

067

IN THE SUPREME COURT OF FLORIDA

**FILED**  
MRS. WHITE  
AUG 8 1961  
CLERK, SUPREME COURT  
TALLAHASSEE, FLORIDA

STATE OF FLORIDA,	:	
	:	
Petitioner,	:	
	:	
v.	:	CASE NO. 87,768
	:	
ARNOLD LEON PRATT,	:	
	:	
Respondent.	:	

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RESPONDENT'S CROSS-REPLY BRIEF ON THE MERITS

NANCY A. DANIELS  
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SECOND JUDICIAL CIRCUIT

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**RESPONDENT'S CROSS-REPLY BRIEF ON THE MERITS**

ISSUE II

WHETHER RESPONDENT'S ABSENCE FROM THE STATE OF FLORIDA, WITH THE KNOWLEDGE AND CONSENT OF THE STATE, TOLLED THE STATUTE OF LIMITATIONS THEREBY ALLOWING THIS PROSECUTION TO OCCUR 4 ½ YEARS AFTER THE COMMISSION OF THE CRIME.

Respondent claims this issue is procedurally barred because Mr. Pratt failed to invoke the discretionary jurisdiction of this Court or to cross-appeal this issue in his answer brief. Respondent is wrong.

[1, 2] At the outset, we agree that the filing of a notice of cross-appeal is not jurisdictional. Safeco Ins. Co. v. Rochow, 384 So. 2d 163 (Fla. 5th DCA 1980). As indicated in the committee notes to Florida Rule of Appellate Procedure 9.110, the provision for cross-appeal was intended to replace the cross-assignments of error provided by the earlier rules. Florida Rule

of Appellate Procedure 9.040(a) provides that "[i]n all proceedings, a court shall have such jurisdiction as may be necessary for a complete determination of the cause." ... Finally, we note that rule 9.140(f) pertaining to the scope of review in criminal appeals states that "[i]n the interest of justice, the court may grant any relief to which any party is entitled."

Lopez v. State, 638 So. 2d 931, 932-933 (Fla. 1994). Moreover, this Court has reviewed issues outside the scope of certified questions, before. See Feller v. State, 637 So. 2d 911, 914 (Fla. 1994), as follows:

[3] Feller raises several other issues for review by this Court. Having jurisdiction on the basis of the certified questions, we have jurisdiction over all issues. Jacobson v. State, 476 So. 2d 1282 (Fla. 1985); Savoie v. State, 422 So. 2d 308 (Fla. 1982).

Hence, this issue is not procedurally barred, but is ready for review by this Court.

### Merits

While Respondent insists Petitioner's cases are inapplicable, Respondent provides no support for her own interpretation of Section 775.15(6), Florida Statutes. Instead, Respondent unsuccessfully attempts to distinguish State v. Miller, 581 So. 2d 641 (Fla. 2nd DCA 1991) as involving, only, subsection (5). Miller is on point because the due process principles involved in subsections (5) and (6) are identical. In either case, the law prevents the State from being prejudiced by

a defendant's intentional avoidance of process. Each contains an "absence from the state" provision. And in either case, where a defendant's absence from the State is not his fault, the statute is not tolled. That is, even though Miller, involved a delayed arrest scenario envisioned by subsection (5), there is no reason why this Court's interpretation of the "absence from the state" provision of that subsection should be any different under a subsection (6) analysis. There is simply no logical basis for tolling the statute of limitations, in this case, when the federal government carried Mr. Pratt out of this State, against his will. Of course, it makes no sense to suggest the State should not be prejudiced when it knew of his whereabouts and could extradite him at will; but chose, instead, to delay the prosecution for a period in excess of the Statute of Limitations. It is precisely this situation, where the State has every means to prosecute at its disposal, but chooses not to, which limiting statutes were created to remedy.

Typically a statute of limitations for a criminal offense must be liberally construed in favor of the defendant.

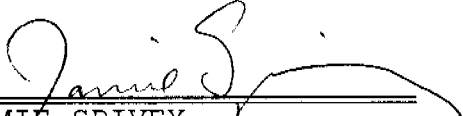
State v. Guthrie, 567 So. 2d 544 (Fla. 2nd DCA 1990). Likewise, the Rule of Lenity provides that:

[W]hen the language is susceptible of differing constructions, it shall be construed most favorably to the accused.

See, Section 775.021(1), Florida Statutes. Hence, this second conviction and sentence for Mr. Pratt's crime should be vacated and dismissed for all time.

Respectfully submitted,

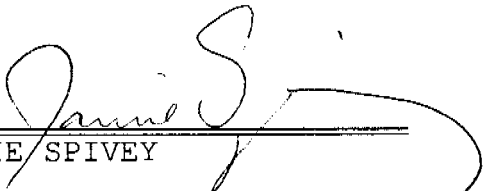
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ATTORNEY FOR APPELLANT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to Carolyn Mosley, Assistant Attorney General, by delivery to The Capitol, Criminal Appeals Division, Plaza Level, Tallahassee, Florida, 32301, and a copy has been mailed to appellant, on this 8 day of August, 1996.

  
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JAMIE SPIVEY