

Original

Supreme Court of Florida

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STEVEN C. NAUGLE,
Petitioner,

CLERK
By _____

vs.

Case No. 69,734

STATE OF FLORIDA,
Respondent.

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

PETITIONER'S REPLY BRIEF ON THE MERITS

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Petitioner, pro se.

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PREFACE

The Petitioner is Mr. Naugle and the Respondent is the State of Florida. The parties will be referred to as Mr. Naugle and the State. The following symbols will be used:

R-Record on Appeal

A-Appendix

SUMMARY OF ARGUMENT

The State has suggested that Mr. Naugle refused to sign a written waiver of extradition for almost three (3) weeks after his arrest by Michigan authorities. This contention is without support for the record clearly reflects that Mr. Naugle agreed to sign the waiver when first asked by the Michigan authorities. (R. 210-211)

The State has also addressed a recent ruling by this court in support of thier argument, Bloom v. McKnight, 12F.L.W.30. The decision in Bloom is a ex post facto law and the State's are forbidden to pass any such law by the United States Constitution according to Artile I, § 10, U.S. Constitution.

It should be noted that there are only two differences between the instant case and State v. Bivona, 496 So2d 130 (Fla. 1986). First, Bivona was arrested in California on a charge in that State and after he confessed to a bank robbery in Florida the charge was dropped. Second, bivona was charged by an information the date the detainer was lodged against him in California by the Florida authorities. Whereas in Mr. Naugle's case, he was arrested without a warrant solely on the Florida complaint and warrant which was never forwarded to the Michigan authorities. He was not charged by an indictment or information during any of his foreign incarceration and it was not until three and one-half months after his return to Florida that the State filed the information and then only upon the request of Mr. Naugle.

It should also be noted that Florida has no requirement other that the Statute of limitations on the time the State is to file an information after the accused is in custody, but Rule 3.140 as adopted from many

different States including the Federal Rules of Criminal Procedure 7(c). In the Fed. R. Cr. P. the prosecutor must file his information within thirty (30) days after the accused arrest, similar to Rule 3.132 of Fl. Rules of criminal procedure where the State must refile a dismissed information within thirty (30) days after the dismissal of the original. It should be noted that there is no other provision in the Statutes or Rules of this State that require the Prosecutor to file an information in any prescribed period other than the statute of limitations of the prosecution for the degree felony which the crime is classified. Mr. Naugle would assert that the Author's note in F.S.A. Rule 3.140 states that the present rule was adopted in its entirety from the Federal Rules of Criminal Procedure, but the present rule makes no mention on the thirty (30) days in which the State is required to file their information after the accused is in custody. If the present rule would of contained this section Mr. Naugle could of obtained his release by the prejudice that was cause by such a lengthy delay in the filing of the information filed against him four- and onehalf months after his arrest. Durn this period Mr. Naugle was held in the county jail with no probable cause and against all the laws of this State. Mr. Naugle did have minimal protection due to a request for an adversary preliminary hearing, but Mr. Naugle was unable to demand this hearing while incarcerated in Michigan.

ARGUMENT

DEFENDANT'S WHO ARE ARRESTED AND DETAINED IN FOREIGN JURISDICTIONS SOLELY ON FLORIDA CHARGES, BUT WHO ARE NOT CHARGED WITH A CRIME IN FLORIDA BY INDICTMENT OR INFORMATION, ARE NOT EXCLUDED FROM THE BENEFITS OF FLORIDA'S SPEEDY TRIAL RULE UNDER RULE 3.191(b)(1).

The State has pointed to a recent ruling of this Court in support of thier argument, Bloom v. McKnight, supra. This ruling is prejudicial to Mr. Naugle in that it is "ex post facto law".

An "ex post facto law" is defined as a law which provides for the infliction of punishment upon a person for an act done which,....

a law which, assuming to regulate civil rights and remedies only,....

A law which, deprives persons accused of crime of some lawful protection to which they have become entitled,....

every law which, in relation to the offense or its consequences, alters the situation of a person to his disadvantage.

Black's Law Dictionary, Fifth Edition 1979.

The Bloom case itself constituted actual prejudice in Mr. Naugle's case, sufficient to satisfy the requirements of a constitutional speedy trial claim.

The State has also pointed out that if Rule 3.191 (b)(1) does not apply due to the unambiguous language of the rule, than for the same reason (a)(1) would not apply due to the same language in that subsection. This exactly true and the thrust of Mr. Naugle's argument. There is no protection in any laws of this State for a person who is arrested in a foreign jurisdiction solely on a Florida arrest warrant without an indictment or information filed against him. The drafter's of our present rule 3.191 failed to include a subsection for those who are arrested in foreign jurisdictions without an information filed against them and in so doing, have caused an anomalous situation which needs immediate

attention by this Highest Court of Florida, to correct the problem and prevent such a situation from ever arising again in the future.

Mr. Naugle has been prejudiced by a four and one-half (4½) month delay in the formal filing of the information. The prejudice occurred when Mr. Naugle was unable to file a demand for speedy trial under the rules of this State, i.e., Fla. Rules of Criminal Procedure 3.191(a)(2). Mr. Naugle was precluded from filing his demand for a period of five (5) months after his arrest, i.e., November 17, 1984 to March 30, 1985, a total of one hundred and thirty three (133) days from his arrest by the Michigan authorities. This prejudice meets the requirements enunciated in Barker v. Wingo, 407 U.S. 514 (1972), and therefore brings Mr. Naugle's case into a Constitutional dimension of speedy trial claim.

This Court has pointed out in Bivona, supra, that the accused was able to secure a speedy trial through 941.17 F.S., but in fact, Rule 3.191(b)(1) makes no mention of F.S. 941.17, but does in fact make mention of F.S. 941.45-941.50. If in fact Mr. Naugle had no protection of a speedy trial through Rule 3.191 then he must turn to F.S. 941.45(3)(a). The first line of this section clearly excludes Mr. Naugle from its operation.

[W]henver a person has entered upon a term of imprisonment in a penal or correctional institution of a party State...

This language clearly excludes Mr. Naugle from its operation for two (2) reasons. The first being, Mr. Naugle never entered upon a term of imprisonment in the State of Michigan. Second, Mr. Naugle was never incarcerated in a penal or correctional institution in the State of Michigan, only the county jail. Clearer language than this is difficult to envisage.

The State contends that the language of Rule 3.191(b)(1)...

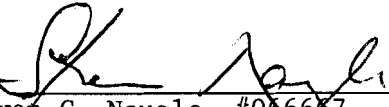
every person charged with a crime by indictment or information..., should not be read so narrowly for the reason it also exist in section (a)(1) of the same rule and therefore (a)(1) would not apply to any defendant who has not been charged by an indictment or information. The State goes on to say, " That if that were the law, the spirit of the speedy trial rule could easily be circumvented". The language of the rule is unambiguous and must not be ignored, for the drafter's of the present rule included the language for a purpose and it is evident that the purpose is to protect the accused from procedural and substantive violations of the prosecutors office. Could this Court or any Court of the United States of America totally ignore the language of a Statute or Rule in determining a case as complex as the one herein. If it could be done the entire judiciary would be futile for the reason that society itself would have no respect for a system that did not abide by the laws it enacted. If this where the case the United States of America would not be as our forefather's have died to make it, and the United States Constitution would have no impact on the way our country is run today. The State's contention is totally without support and is foreign in the eyes of justice.

To recapitulate, this case involves an issue of prejudice against Mr. Naugle for there is no existing law to protect him from the slothful pace of the prosecutor's office in the formal filing of the information, and Mr. Naugle had no right to demand a speedy trial under the rules of this State due to the lack of a formal charging instrument for nearly five months after his arrest. Mr. Naugle was denied due process of law, and the right to secure a speedy trial -pon demand.

CONCLUSION

Based on the foregoing reasons this Court must reverse and remand with instructions that Mr. Naugle be discharged post haste, And this Court should promogate a new rule to protect the ones to follow from this very painful and exhausting battle of attempting to find a law to protect his constitutional guarantee of a speedy trial that does not exist.


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 Candance M. Sunderland, Assistant Attorney General, Park Trammell Building, Suite 804, 1313 Tampa Street, Tampa, Florida 33602 this 1 day of April, 1987.


Steven C. Naugle, Pro se.