IN THE SUPREME COURT
OF FLORIDA.

STEVEN VALDEZ a/k/a STEVEN SHAUNSTONE,	*	
Petitioner,	*	
-vs-	*	CASE NO. 78,260
HONORABLE TOM TRAMEL, as Sheriff of Columbia County, Florida,	*	FIRST DISTRICT NO. 90-1484
Respondent.	*	
	*	

ON APPEAL FROM THE DISTRICT COURT
OF APPEAL OF FLORIDA, FIRST DISTRICT

INITIAL BRIEF OF PETITIONER

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IN THE SUPREME COURT
OF FLORIDA.

STEVEN VALDEZ a/k/a STEVEN SHAUNSTONE,	*	
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Respondent.	*	
	*	

INITIAL BRIEF OF PETITIONER

I. PRELIMINARY STATEMENT

STEVEN VALDEZ a/k/a STEVEN SHAUNSTONE was the Defendant in the trial court and will be referred to in this brief as Petitioner, Defendant, or by his proper name. References to the exhibits in the appendix of this initial brief will be referred to by, for example "Exhibit A" as Ex. A. References to the First District Court of Appeals' decision will be referred to as "the Valdez court", or "the lower court".

II. STATEMENT OF THE CASE AND FACTS

Defendant STEVEN VALDEZ was arrested without a warrant and incarcerated at the Columbia County Detention Center in Lake City, Florida, on March 30, 1990. At that time he was charged by the arresting officers with robbery while armed, aggravated assault, fleeing and attempting to elude, reckless driving, no valid driver's license, and resisting arrest without violence. [Ex. A]. On or about April 24, 1990, the undersigned approached Assistant State Attorney TOM COLEMAN to agree to a stipulation as to a lower bond amount than previously set by the magistrate at first appearance. Agreement was reached to set the bond at $20,000.00. [Ex. B]. At this point, the undersigned told MR. COLEMAN that at least twenty-one (21) days had passed since Defendant had been arrested, and no information or indictment had been filed charging the Defendant with a crime.

As of May 10, 1990, forty days had passed since Defendant had been arrested, however, no information or indictment had been filed charging the Defendant with any crime. On May 10, 1990, the undersigned filed a motion for immediate release from incarceration and demand for adversary preliminary hearing. [Ex. C].

On May 11, 1990, the State Attorney's Office filed an information charging Defendant with the crimes of robbery while armed, aggravated assault, fleeing and attempting to elude, reckless

driving, no valid driver's license, and resisting arrest without violence. [Ex. D].

On May 14, 1990, a hearing was conducted on Defendant's immediate release from incarceration. At that time the Honorable E. VERNON DOUGLAS, Circuit Judge, denied the motion. [Ex. E].

On May 22, 1990, the undersigned petitioned the First District Court of Appeal for a writ of habeas corpus. That Court denied the Petition by its order dated June 21, 1990. [Ex. F]. That Court also certified the question presented - the correct interpretation of Florida Rule of Criminal Procedure 3.133(b)(6) - to the Florida Supreme Court as one of great public importance.

As of the day of the filing of this initial brief, Defendant remains incarcerated in the Columbia County Detention Center.

III. SUMMARY OF ARGUMENT

At issue is the proper interpretation of Florida Rules of Criminal Procedure 3.133(b)(6). The plain language of the rule mandates automatic release if, after forty days of incarceration, no indictment or information charging a defendant with a crime has been filed. The fact that Petitioner did not apply for relief under Rule 3.133(b)(1) is irrelevant to his entitlement to relief under subsection (b)(6) of the same rule. To continue to hold Petitioner in custody under these circumstances violates Article I, Sections 9 and 14 of the Florida Constitution and Article XIV of the United States Constitution.

IV. ARGUMENT

ISSUE I

WHETHER FLORIDA RULE OF CRIMINAL PROCEDURE 3.133(b)(6) REQUIRES A DEFENDANT TO BE RELEASED FROM CUSTODY IF THE STATE ATTORNEY'S OFFICE FAILS TO FILE AN INFORMATION OR INDICTMENT CHARGING A DEFENDANT WITH A CRIME WITHIN FORTY DAYS OF A DEFENDANT'S ARREST.

Florida Rule of Criminal Procedure 3.133(b)(6) states clearly

> In the event that the Defendant remains in custody and has not been charged in 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. Then 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. [Emphasis added].

The last sentence of the above quoted rule makes it plainly clear that in no event shall any defendant remain in custody after forty days if not charged by some document by the State Attorney's Office. This is exactly what happened in the instant case. The First District Court of Appeal in the instant case has read subsection (b)(6) of the rule to be dependent upon subsection (b)(1) of that rule. This is so even though there is no

case law to support that position, and the plain language of the rule would dictate otherwise.

In Thomas v. Dyess, 557 So.2d 196 (Fla. 2d DCA 1990), the Petitioner sought release by petition for writ of habeas corpus when no charges were filed against him after thirty days of his arrest. Id. at 197. An information was filed after forty days had passed, and hearing requiring the State to show cause why Petitioner should not be released was held afterwards. Id.

The trial court in Thomas denied the petition. Id. However, the Second District Court of Appeal reversed and ordered Petitioner released. Id. In granting the Petition the Court viewed Rule 3.133 broadly and stated that the purpose of the rule

> . . . appears to require the State to file [charges] within a certain time or lose the right to insist on the defendant's continued detention. Id. [Emphasis added].

The Thomas court realized that another District Court had reached a contrary position. In Bowens v. Tyson, 543 So.2d 851 (Fla. 4th DCA 1989), the Petitioner in habeas moved for pre-trial release after forty-two days in custody, yet the trial court denied the motion. The District Court affirmed the trial court, stating automatic release after forty days was not mandated by the rules.[1] Id. at 852.

[1]Bowens was accepted for review on a question certified to be of great public importance by the Florida Supreme Court, case #74,370. It was orally argued in February, 1990.

The Thomas court correctly realized the result reached in Bowens was incorrect. 557 So.2d at 197. That court viewed the rule broadly [as stated previously], and realized that to follow the logic of Bowens would

> . . . reduce the rule to little more than a reminder to the state to file charges in advance of any release hearing, however tardy. Id.

The District Court in the instant case adopted the view of the State; that release is mandated only after an adversary preliminary hearing. This assumes forty days have passed and no information or indictment has been filed by the State [Ex. F].

The Valdez court's interpretation of the rule ignores the plain language of subsection (b)(6) of the rule. That subsection requires automatic release of a defendant who has remained in custody for more than forty days where, as is here, no information or indictment has been filed by the State Attorney's Office. As the Thomas court correctly pointed out, the automatic release provision of subsection (b)(6) is in addition to the entitlement to a prompt preliminary hearing and probable cause finding. Thomas at 197.

Interpreting the rule in this fashion is consistent with the position the adopters of the rule had in mind. As subsection (b)(1) of the rule states:

> a Defendant who is not charged in an information or indictment within twenty-one days from the date of his arrest or service of the capias upon him shall have the right to an adversary preliminary

> hearing on any felony charge then pending against him. The subsequent filing of an information or indictment shall not eliminate a defendant's entitlement to this proceeding. [Emphasis added].

The last sentence of that rule states clearly that a defendant is "entitled", as a matter of right, to this proceeding. It also states that this proceeding is not affected by any later action by the State Attorney's Office. It does not, contrary to the Valdez court's opinion, require a Petitioner in habeas corpus to file for an adversary preliminary hearing prior to moving for release under subsection (b)(6) of the rule. In anything, subsection (b)(1)'s last sentence states that a defendant is entitled to a preliminary hearing even after he may be released under subsection (b)(6) of the rule. Thus, a defendant is entitled to release under subsection (b)(6) regardless of whether there has been an adversary preliminary hearing.

To allow the court's opinion in Valdez to stand not only goes against the plain language of the rule, but against this Court's holding in In Re: Rules of Criminal Procedure, Rule 3.133(b)(6), 545 So.2d 266 [Fla. 1989]. In deciding to keep the rule on the books, this court stated that

> at this junction, the court is unwilling to repeal the new amendment without some provision in the rules to protect against the possibility of prisoners remaining in custody indefinitely without being charged in the cases in which no justification exists for the delay. Id.

In the instant case no justification was ever advanced for the

State's failure to file charges within forty days, either at the trial court or District Court level. The trial court's order only addresses the fact that the defense failed to move for an adversary preliminary hearing after twenty-one days, and is, therefore, not entitled to release under subsection (b)(6). (Ex. E). However, had the defense failed to move for release, Petitioner might have sat in jail indefinitely with no charges being filed. The Respondent below asserted that by moving for release, this is a way to "require the State to properly charge defendant". In other words, the defendant must remind the State to properly charge the defendant. That is an outcome both this court in In Re: Rules of Criminal Procedure, and the Second District Court in Thomas failed to accept. Thomas at 198.

The Respondent below argued that to grant the petition would be a "back door attempt to obtain pretrial release." Also, according to Respondent, "substantive law" holds Petitioner is not entitled to release. If that indeed is the case, why does subsection (b)(6) so plainly state that the release is mandated after forty days? Even assuming arguendo that the language is not clear, it is essential to note that (in addition to all other argument by Respondent below that "substantive law" governs here) this is a rule of criminal procedure. As such, the rules of construction which apply to penal statutes should be applied to Rule 3.133. If any intent of the framers of the rule should be in doubt, the proper course is to resolve any doubt in

favor of the Defendant. Ex parte Bailey, 39 Fla. 734, 23 So. 552 [1897].

Thus, resolution of doubt in the instant case should be in favor of Petitioner and he should be released on his own recognizance pending trial in this case.

V. CONCLUSION

For the reasons set forth under Issue I, Petitioner requests this Honorable Court to reverse the decision of the trial court and the District Court appealed from and to enter an order releasing Petitioner on his own recognizance pending trial in this case.

Respectfully submitted,

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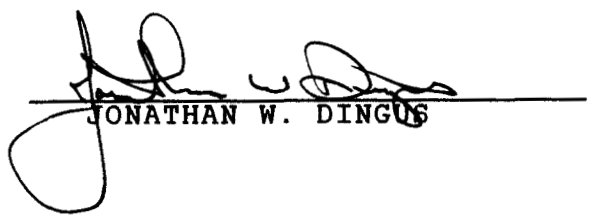
VI. CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing initial brief of Petitioner has been furnished by U. S. Mail to EDWARD C. HILL, Assistant Attorney General, The Capitol, Tallahassee, FL; STEVE CHRISTENSON, Assistant Attorney General, The Capitol, Tallahassee, FL and a copy to copy has been mailed to Petitioner, STEVEN VALDEZ, this 20TH day of July, 1990.



JONATHAN W. DINGUS