IN THE SUPREME COURT OF FLORIDA

STEVEN C. NAUGLE,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Case No. 69,734

ON PETITION FOR REVIEW OF THE DECISION OF
THE FLORIDA SECOND DISTRICT COURT OF APPEAL

RESPONDENT'S BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

STEVEN C. NAUGLE will be referred to as the "Appellant" in this brief and the STATE OF FLORIDA will be referred to as the "Appellee". The Record on Appeal will be referenced by the symbol "R" followed by the appropriate page number.

SUMMARY OF THE ARGUMENT

The trial court properly denied the motion for discharge because under the new speedy trial rule the state had 10 days from the hearing on the motion to discharge to bring Petitioner to trial and because under subsection (b)(1) speedy trial did not begin to run until Petitioner was available in-state for trial. This court's decision in Bivona was correct and the facts in the instant case show no meaningful basis for distinguishing it from Bivona.

ARGUMENT

DEFENDANTS WHO ARE ARRESTED AND DETAINED IN FOREIGN JURISDICTIONS SOLELY ON FLORIDA CHARGES ARE EXCLUDED FROM THE BENEFITS OF FLORIDA'S SPEEDY TRIAL RULE. RULE 3.191(b)(1).

Petitioner, Steven C. Naugle, was arrested in Michigan on November 17, 1984, pursuant to a warrant from Pinellas County, Florida. (R.145, 208) Mr. Naugle refused to waive extradition until three weeks after his arrest. (R.210-211) He was returned to Pinellas County on January 4, 1985.

On June 3, 1985, Petitioner sought discharge under Rule 3.191(a)(1) (speedy trial). After a hearing, the trial court denied the motion, holding that under 3.191(b)(1), speedy trial did not begin to run until Naugle was available for trial in the State of Florida. Further, the trial court held that the present speedy trial rule applies to all defendants whose cases were pending at the time of its amendment.

On appeal, recognizing that the Second District Court of Appeal's opinion in State v. Green, 473 So.2d 823 (Fla. 2d DCA 1985) held that the amended rule only applies to defendants taken into custody on or after January 1, 1985, the State, nevertheless, maintained that the new rule applied to the instant case. Subsequently, this court has held in Bloom v. McKnight, 12 F.L.W. 30 (Fla. Jan. 5, 1987) that the applicable speedy trial rule is the rule which is in effect at the time defendant files the motion for discharge.

Thus, as the State had 10 days from the date the trial court heard the motion for discharge to bring defendant to trial, discharge was not warranted even if (b)(1) did not apply to Mr. Naugle. See, Rule 3.191(i), Fla. R. Crim. P. (1986).

This court has, however, made it clear that (b)(1) does apply to the facts in the instant case. In State v. Bivona, 496 So.2d 130 (Fla. 1986) this court clearly stated that:

> "The language of (b)(1) is without ambiguity. One who is 'incarcerated [outside Florida], and who is charged with a crime by indictment or information issued or filed under the laws of this state, is not entitled to the benefit of this rule until that person returns or is returned to the jurisdiction of the court within which the Florida charge is pending and until written notice of this fact is filed with the court and served upon the prosecutor." Id. at 132, See also, Bate v. Wilson, 498 So.2d 918 (Fla. 1986).

Petitioner submits that this court's interpretation of the rule is incorrect, overbroad, or inapplicable to him in any event. To support this argument, Petitioner argues that since he had waived extradition and was not serving a foreign sentence that he would not have speedy trial rights under §941.17, Fla. Stat. or §941.45(3)(a), Fla. Stat. Thus, Mr. Naugle would have this court read into Rule 3.191(b)(1) a provision that it applied only those serving a foreign conviction or refusing to waive extradition. There is nothing in this rule that would support such a reading.

Petitioner's argument also ignores the following language in Bivona, supra:

> "We also find that application of the clear and unambiguous language of the speedy trial rule to deny the benefit of the rule to prisoners held solely on Florida charges in out-of-state jails does not raise the spector of neglected prisoners languishing indefinitely while awaiting to return to Florida. Florida's speedy trial rule is a procedural protection and, except for the right to due process under the rule, does not reach constitutional dimension. Barker v. Wingo, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972). It is a principle of sovereign grace, and the sovereign is not obliged to extend its grace to those beyond its jurisdiction. Cf. **Kronz v. State**, 462 So.2d 450 (Fla. 1985) (no right to credit for time served awaiting to return to Florida). The Federal constitutional right to a speedy trial, on the other hand, would not appear to be limited to the borders of Florida and the considerations enunciated in **Barker** would offer relief. A prisoner languishing out-of-state would be able to raise his constitutional speedy trial right upon return to this state." Id. at 133.

Accordingly, Mr. Naugle would have constitutional speedy trial rights to protect him from languishing in a foreign jail even if he were excluded from the speedy trial provisions of §941.17 and 941.45. Neither the law nor the constitution require that out-of-state prisoners be provided with more.

Petitioner also makes much of the fact that he voluntarily waived extradition and should not be penalized for doing so. He also uses this to distinguish his case from the facts in Bivona. This argument overlooks the fact that the initial delay in extraditing Mr. Naugle was due to the fact that he refused to waive extradition. Further, in Bivona this court clearly stated that Bivona did not fight extradition. In either case, the

language in (b)(1) clearly applies to the facts in the instant case.

Mr. Naugle also relies on the language in (b)(1) that states:

> . . . and who is charged with a crime by indictment or information issued or filed under the laws of this state, is not entitled to the benefit of this rule until that person returns or is returned to the jurisdiction. . ." (emphasis supplied)

Petitioner contends that (b)(1) by its terms proscribes its applicability because he was not charged by indictment or information. Conversely, he argues, discharge was proper under (a)(1). This argument overlooks the identical provision in subsection (a)(1):

> ". . . every person charged with a crime by indictment or information shall be brought to trial within 90 days if the crime charged be a misdemeanor, or within 175 days if the crime charged is a felony. If trial is not commenced within these time periods, the defendant shall be entitled to the appropriate remedy as set forth in (i) below."

Accordingly, if (b)(1) did not apply because an information was not filed, then for the same reason (a)(1) would not apply to any defendant for which and information or indictment had not been filed. If that were the law, the spirit of the speedy trial rule could easily be circumvented. It is obvious the rule is not so narrowly read.

In summary, the trial court properly denied the motion for discharge because under the new speedy trial rule the state had 10 days from the hearing on the motion to discharge to bring Petitioner to trial and because under subsection (b)(1) speedy trial did not begin to run until Petitioner was available in-state for trial. This court's decision in Bivona was correct and the facts in the instant case show no meaningful basis for distinguishing it from Bivona.

CONCLUSION

Based upon the foregoing reasons, arguments and authorities, this court should affirm the judgment and sentence of the lower court in this cause.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Steven C. Naugle #066667, Zephyrhills Correctional Institution, Post Office Box 518/Mail #417, Zephyrhills, Florida 34283-0518, this 16 day of March, 1987.

OF COUNSEL FOR RESPONDENT