

75,744

IN THE SUPREME COURT OF FLORIDA

SERMON DYESS,  
Hendry County Sheriff,

Petitioner,

v.

FREDDIE THOMAS,

Respondent,

**FILED**  
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BRIEF OF THE PETITIONER ON JURISDICTION

ROBERT A. BUTTERWORTH  
ATTORNEY GENERAL

ERICA M. RAFFEL  
Assistant Attorney General  
1313 Tampa Street, Suite 804  
Park Trammell Building  
Tampa, Florida 33602  
(813) 272-2670

OF COUNSEL FOR PETITIONER

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OTHER AUTHORITIES CITED

FLORIDA RULE OF CRIMINAL PROCEDURE:

3.133(b)(6).....2, 5-6

PRELIMINARY STATEMENT

Sermon Dyess will be referred to as the Petitioner in this brief and Freddie Thomas will be referred to as the Respondent. The record on appeal will be referenced by the symbol "R" followed by the appropriate page number.

This Court has scheduled oral argument in *Amendment to Florida Rules of Criminal Procedure*, Rule 3.133(b)(6), Case Number 74,961 for 9:00 a.m., Thursday, May 10, 1990.

### STATEMENT OF THE CASE AND FACTS

Respondent was arrested for robbery on November 20, 1989 and attended his first appearance on November 21, 1989. On January 2, 1990, the state filed its information formally charging the Respondent. On January 10, 1990, Respondent made its motion to the state to show cause why Respondent should not be released pursuant to *Florida Rule of Criminal Procedure 3.133(b)(6)* because the information was in fact filed on the 43rd day after the Respondent's arrest. The trial court failed to release the Respondent indicating the personnel and administrative problems within the State Attorney's Office causing the delay was good cause.

Thereafter, Respondent filed his petition for writ of habeas corpus before the Second District Court of Appeal, and the state responded to his petition accordingly. On February 21, 1990, the Second District Court of Appeal issued its opinion disagreeing with the construction of *Florida Rule of Criminal Procedure 3.133(b)(6)* as enunciated by the Fourth District Court of Appeal in Bowens v. Tyson, 543 So.2d 851 (Fla. 4th DCA 1989). The Second District Court of Appeal, in its opinion noted that the information in the Bowens case as well as the instant case was filed after the 30 day period had expired, but before the court heard the defendant's motion for release. The court went on to determine that there was no precedent to guide them in establishing exactly what constituted "good cause" for the late filing of charges, and stated that the interoffice delays within the State Attorney's

Office were not good cause to detain Respondent in jail past the limits set by the rule. Accordingly, they granted Respondent's petition for a writ of habeas corpus.

Thereafter on March 9, 1990, the Second District Court of Appeal issued its mandate, and on March 12, 1990, Petitioner filed its motion to recall issuance of mandate advising the Second District Court of Appeal that review would be sought before this Honorable Court. On March 16, 1990, Petitioner filed its notice to invoke this Court's discretionary jurisdiction with the Second District Court of Appeal.

SUMMARY OF THE ARGUMENT

The opinion of the Second District Court of Appeal in this particular case passes upon a question certified to this Court by the Fourth District Court of Appeals in Bowens v. Tyson, 543 So.2d 851 (4th DCA 1989). Additionally, the opinion and the result of the Second District Court of Appeal in this case directly and expressly conflicts with the decision in Bowens v. Tyson, supra.

## ARGUMENT

### ISSUE I

WHETHER THE INSTANT DECISION CONFLICTS WITH OTHER FLORIDA DECISIONS WHICH HAVE RULED THAT AUTOMATIC RELEASE OF A CRIMINAL DEFENDANT AFTER THE EXPIRATION OF THIRTY DAYS WHEREIN NO INFORMATION HAS BEEN FILED IS NOT WARRANTED WHEN AN INFORMATION IS FILED AFTER SUCH A DEFENDANT MAKES A MOTION TO BE RELEASED ON HIS OWN RECOGNIZANCE PURSUANT TO FLORIDA RULE OF CRIMINAL PROCEDURE 3.133(b)(6), BUT BEFORE THE HEARING THEREON.

*Florida Rule of Criminal Procedure 3.133(b)(6) provides:*

*Pretrial detention.* In the event that the defendant remains in custody and has not been charged in an information or indictment within thirty days from the date of his or her arrest or service of *capias* upon him or her, he or she shall be released from custody on their own recognizance on the thirtieth day unless the state can show good cause why the information or indictment has not been filed. If good cause is shown the state shall have ten additional days to obtain an indictment or file an information. If the defendant has not been so charged within this time, he or she shall be automatically released on his or her own recognizance. In no event shall any defendant remain in custody beyond forty days unless he or she has been charged with a crime by information or indictment.

In Bowens v. Tyson, 543 So.2d 851 (4th DCA 1988), the Fourth District Court of Appeal in passing upon this provision of the Florida Rules of Criminal Procedure said, "We do not interpret the rule to mandate automatic release if the state files an information or indictment after the thirty day period has expired, but before the court hears the defendant's motion for release. Therefore the petition for writ of habeas corpus is



denied." However, the Second District Court of Appeal in its opinion of February 21, 1990, noted the decision of the Fourth District Court of Appeal in Bowens v. Tyson and indicated that the Petitioner there moved for pretrial release after forty-two days as Respondent herein and also observed that in Bowens v. Tyson the state filed its information after the thirty day period had expired, but before the court heard the defendant's motion for release as occurred in the instant case as well, and yet disagreed with the construction applied by the Fourth District Court of Appeal, and granted Respondent's petition for writ of habeas corpus. Additionally, the Fourth District Court of Appeal in Bowens v. Tyson, *supra* stated that because interpretation of this subsection of the Rules of Criminal Procedure is a matter of great public importance, certified the following question to the Florida Supreme Court:

"Is a defendant who is held in custody for thirty days without the filing of an information or indictment entitled to automatic pretrial release under Florida Rule of Criminal Procedure 3.133(b)(6), even though the state files an information before the court hears the defendant's motion for release?"

Despite the certified question, the Second District Court of Appeal addressed the same precise issue.

Petitioner therefore asserts it is apparent that the Second District Court of Appeal's opinion in this case expressly and directly conflicts with the decision of another district court of appeal, and passes upon a question certified by the Fourth


District Court of Appeal as to be a question of great public importance, and therefore urges this Court to exercise its discretionary jurisdiction and accept this case for determination of the issues raised.

CONCLUSION

WHEREFORE, based on the foregoing reasons, arguments and citations of authority, Petitioner requests this Court to grant its discretionary jurisdiction in this case.

Respectfully submitted,

ROBERT A. BUTTERWORTH  
ATTORNEY GENERAL

  
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ERICA M. RAFFEL  
Assistant Attorney General  
Florida Bar ID#: 329150  
1313 Tampa Street, Suite 804  
Park Trammell Building  
Tampa, Florida 33602  
(813) 272-2670

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Regular Mail to Freddie Thomas, Hendry County Jail, Labelle, Florida 33935, & to Douglas M. Midgley, Public Defender, P. O. Box 1345, Labelle, Florida 33935, this 20<sup>th</sup> day of March, 1990.

  
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OF COUNSEL FOR RESPONDENT