted; a statute of limitation as to criminal prosecution is strictly a creature of Statute. As such, it is an extension of the sovereign power in behalf of the individual. And while it has been generally held that such a Statute should be liberally construed in behalf of the individual, by the same token, in simple justice to the State as the sovereign authority bestowing the privilege, it is entitled to something more than a hypertechnical, distorted, strained construction of the factors constituting the exercise of such privilege.
>
> In the instant case it is abundantly clear that the State of Florida intended in good faith to commence the prosecution of defendant a few days after the alleged offense was committed and took positive steps to set the machinery in motion to effectuate and to evidence that intent. Such substantially should satisfy the Statute.

(emphasis added). Id. at 261-62. It is noteworthy that Hickman was decided prior to the legislature's enactment of 932.465 in 1970. Thus, if Hickman had misconstrued legislative intent, the error could have easily been remedied by a re-wording of the statute, prohibiting the warrant for arrest from tolling the statute. Neither the 1970 statute nor the 1975 statute repudiates in any manner the prior decisions of the courts.

Although §775.15 is substantially longer than the previous limitation statutes, a careful reading of the current statute indicates the changes were intended to revert, to an

extent, back to common law, and to benefit the State rather than the defendant. For example, the time periods within which to bring certain changes were increased. Moreover, provisions were added in subsection (3) to enable the state to prosecute fraud cases within one year after discovery of the offense, rather than after the commission of the offense. In addition, a provision was added, in the state's favor, to toll the statute of limitations when the defendant left the state before the state evidenced its intent to prosecute. Subsection (5) of 775.15 basically restates the principles already established by the two previous limitations statutes. While this particular provision of the statute provides that prosecution is commenced when either an indictment or information is filed, nothing in the wording of the statute indicates this language is restrictive to the State--the language merely states what the language from the previous statutes appeared to suggest. Thus, it is clear that the legislature intended to benefit the state when it changed the statute of limitations in 1974. Clearly, the legislature still intends that the filing of an indictment or information commences the prosecution. However, the construction given 775.15(5) by the Fourth District defeats legislative intent and leads to an unreasonable or absurd result.

It is well recognized by Florida Courts that the intent of the legislature is controlling over the literal interpretation of the words of the statute. As this Court stated recently:

> A statute should be construed and applied so as to fairly and liberally accomplish the official purpose for which it was adopted even if the results seem contradictory to ordinary rules of

> construction and the strict wording of the statute... And the manifest intent of the legislature will prevail over any literal import of words used by it; and no literal interpretation leading to an unreasonable conclusion or a purpose not intended by the law should be given.

State v. Ramsey, supra, at 671, 673. See, Griffis v. State, 356, So.2d 297, 299 (Fla. 1978) quoting from Beebe et ux. v. Richardson, 156 Fla. 559, 23 So.2d 718, 719 (1945):

> . . .[W]here the context of a statute taken literally conflicts with a plain legislative intent clearly discernible, the context must yield to the legislative purpose, for otherwise the intent of the lawmakers would be defeated. State v. Beardsley, 84 Fla. 109, 94 So. 660; City of West Palm Beach v. Amos, 100 Fla. 891, 130 So. 710; State v. City of Miami, 101 Fla. 292, 134 So. 608.

See also, Austin v. State ex rel Christian, 310 So.2d 289 (Fla. 1979); Martin v. State, 367 So.2d 1119, 1120 (Fla. 1st DCA 1979) (holding that it is fundamental that a statute not be construed to bring about an unreasonable or absurd result).

Petitioner points out that basing the §775.15 requirement of commencement of prosecution to be contingent on the serving of a warrant on an accused within the three year period as did the Fourth District sub judice leads to an absurd result which could not have been intended by the legislature. In the instant case, although the information was filed and a warrant issued on January 20, 1982, the warrant was not served until August 7, 1985. This three and one-half year delay was viewed by the trial court as an unreasonable delay. However, the absurd result is that if the State had wanted to file the information on January 3, 1985, just one day short of the expiration of the

statute of limitations period and some 2 years - 364 days after the offense occurred; the serving of the warrant on August 7, 1985 (only 7 months later if the State had filed its information on January 3, 1985) may not have been viewed as unreasonable by the trial court. It is this result which would serve to defeat the policy underlying the statute of limitations, namely to prevent the State from hampering defense preparation by delaying prosecution until evidence is stale and witnesses have died, disappeared, or otherwise become unavailable. State v. Garofolo, 453 So.2d 905 (Fla. 4 DCA 1984). Thus, had the State filed its information at the eleventh hour, a delay of seven months in serving the warrant may not have been deemed unreasonable. Furthermore, the construction of this statute as interpreted by the Fourth District would encourage the State to file charges in a dilatory fashion and simultaneously defeat the purpose of the statute in encouraging prompt prosecution.

Second, if the purpose behind that statute of limitations remains to be "to protect every person from being unterminably under the threat or cloud of possible criminal prosecution," Hickman, supra at 261, then the simple issuance of an indictment or information satisfies the purpose of the statute more than does basing commencement of prosecution on the issuance of an indictment or information where the warrant is executed without unreasonable delay. The execution of a capias may be delayed for several practical reasons. Thus, it is unreasonable to say

that the State has not made its intention to prosecute clear when a mere indictment of information is filed as opposed to the execution of a capias. Under the facts of the case sub judice, it is clear that the State intended to prosecute Respondent. An information was filed and a warrant was issued for Respondent's arrest. The issuance of the arrest warrant triggers an immediate command to law enforcement officials to apprehend the person named in the warrant. These actions exemplified an intense effort to prosecute.

Since the information was filed and a warrant was issued in a timely fashion, Respondent's only recourse in such a situation is to argue that the serving of the warrant three and one-half years after the crime was committed violates his due process guarantees and constitutional speedy trial right under the Sixth Amendment. Respondent made a motion to discharge based upon these grounds prior to the motion the State now appeals. (Vol. II, R.15-21). It is well established that one of the factors to be considered when addressing the constitutional speedy trial right is the extent of the prejudice suffered by an accused. Barker v. Wingo, 407 U.S. 514, 92 S. Ct. 187, 33 L. Ed. 2d 108 (1972). However, this argument wasn't accepted by the trial court who denied the motion. (Vol. II, R. 21A). Respondent would suffer no prejudice by proceeding to trial.

Thus, where the information was filed and warrant

issued within the three-year statute of limitations period, the prosecution was timely commenced. Accordingly, the decision of the Fourth District must be reversed and Petitioner urges this Court to adopt the reasoning of the Third District in State v. Chacon, supra.

CONCLUSION

Based on the arguments and authorities presented herein, Petitioner respectfully prays this Honorable Court reverse the decision of the Fourth District Court of Appeal of the State of Florida and that the trial court's order discharging the Respondent be reversed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Petitioner's Initial Brief on the Merits has been furnished by U.S. Mail to Anthony Cavello, Esq., Assistant Public Defender, this 12th day of November, 1986.

Amy Lynn Diem
Of Counsel