

IN THE SUPREME COURT OF FLORIDA

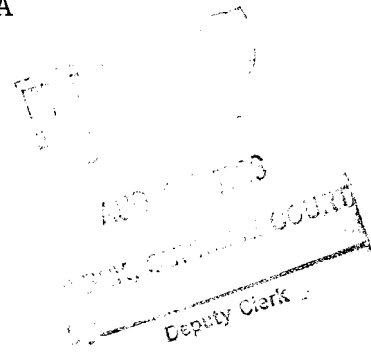
CASE NO. 69211

STATE OF FLORIDA,  
Petitioner,

vs.

WILLIE FIELDS,

Respondent.



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ON PETITION FOR DISCRETIONARY REVIEW

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BRIEF OF PETITIONER ON JURISDICTION

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PRELIMINARY STATEMENT

Petitioner was the prosecution at the trial court level and the Appellant on appeal. Respondent was the defendant at the trial level and the Appellee in the Fourth District Court of Appeal. The parties will be referred to in this brief as they appear before this Honorable Court.

The symbol "A" followed by a number will constitute a page reference to the appendix being filed by Petitioner, along with this brief.

All emphasis has been supplied unless the contrary is indicated.

### STATEMENT OF THE CASE

The Respondent, Willie Fields, was charged by Information No. 82-922-CF, filed in the Circuit Court of the Seventeenth Judicial Circuit, in and for Broward County, Florida, with aggravated assault, contrary to section 784.02, Florida Statutes. The offense was alleged to have occurred on January 4, 1982. The State filed its Information on January 20, 1982, but Respondent was not arrested until August 7, 1985.

On December 16, 1985, Respondent moved for discharge. On December 16, 1985 the trial court rendered its written order granting the Motion for Discharge on the ground that the statutes of limitation had run. The Petitioner appealed and on July 23, 1986 the Fourth District Court of Appeal filed its opinion affirming the trial court's order. (A 1-3). The Petitioner timely commenced this proceeding on August 19, 1986, by filing a Notice of Intention to Invoke Discretionary Jurisdiction of this Court.

### STATEMENT OF THE FACTS

Respondent was charged with committing an aggravated assault on January 20, 1982 which was alleged to have occurred on January 4, 1982. Although a warrant was issued, it was not served upon Respondent until August 7, 1985. The trial court and the Fourth District Court held that the prosecution was untimely where it was not "commenced" within the three year applicable statute of limitations period. 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. (A 1-3).

QUESTION PRESENTED

WHETHER THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL IN THE PRESENT CASE IS IN DIRECT CONFLICT WITH THIS COURT'S DECISION IN STURDIVAN V. STATE, 419 So.2d 300 (Fla. 1982), AS WELL AS THE DECISIONS OF THE THIRD DISTRICT COURT OF APPEAL IN WARREN V. WAINWRIGHT, So. 2d \_\_\_, 11 FLW 508 (Fla. 3rd DCA February 25, 1986) AND STATE V. CHACON, 479 So.2d 229 (Fla. 3rd DCA 1985)?

### SUMMARY OF THE ARGUMENT

Petitioner submits that this Court should accept jurisdiction of the instant case where the Fourth District Court of Appeal's decision is in conflict with this Court's decision in Sturdivan v. State, 419 So.2d 300 (Fla. 1982). Sturdivan 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 the proper official for execution. Sturdivan was followed by the Third District in Warren v. Wainwright, \_\_\_ So.2d \_\_\_, 11 FLW 508 (Fla. 3rd DCA February 25, 1986), and State v. Chacon, 479 So.2d 229 (Fla. 3rd DCA 1985). However, the Fourth District interpreted Sturdivan too restrictively and refused to apply its rule sub judice.



ARGUMENT

POINT ON APPEAL

THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL IN THE PRESENT CASE IS IN DIRECT CONFLICT WITH THIS COURT'S DECISION IN STURDIVAN V. STATE, 419 So.2d 300 (Fla. 1982), AS WELL AS THE DECISIONS OF THE THIRD DISTRICT COURT OF APPEAL IN WARREN V. WAINWRIGHT, So.2d \_\_\_, 11 FLW 508 (Fla. 3rd DCA February 25, 1986) AND STATE V. CHACON, 479 So.2d 229 (Fla. 3rd DCA 1985).

The Petitioner submits that the decision of the Fourth District Court of Appeal is contrary to this Court's decision in Sturdivan v. State, 419 So.2d 300 (Fla. 1982), as well as the decision of the Third District Court in Warren v. Wainwright, \_\_\_ So. 2nd \_\_\_, 11 FLW 508 (Fla. 3rd DCA February 25, 1986) and State v. Chacon, 479 So.2d 229 (Fla. 3rd DCA 1985). Indeed, the Fourth District Court of Appeal even acknowledged this conflict in its written opinion. (A 2-3).

In Sturdivan v. State, 419 So.2d 300, 301 (Fla. 1982) this Court held that "It is settled law in Florida that for the 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. The court concluded that the issuing of a warrant and its delivery for execution constitute circumstances which do toll the statute of limitations. Because this Court's decision in Sturdivan, supra, relied in part on Rosengarten v. State, 171 So.2d 591 (Fla. 2nd DCA 1965), which interpreted section 932.05 Florida Statutes (1965), a predecessor statute to section 775.15 Florida Statutes (1985), the Fourth District

concluded that the rule enunciated in Sturdivan, supra, was inapplicable to the present case. Petitioner submits the court has interpreted this Court's decision in Sturdivan to restrictively.

In both State v. Chacon, supra and Warren v. Wainwright, supra, the district court relied on this Court's decision in Sturdivan to find that the prosecution was timely commenced within the statute of limitations period by issuance of the arrest warrant and delivery for execution. The Fourth District in the instant case refused to consider the applicability of Warren and Chacon to this case based upon those cases reliance on Sturdivan.

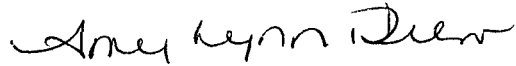
Thus, the Petitioner submits that this Court should accept jurisdiction in this cause sub judice to resolve the conflict between the pronouncement and holdings of this Court's decision in Sturdivan v. State, supra, and the Third District's decisions in Warren v. Wainwright, supra, and State v. Chacon, supra.

CONCLUSION

Based upon the foregoing argument and authorities cited herein, Petitioner respectfully submits that this Court should accept jurisdiction due to conflict of decisions pursuant to Florida Rules of Appellate Procedure 9.030(a)(2)(A)(iv).

Respectfully submitted,

JIM SMITH  
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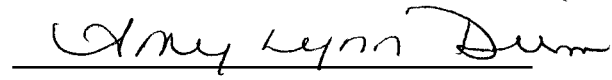


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Brief of Petitioner on Jurisdiction has been furnished by courier to ANTHONY CALVELLO, ESQ., Assistant Public Defender, 224 Datura Street, 13th Floor, West Palm Beach, Florida 33401, this 21st day of August 1986.

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Of Counsel