IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v. CASE NO. 78, 950

RONALD T. AGEE, A/K/A
RONALD LOGAN,

Respondent.

_____/

REPLY BRIEF OF PETITIONER

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

CAROLYN J. MOSLEY, #593280
ASSISTANT ATTORNEY GENERAL

JAMES W. ROGERS, #325791
BUREAU CHIEF-CRIMINAL APPEALS

DEPARTMENT OF LEGAL AFFAIRS
THE CAPITOL
TALLAHASSEE, FL 32399-1050
(904) 488-0600

COUNSEL FOR PETITIONER

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ISSUE

WHETHER THE TRIAL AND APPELLATE COURTS ERRED IN DISCHARGING THE RESPONDENT UNDER THE SPEEDY TRIAL RULE ON THE CHARGE OF ATTEMPTED FIRST-DEGREE MURDER.

Agee contends that this Court is without jurisdiction to review the decision in the instant case because it does not directly conflict with the decision in State v. Dorian, 16 F.L.W. D2370 (Fla. 3rd DCA September 10, 1991). Agee misapprehends the basis of this Court's jurisdiction. In its opinion on motion for rehearing, the First District Court of Appeal stated, "[W]e certify conflict between our decision herein and State v. Dorian, ..." (A. 17) This statement was sufficient to trigger the discretionary jurisdiction of this Court under Article V, § 3(b)(4), Florida Constitution, which provides that this Court "[m]ay review any decision of a district court of appeal that passes upon a question certified by it to be of great public importance, or that is certified by it to be in direct conflict with a decision of another district court of appeal."

It is the certification itself, not the reason for the certification, that activates this Court's jurisdiction. Susco Car Rental System of Florida v. Leonard, 112 So.2d 832 (Fla. 1959) (jurisdiction attached without review of certified question to determine whether it in fact was one of "great public interest"). The Florida Constitution now authorizes certification on two grounds (great public importance and

decisional conflict). The rationale for the Susco decision would apply to the second ground as well.[1]

Under a separate provision, this Court's jurisdiction is activated by a determination that express and direct conflict exists between the decisions of two different courts. Art. V, § 3(b)(3). If this Court had to make that same determination under Art. V, § 3(b)(4) when a district court certified conflict, the certification itself would be meaningless. This is the interpretation urged by Agee. Once jurisdiction attaches, of course, it is within this Court's discretion whether to exercise it.

The State briefly would emphasize that the decisions indeed are in conflict. In both cases, based on the same reason, the defendant was not brought to trial within the time period specified by the speedy trial rule. The remedy for the violation in Dorian was application of the window of recapture, but in the case at bar, it was automatic discharge.

Agee relies on the committee notes to the speedy trial rule. To clarify, the committee notes are not part of the rule. The opinions adopting the 1972, 1977, 1980, and 1984 amendments to the rules of criminal procedure state, "The notes appended to the

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[1] In his treatise on Florida appellate practice, Judge Padovano states: [A] decision *certified as being in* "direct conflict" under Section 3(b)(4) need not "expressly conflict" with another appellate decision. Even a summary type decision made upon the basis of a single citation, in the absence of any stated legal reasoning, will qualify for review if it is certified to be in conflict. (emphasis in original) Philip J. Padovano, Florida Appellate Practice, page 27 (West Pub. 1988).

various amendments are not adopted by the Court." In re Florida Rules of Criminal Procedure, 272 So.2d 65 (Fla. 1972); The Florida Bar, 343 So.2d 1247 (Fla. 1977); The Florida Bar, 389 So.2d 610 (Fla. 198), and Florida Bar Re: Amendment to Rules--Criminal Procedure, 462 So.2d 386 (Fla. 1984).

Agee relies on State v. Rheinsmith, 362 So.2d 698 (Fla. 2d DCA 1978) for the proposition that the State cannot defeat the time provision in the speedy trial rule by filing a nolle prosequi. The State agrees with this general interpretation of the rule. However, Rheinsmith does not address the remedy for the violation. In fact, the State prevailed in Rheinsmith because it had been granted a continuance which extended the speedy trial period. In 1978, the remedy for violating the specified time period was automatic discharge; now, of course, the remedy is the window of recapture. Therefore, even if the defendant in Rheinsmith had prevailed on appeal, it would not resolve the issue presented here.

Agee argues that he was entitled to file his motion for discharge while outside the jurisdiction of Florida. If the only remedy for violating the speedy trial rule was automatic discharge, this argument might have some merit, but since the State is entitled to the window of recapture, the defendant must be within the state when he files the motion.

CONCLUSION

Based on the foregoing discussion, the State respectfully requests this Honorable Court to quash the decision of the First District affirming the trial court's order discharging Agee from further prosecution for attempted first-degree murder.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

CAROLYN J. MOSLEY, #593280
ASSISTANT ATTORNEY GENERAL

JAMES W. ROGERS, #325791
BUREAU CHIEF-CRIMINAL APPEALS

DEPARTMENT OF LEGAL AFFAIRS
THE CAPITOL
TALLAHASSEE, FL 32399-1050
(904) 488-0600

COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing jurisdictional brief has been furnished by U.S. Mail to James T. Miller, Assistant Public Defender, 407 Duval County Courthouse, Jacksonville, Florida, 32202, this 25th day of February, 1992.

Carolyn J. Mosley
Assistant Attorney General