

IN THE SUPREME COURT OF FLORIDA

JESUS PEREZ,
Petitioner,
v.
STATE OF FLORIDA,
Respondent.

FILED

SID J. WHITE

APR 12 1988

CASE NO. 72-161 CLERK, SUPREME COURT

By

DCA NO. BQ-153 Deputy Clerk

BQ-154

BQ-155

RESPONDENT'S BRIEF ON JURISDICTION

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

KURT L. BARCH
ASSISTANT ATTORNEY GENERAL
DEPARTMENT OF LEGAL AFFAIRS
THE CAPITOL
TALLAHASSEE, FLORIDA 32399-1050
(904) 488-0600

COUNSEL FOR RESPONDENT

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF CONTENTS	i
TABLE OF CITATIONS	ii
PRELIMINARY STATEMENT	1
STATEMENT OF THE CASE AND FACTS	2
SUMMARY OF ARGUMENT	3
ARGUMENT	
<u>ISSUE</u>	
WHETHER THE DECISION OF THE DISTRICT COURT OF APPEAL EXPRESSLY AND DIRECTLY CONFLICTS WITH <u>REINO V. STATE</u> , 352 So.2d 853.	4
CONCLUSION	7
CERTIFICATE OF SERVICE	7

TABLE OF CITATIONS

<u>CASE</u>	<u>PAGE</u>
Buford v. State, 403 So.2d 943 (Fla. 1981) cert. denied, 454 U.S. 1164, 102 S.Ct. 1039, 71 L.Ed.2d (1982)	4,6
Dobbert v. Florida, 432 U.S. 282, 53 L.Ed.2d 344, 97 S.Ct. 2290 (1977)	5,6
Manucy v. Wadsworth, 293 So.2d 345 (Fla. 1974)	4,5
Reino v. State, 352 So.2d 853 (Fla. 1977)	4,5,6
 <u>OTHER:</u>	
Section 775.15, Florida Statutes (1975)	4
Section 932.465, Florida Statutes (1973)	4

IN THE SUPREME COURT OF FLORIDA

JESUS PEREZ,

Petitioner,

v.

CASE NO. 72,161

STATE OF FLORIDA,

DCA NO. BQ-153

Respondent.

BQ-154

BQ-155

PRELIMINARY STATEMENT

Petitioner, was the defendant in the Circuit Court of Santa Rosa County and Appellee in the appeal. The State of Florida was the prosecuting authority in the circuit court and the Appellant on appeal. Citations to the record on appeal will be referred to by the symbol "R" followed by the page number in parenthesis.

STATEMENT OF THE CASE AND FACTS

The State of Florida charged the Petitioner by information with three incidents of sexual battery occurring between June 1, 1975 and June 1, 1976. Circuit Court case nos. 86-182, 86-183, 86-184. On June 9, 1986 the Appellee filed motions to dismiss all three cases alleging that the statute of limitations had expired for the offenses charged. On August 8, 1986, the trial court conducted a hearing on the Appellee's motions. On October 10, 1986, the trial court issued an order granting the motions to dismiss. The trial court determined that at all times material to the dates relied upon by the State, the law required that the prosecution be commenced within four years of the dates of the occurrence. The offense occurred on or after July 1, 1975 and within two years, if the offense occurred prior to July 1, 1975. (R 211-22)

The State of Florida appealed the trial court's order to the First District Court of Appeal. The First District Court reversed the decision and remanded the case to the trial court. (See copy of court's opinion attached hereto.)

SUMMARY OF ARGUMENT

The First District Court of Appeal correctly determined that the statute of limitations in effect at the time of the commission of the offense controls the prosecution of the case.

ARGUMENT

ISSUE

WHETHER THE DECISION OF THE DISTRICT COURT OF APPEAL EXPRESSLY AND DIRECTLY CONFLICTS WITH REINO V. STATE, 352 So.2d 853.

The First District Court of Appeal correctly determined that the statute of limitations in effect at the time of the commission of the offense controls the prosecution of the case. At the time of the offense there was no limitation on the prosecution of sexual battery on a child. 932.465, Florida Statutes (1973). The Statute provided that a prosecution for an offense punishable by death could be commenced at any time. Effective July 1, 1975, the time limitation was amended to Section 775.15, Florida Statutes (1975), to provide that a capital felony could be commenced at any time. The Statute also provided for other periods of limitation ranging from 3 to 4 years depending upon the offense.

After the commission of the crimes the death penalty for sexual assault on a person age 11 or younger was held to be an unconstitutional violation of the Eighth Amendment. Buford v. State, 403 So.2d 943 (Fla. 1981), cert. denied, 454 U.S. 1164, 102 S.Ct. 1039, 71 L.d.2d (1982).

In the instant case the District Court correctly determined, pursuant to this Court's decision in Manucy v. Wadsworth, 293

So.2d 345 (Fla. 1974), that the statute of limitation in effect at the time of the commission of the crime was controlling in determining if a prosecution had been timely commenced. The District Court concluded from the Manucy decision that determination of the applicable limitation period should be made from the perspective of the date that the crime was committed and not from the perspective of the date the charges were brought.

The District Court also correctly distinguished the current case from that of Reino v. State, 352 So.2d 853 (Fla. 1977). In Reino, it was held that the two year statute of limitation controlled a murder committed during the period between the Furman decision and the Florida legislature's reinstatement of the death penalty. In Reino, unlike the present case, the death penalty was not a possible penalty at the time of the murder. The District Court correctly pointed out that the subsequent unconstitutionality of the death penalty does not affect the period of time in which the charges may be brought. The fact that there was a statute of limitation in effect during the period between the time of the offense and the time of the prosecution is of no consequence.

Any subsequent changes under the statute of limitation did not work any onerous application of an ex post facto change in the law, therefore, the Appellant's condition was no worse, at the time of prosecution than it was at the time he committed


the offenses. Dobbert v. Florida, 432 U.S. 282, 53 L.Ed.2d 344, 97 S.Ct. 2290 (1977). Since the District Court's decision is not in conflict with either Reino v. State, supra or Buford v. State, 403 So.2d 943 (Fla. 1981) jurisdiction should be declined.

CONCLUSION

The Petition for Discretionary Review should be denied since the Petitioner has failed to establish the requisite jurisdictional conflict between the District Court's decision and decisions of this Court or other district courts.

Respectfully submitted,


ROBERT A. BUTTERWORTH
ATTORNEY GENERAL


KURT L. BARCH
ASSISTANT ATTORNEY GENERAL
DEPARTMENT OF LEGAL AFFAIRS
THE CAPITOL
TALLAHASSEE, FLORIDA 32399-1050
(904) 488-0600

COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been forwarded by U.S. Mail to Robert N. Heath, Jr., HARRELL, WILTSHIRE, SWEARINGEN, WILSON & HARRELL, P.A., 201 East Government Street, Pensacola, Florida 32501, on this 12 day of April, 1988.


KURT L. BARCH
ASSISTANT ATTORNEY GENERAL