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IN THE SUPREME COURT OF FLORIDA

CASE NO. 82,217

DCA CASE NO. 92-1972

MARVIN REED,

Defendant/Petitioner,

-vs-

STATE OF FLORIDA,

Plaintiff/Respondent.

ON PETITION FOR DISCRETIONARY REVIEW FROM THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

REPLY BRIEF OF PETITIONER MARVIN REED ON THE MERITS

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STATEMENT OF THE CASE AND FACTS

The petitioner, MARVIN REED, respectfully relies upon the Statement of the Case and Statement of the Facts as presented in his initial brief on the merits.

ARGUMENT

THE TRIAL COURT ERRED IN STRIKING AS A NULLITY, RATHER THAN GRANTING, THE DEFENDANT'S MOTION FOR DISCHARGE TIMELY FILED AFTER THE STATE'S TACTICALLY MOTIVATED NOLLE PROSEQUI ENTERED 174 DAYS AFTER ORIGINAL CHARGES WERE FILED, THEREBY DENYING HIS RIGHT TO A SPEEDY TRIAL GUARANTEED BY FLA. R. CRIM. P. 3.191, THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, AND ARTICLE I, SECTION 16 OF THE FLORIDA CONSTITUTION.

The State puts too much emphasis on Petitioner's claim that the "...subsequent robbery, aggravated battery, and kidnapping charges filed against Reed after the State's nol pros were based on the same occurrence as the original charges of leaving the scene of an accident...". [Petitioner's Initial Brief at 15] In truth, it does not matter. Assuming, arguendo, the charges were not so related, Reed was still denied his right to a speedy trial.

There is no question, and the State does not dispute the fact, that Reed was arrested on January 4, 1991 for armed robbery as well as leaving the scene of an accident. [Brief of Respondent at p. 12, n.1] Accordingly, he was entitled to a trial on all charges within 175 days of that custody. Fla. R. Crim. P. 3.191(a). The "same occurrence" doctrine only comes into play when an accused seeks to "impute" his arrest and custody on one charge to other charges because the charges are integrally related and he has not been arrested on all charges. Because Reed was arrested on all charges, the speedy trial period runs from the date of his custody and the "same occurrence" doctrine does not come into play.

The State's reliance on Snead v. State, 346 So.2d 546 (Fla. 1st DCA 1976) and the bold proposition that "an arrest in which no charge is made does not commence the period in which a speedy trial is required" is misplaced. [Brief of Respondent at p. 14] Snead, unlike this case, involved an "arrest" in which a suspect "was picked up and then released." [Id. at 547]. The court described the "arrest" as being "taken to jail and held for a short period for investigation...". [Id at 547]. Here, to the contrary, there is no legitimate question that Reed was taken into custody by the police for all charges deriving from his robbery and flight whether or not they are considered to have arisen from the same occurrence. This was no investigatory detention.

By the same token, all the other cases cited by the State involve situations where a suspect's original arrest and custody did not include the charge at issue. For example, in State v. De Santos, 251 So.2d 289 (Fla. 3d DCA 1971), although the police were "cognizant" of additional charges at the time the defendant was arrested in an unrelated case, the defendant was not taken into custody for the additional offense until much later.

In State v. Deratany, 410 So.2d 977 (Fla. 5th DCA 1982) the defendant was originally charged with making a false report to the police and arrested. Only later was he charged with and arrested for presenting a false insurance claim. The court correctly held that the speedy trial time for the latter charge did not start to run until his custody for that offense.

Likewise, in Walker v. State, 390 So.2d 411, 412 (Fla. 4th DCA

1980) the court based its affirmance on the trial court's case-specific finding of fact that the defendant had not been arrested for the vehicular homicide until long after his arrest for leaving the scene of an accident. Here, Reed was arrested on all charges at the same time.

Moreover, the Respondent's claim that the State's failure to timely file an information against Reed for the robbery-related charges renders the Petitioner impotent to exercise his speedy trial rights is strong evidence of the State's unfair tactical manipulations. Consistent with this Court's precedent in State v Agee, 622 So.2d 473 (Fla. 1993) and Fla. R. Crim. P. 3.191(o), it has also consistently been held that the State may not withhold the filing of selected charges while arresting the defendant on others where there is ample evidence to support probable cause as to all charges, so as to attempt to extend the time period of the Speedy Trial Rule. Thomas v. State, 374 So.2d 508, 513 (Fla. 1979); State ex rel. Meyer v. Keough, 325 So.2d 75 (Fla. 2d DCA 1976).

The speedy trial rule, and the constitutional right to a speedy trial, require dismissal when the state fails to charge or delays in charging a defendant with crimes arising out of the same conduct or criminal action. State v. Stanley, 399 So.2d 371 (Fla. 3rd DCA 1981). Even when crimes do not arise from the same criminal action, however, a defendant's right to a speedy trial and the spirit of the speedy trial rule prohibit the state from unreasonably delaying the filing of charges for which probable cause to prosecute exists. Giglio v. Kaplan, 392 So.2d 1004 (Fla.

4th DCA 1981). The state's delay of 245 days (from the time of Reed's custody on January 4, 1991 to the filing of life felony charges against him on September 6, 1994) was unreasonable.

Not only did the State misuse its nol pros power, it also abused its prosecutorial discretion by stalling the bringing of formal charges against an accused, both in ways which operated to permit it to avoid the limitations of the speedy trial rule and deny the Petitioner his constitutional rights.

The decision of the district court should be reversed.

Respectfully submitted,

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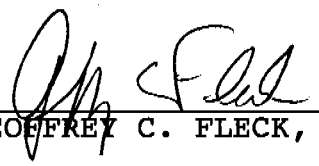
BY: 
GEOFFREY C. FLECK, ESQUIRE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed to Charles M. Fahlbusch, Esquire, Assistant Attorney General, 4000 Hollywood Boulevard, Hollywood, Florida 33121, this 25th day of February, 1994.

BY: 
GEOFFREY C. FLECK, ESQUIRE