IN THE SUPREME COURT OF FLORIDA

CASE NO. 86,019

LOWER CASE NO: 94-309(3DCA)

STATE OF FLORIDA,

Petitioner,

-vs-

WILLIAM R. WOODRUFF,

Respondent.

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

RESPONDENT'S BRIEF ON JURISDICTION

BENNETT H. BRUMMER
Public Defender
Eleventh Judicial Circuit
of Florida

Special Assistant Public
Defender
AMY D. RONNER
FLORIDA BAR NO. 0511470
St. Thomas University
School of Law
Appellate Litigation Clinic
16400 N.W. 32nd Avenue
Miami, Florida 33054
(305) 623 2322

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF THE FACTS 1

STATEMENT OF THE CASE 1

SUMMARY OF THE ARGUMENT 3

ARGUMENT 4

I. THERE IS NO CONFLICT JURISDICTION BECAUSE THE NESWORTHY CASE IS NO LONGER GOOD LAW AND IS DISTINGUISHABLE 4

A. Nesworthy Is No Longer Good Law After Reed, Which Supports the Result Below 4

B. Also, Nesworthy Is Distinguishable 8

CONCLUSION 9

CERTIFICATE OF SERVICE 10

TABLE OF AUTHORITIES

Cases

Ashley v. State, 265 So. 2d 685 (Fla. 1972). 2

Nesworthy v. State, 648 So. 2d 259 (Fla. 5th DCA 1994) . Passim

Reed v. State, 649 So. 2d 227 (Fla. 1995) . . . . . Passim

State v. Agee, 662 So. 2d 473 (Fla. 1993) 5-6

State v. Rodriquez, 575 So. 2d 1262 (Fla. 1991) 8

State v. Woodruff, 654 So. 2d 585 (Fla. 3d DCA 1995) . . 2, 3, 8

Wainwright v. Taylor, 476 So. 2d 669 (Fla. 1985) 4

Statutes

Section 316.193, Fla. Stat. (1993) 8

Section 775.021, Fla. Stat. (1993) 8

Rules

Fla. R. App. P. 9.210 (1994) 1

Fla. R. Crim. P. 3.191. (1994) . . . . . Passim

Fla. R. Crim. P. 3.151 (1994) 2

STATEMENT OF THE FACTS

On the evening of July 4, 1993, the Respondent, William R. Woodruff ("Woodruff") was involved in a two-car accident in Miami, Florida.[1]

STATEMENT OF THE CASE

The Simultaneous Prosecutions

On July 5, 1993, the State charged Woodruff with two counts of driving under the influence (hereinafter "DUI") with serious injury, two counts DUI property damage and one for driving with a suspended license. On that same day, Mr. Woodruff entered a not guilty plea at the county court arraignment and demanded a jury trial.

On August 4, the State filed an information in circuit court charging Mr. Woodruff with felony DUI, two counts of DUI property damage and one count each of DUI personal damage, DUI impairment and driving with a suspended license. It is undisputed that these charges arose from the same conduct as the charges in county court.

There Was No Transfer or Consolidation

The State's representation in its Brief on Jurisdiction at 1, that "the record does not reflect how the transfer was effected", is misleading because it implies that there had actually been a transfer. This is not the case. It is undisputed that there was no transfer or consolidation in the circuit court.

This is what occurred: the clerk of the county court tried to

---

[1] In compliance with Fla. R. App. P. 9. 210(c), Respondent has provided his own statement of the case and facts in the interest of accuracy and clarity.

transfer the charges without either the State or the defense filing a motion to transfer or consolidate. Moreover, neither the circuit court nor the county court held a hearing on any consolidation or transfer. As such, no consolidation or transfer was effected. With respect to this issue, the Third District said:

> The state's argument that the charges were consolidated is without merit. Consolidation may be authorized by only the trial judge upon the proper motion of a party. Ashley v. State, 265 So.2d 685 (Fla. 1972); Fla. R. Crim P. 3.151. Neither the state nor the defendant filed a motion to consolidate. The court clerk's transfer of the case did not effect a consolidation, and the clerk had no authority to consolidate the cases.

State v. Woodruff, 654 so. 2d 585, 587 (Fla. 3d DCA 1995)

The State's Speedy Trial Violation

On October 4, 1993, the speedy trial period expired in Woodruff's county court case. Consequently, the Assistant Public Defender handling Mr. Woodruff's county court charges filed a notice of expiration of speedy trial on October 15, 1993. After the filing of this notice, the State still failed to take any action within the window period of Florida Rule of Criminal Procedure 3.191(p)(3). Then on December 2, 1993, Mr. Woodruff filed a motion to discharge pursuant to Florida Rule of Criminal Procedure 3.191.

Mr. Woodruff, of course, also filed a motion to dismiss all charges pending in the circuit court because they arose out of the same incident as the charges pending in the county court. The State, however, in a late attempt to avoid the ramifications of its violation of the speedy trial, proceeded to enter a nolle prosequi

to all of the county charges on December 3, 1993.

On December 17, the trial court granted Mr. Woodruff's motion and dismissed the information.

The Third District's Affirmance

The Third District Court of Appeal unanimously affirmed that dismissal. State v. Woodruff, 654 So. 2d 585. The plain language of the Speedy Trial Rule was the primary basis for the court's decision, which stated in part:

> As a matter of law, defendant is forever discharged from the county court charges. After the speedy trial period ran on the misdemeanor ticket offenses, defendant filed appropriate motions for discharge. The state's nolle prosequi was a nullity because the state took no action pursuant to Rule 3.191(p)(3) after the notice of expiration of speedy trial period was filed. Rule 3.191(p)(3) provides that a defendant not brought to trial within 10 days of a hearing on a notice of expiration of speedy trial 'shall be forever discharged from the crime.'

Id. at 586-87. The State sought a rehearing, certification and clarification, which the Third District denied.

SUMMARY OF ARGUMENT

This Court should reject the State's argument that there is conflict jurisdiction in the present case for two separate reasons.

First, we rely on the basic proposition that where a decision has no precedential effect, it cannot provide this Court with a basis for conflict jurisdiction. After this Court's decision in Reed v. State, 649 So. 2d 227 (Fla. 1995), it is the law that once the State violates the Speedy Trial Rule, all charges arising out of the same conduct are gone. While the State insists that the

Fifth District decision in Nesworthy v. State, 648 So. 2d 259 (Fla. 5th DCA 1994) conflicts with the decision below, the Nesworthy decision is irrelevant here because it cannot and does not survive Reed, which is consistent with the decision below.

Second, as we will show, the Nesworthy decision cannot trigger discretionary jurisdiction because it is factually distinguishable.

ARGUMENT

I.

THERE IS NO CONFLICT JURISDICTION BECAUSE THE NESWORTHY CASE IS NO LONGER GOOD LAW AND IS DISTINGUISHABLE

A.

Nesworthy Is No Longer Good Law After Reed, Which Supports The Result Below

First, it is basic that this Court's "concern in cases based on [its] conflict jurisdiction is the precedential effect of those decisions which are incorrect and in conflict with decisions reflecting the correct rule of law." Wainwright v. Taylor, 476 So. 2d 669, 670 (Fla. 1985). Because Nesworthy v. State, 648 So. 2d 259, has no precedential effect after this Court's subsequent pronouncement in Reed v. State, 649 So. 2d 227, and because Reed supports the result below, this Court should decline review.

In Nesworthy, the defendant was charged with misdemeanor driving under the influence. On April 20, 1993, a hearing was held on Nesworthy's motion for discharge under the speedy trial rule. Two days later, however, the state nolle prosequied that charge. Then the State filed a two count information charging Nesworthy

with felony DUI with serious bodily injury and again with the DUI personal or property damage. Nesworthy again moved for a speedy trial discharge and the court granted it on the second count, but not on the felony.

On appeal, the Fifth District affirmed that ruling and said that "notwithstanding the speedy trial status of any previously filed misdemeanor, a felony may be charged and the defendant brought to trial within the speedy trial times applicable to felonies." 648 So.2d at 260.

After Nesworthy, this Court decided Reed, which trumps Nesworthy. In Reed, the defendant and another man robbed a convenience store and in the course of fleeing became involved in an automobile accident. The State charged Reed with leaving the scene of an accident involving personal injury. The State nol-prosequied these charges on June 27, 1991 and Reed filed a motion to discharge pursuant to the speedy trial rule on July 15, 1991.

Then the State filed an information charging Reed with numerous felonies arising out of the convenience store robbery. The court denied Reed's motion for discharge on December 13, 1991. On May 6, 1992, the State filed an information adding felony charges arising out of the robbery and recharging Reed with the two counts of leaving the scene of an accident involving personal injury.

This Court determined that Reed was entitled to be discharged on all counts because of the State's violation of the speedy trial rule. In so doing, this Court applied its decision in State v.

Agee, 622 So. 2d 473 (Fla. 1993) to the case before it even though Agee had somewhat different facts. This Court elaborated as follows:

> In Agee the defendant was charged with attempted murder. Three days before the expiration of the speedy trial period, the State entered a nolle prosequi. After the speedy trial period had run, the State refiled the attempted murder charge. We held that when the State enters a nolle prosequi, the speedy trial period continues to run and that the State may not refile charges based on the same conduct after the period has expired. While Agee controls the disposition of the instant charges of leaving the scene of an accident involving personal injury, unlike Agee, the charges of robbery and kidnapping had not been previously nol-prossed when Reed filed his motion to discharge.

Id. at 229.

This Court extended the rule in Agee, that "when the State enters a nolle prosequi, the speedy trial period continues to run and . . . the State may not refile charges based on the same conduct after this period has expired." Id. (emphasis added) That is, this Court expanded the Agee prohibition to cover the new charges.

If the Fifth District had had the benefit of Reed, it would have reached a contrary result in the Nesworthy case. After Nesworthy's motion to discharge under the speedy trial rule, the State nolle prosequied the misdemeanor DUI and then later refiled it along with the new felony charge. Because both charges were based on "the same conduct," the speedy trial rule applied to both and Nesworthy, just like Reed, would have been discharged. As such, there is no way Nesworthy can survive this Court's subsequent

decision in Reed.

Contrary to the State's contention, Reed is consistent with the result below. As in the present case, Reed involved traffic violations along with other charges.[2] The only conceivable difference between the procedural posture here and that in Reed was that here the charges based on the same conduct were pending in circuit court and not re-filed. This, however, is a meaningless difference. What, of course, underlies this Court's decision in Reed and others decisions which enforce the plain language of the speedy trial rule is a policy against allowing the State to use mechanisms, like a nolle prosequi, to unilaterally extend the time frame under the speedy trial rule.

Here, as in Reed, a discharge of all charges "based on the same conduct" was proper. If the State could nevertheless proceed with the same charges after the expiration of the speedy trial rule, it would contravene not only the plain language of the Speedy Trial Rule, but also the ruling in and spirit of Reed. That is, anything other than the affirmance, which was the result below, would give prosecutors a way to unilaterally extend the time frame under the speedy trial rule by their mere filing of the identical charges in both county court and circuit court. Such duplicative filing would become a form of "extension insurance" and permit them to circumvent the "forever discharged" language of the Speedy Trial

---

[2] See Reed v. State, 649 So.2d at 230 (Justice Wells, dissenting) ("The majority's decision not only discharges the defendant from prosecution for the armed robbery and traffic violations, but also for the kidnapping charges.")

Rule when and if they happen to violate the speedy trial rule in county court.

B.

Also, Nesworthy Is Distinguishable

Second, there is also no conflict jurisdiction because Nesworthy is distinguishable and actually consistent with the result below. In Nesworthy, what the Fifth District essentially recognized was that the particular misdemeanor and felony offenses were different.

Here, however, as the Third District correctly determined, the county court and circuit court cases were not different -- but "identical." State v. Woodruff, 654 So. 2d at 587. The Third District, analogizing the estoppel effect of a speedy trial discharge to the double jeopardy bar, elaborated:

> Although proving the existence of three prior DUI conviction is an essential element of felony DUI offense, State v. Rodriguez, 575 So. 2d 1262 (Fla. 1991), the sole distinguishing factor between the misdemeanor and the felony is the severity of punishment prescribed by section 316.193(2). See Rodriguez, 575 So. 2d at 1266 ("if a defendant charged with felony DUI elects to be tried by jury, the court shall conduct a jury trial on the elements of the single incident of DUI at issue. . . .If the jury returns a guilty verdict as to that single incident of DUI, the trial court shall conduct a separate proceeding without a jury to determine in accord with general principles of law, whether the defendant had been convicted of DUI on three or more prior occasions.") Hence, the offenses fall under the section 775.021(4)(b)1. double jeopardy bar for "Offenses which require identical elements of proof."

Id.

As such, here, unlike the situation in Nesworthy, the case in circuit court was really identical to that in county court. In fact, in Nesworthy, the appellate court affirmed the trial court's granting of the discharge on the offense that was identical. In this respect, the result here is not in conflict with Nesworthy -- but actually consistent with Nesworthy. In sum, discretionary review is inappropriate here.

CONCLUSION

In sum, because Nesworthy has no precedential value after Reed and because Nesworthy is distinguishable from the present matter, we request this Court to decline to entertain its discretionary conflict jurisdiction.

Respectfully submitted,

BENNETT H. BRUMMER,
Public Defender
Eleventh Judicial Court of Florida

By: 
Amy D. Ronner
Special Assistant Public Defender
Florida Bar No. 0511470
St. Thomas University School of Law
Appellate Litigation Clinic
16400 N.W. 32nd Avenue
Miami, Florida 33054
(305) 623-2322

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing Respondent's Brief on Jurisdiction was mailed to Paul M. Gayle - Smith, the Office of the Attorney General, Criminal Division, Post Office Box 013241, Miami, Florida 33101 this 1st day of August, 1995.

BENNETT H. BRUMMER,

Public Defender
Eleventh Judicial Court of Florida

By: Amy D. Ronner

Amy D. Ronner
Special Assistant Public Defender
Florida Bar No. 0511470
St. Thomas University School of Law
Appellate Litigation Clinic
16400 N.W. 32nd Avenue
Miami, Florida 33054
(305) 623-2322

N:Ronner\Cert