IN THE SUPREME COURT OF FLORIDA

State of Florida,

Petitioner,

v.

Latundra Williams,

Respondent.

CASE NO.: 00-1905

LOWER TRIBUNAL NO.:2D00-2978

RESPONDENT'S AMENDED BRIEF

COUNSEL FOR RESPONDENT

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STATEMENT OF FACTS AND OF THE CASE

Latundra Williams was arrested on October 8, 1999 for Aggravated Child Abuse and Child Neglect, pursuant to Florida Statutes 827.03 (1999). The State filed an Information against Ms. Williams on May 3, 2000, 206 days after her arrest. At arraignment on June 12, 2000, the Office of the Public Defender was appointed to represent Ms. Williams.

On June 26, 2000 Ms. Williams filed a Motion to Discharge For Violation of Speedy Trial. On July 10, 2000, the trial court, having heard the oral argument of counsel, denied Ms. Williams motion. The trial court, at the urging of the State Attorney, treated the Motion to Discharge as a Notice of Expiration of Speedy Trial, thereby setting the case for jury trial within 10 days. As Ms. Williams argued that the State is not entitled to the recapture window provided for with a Notice of Expiration of Speedy Trial, Ms. Williams reserved her right to challenge the trial court's ruling, waived speedy trial and filed a Petition for Writ of Prohibition.

The Second District Court of Appeal, granted Ms. Williams' Petition for Writ of Prohibition and certified the following question to this Court:

> WHETHER THE HOLDING OF GELDEN V. FULLER, 648 SO. 2D. 1183 (FLA. 1994), APPLIES WHERE THE STATE TAKES NO ACTION PRIOR TO THE EXPERATION OF THE SPEEDY TRIAL PERIOD AND THEN FILES AN INFORMATION AFTER THE PERIOD HAS EXPIRED?

Williams v. State, 25 Fla. L. Weekly D2147, 2147 (2nd DCA, 2000).

On September 21, 2000, this Court issued an Order Postponing Decision on Jurisdiction and Briefing Scheduling.

SUMMARY OF ARGUMENT

The Second District Court of Appeal's opinion should be affirmed, in applying the holding of Genden v. Fuller, 648 So. 2nd 1183 (Fla. 1995), to the instant case. When the State of Florida arrests a person, and then does nothing, but waits until after the speedy-trial time-period has expired, and then files an Information against that individual, the State is not entitled to a fifteen-day recapture window.

ARGUMENT

THE HOLDING OF GENDEN V. FULLER, 648 SO. 2D 1183 (FLA. 1994) DOES APPLY WHERE THE STATE TAKES NO ACTION PRIOR TO THE EXPIRATION OF THE SPEEDY TRIAL PERIOD AND THEN FILES AN INFORMATION AFTER THE PERIOD HAS EXPIRED.

A person charged with a felony shall be brought to trial within one hundred and seventy-five (175) days under Florida Rule of Criminal Procedure 3.191 (a) (1999). The time period commences when the person is taken into custody. Id.

This Court has addressed similar factual scenarios in both State v. Agee, 622 So.2nd 473 (Fla. 1993) and Genden v. Fuller, 648 So. 2nd 1183 (Fla. 1995). In Agee, after the defendant filed a demand for speedy trial, the state entered a nolle prosequi, and then later re-filed charges against the defendant. The Court held that the state did not toll the running of speedy trial by entering the nolle prosequi, and was not entitled to the fifteen (15) day recapture window. In Genden, the defendant was arrested, and before the state filed an Information, the prosecution announced it would bring "no action." Id. After the speedy trial period ran, the state filed an Information against the defendant and had him arrested. Id. The trial court denied the defendant's motion for discharge, ruling that the State had the fifteen-day window period in which to try the defendant. The defendant received a

Writ of Prohibition from the appellate court, which certified the question to the Supreme Court. Id. The Court ruled that the State cannot toll the running of the speedy trial time period by entering a “no action” prior to filing formal charges.

Here, the State waited until after the speedy trial time period expired to file the Information. Therefore, the State is not entitled to the fifteen-day recapture window, in which to try Ms. Williams. Similar to Genden, the State chose not to do anything until after the speedy- trial time-period expired. The fact that the state never announced "no action" is irrelevant, as that declaration from the State has no legal bearing as to Ms. Williams' right to speedy trial. Obviously, in order to comply with Ms. Williams' right to speedy trial the state would have had to have filed the Information within that time period, and proceeded with their case against her. They chose not to, until after her speedy-trial time-period ran, and they should be precluded from continuing with this prosecution.

The fact that Ms. Williams filed no "demand for speedy trial" or "notice of expiration of speedy", during the speedy trial period, is irrelevant to the issue before this Court. However, if the Court does address it, it is significant to direct the Court to the fact that the Office of the Public Defender, Ms. Williams' Counsel, was not appointed to represent Ms. Williams until Ms. Williams's

arraignment.[1] A person is arraigned after an Information or Indictment is filed. See Florida Rule of Criminal Procedure 3.160 (a)(1999). Here, Ms. Williams was not afforded Counsel until after the speedy-trial period expired, and after the State filed the Information. Two-hundred and forty-six (246) days after being arrested, Ms. Williams was appointed Counsel.

Whether the State announces a "no action", or in actuality takes no action by doing nothing, there should be no difference in the legal repercussions to an individual's rights. "[I]f the State is not prepared to proceed to trial, it may either postpone arresting a suspect until it has an adequate case or, if charges have already been filed, seek an extension for good cause." Genden, at 1185, citing Agee. While the State begs this Court not to place the burden of policing the speedy-trial time-frames of those who are arrested, on their Office, that is exactly where the burden has been and should be. The State works on a daily basis with the arresting officers, and controls when an Information or Indictment is filed and against whom. They decide who will be prosecuted and who won't.

This Court's reasoning in Agee and Gelden, should be applied to Ms. Williams case as well. To allow the State to announce a nol pros on cases that

[1] Typically, arraignment is when the Office of the Public Defender is appointed to represent all indigent persons facing incarceration in Hillsborough County.

charges have been filed on, or to announce a "no action" on cases where no charges have been filed, or, as was done here, to simply do nothing on a case, in an effort by the State to run-around an individual's right to speedy trial, so that the State can have additional time (without asking for it), to develop a case, is an affront to the accused's right to a speedy trial.

The State now requests that this Court set a precedent that would allow them to continually do nothing on cases where people are arrested, until they're ready to file an Information and proceed with the case. The State, is in fact, requesting that this Court give them the entire time period of the statute-of-limitations. In this case, what they are in effect asking for is a three-year time-frame. See Florida Statutes Section 775.13 (b) (1999). The State **had one-hundred and seventy-five days** to file an Information. Even if they had filed on the one-hundred and seventy-fifth day, they would have been entitled to the recapture window. They didn't. They did nothing. One-hundred and seventy-five days is long enough for the State to do something. The State should not be rewarded for taking no action on this case, by giving them more time. Rewarding the State in this case, by giving them the additional time they now seek, would completely eviscerate the accused's right to a speedy trial.

This Court should answer the certified question with an astounding yes, and

affirm the Second District Court of Appeal's Order granting Ms. Williams' Writ of Prohibition.

CONCLUSION

Based on the above argument, Ms. Williams respectfully urges this Honorable Court to affirm the Second District Court of Appeal's opinion, answer the certified question in the positive, and protect her, and others, right to a speedy trial.

Respectfully submitted,
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I HEREBY CERTIFY the foregoing motion was generated with a Times New Roman Regular 14 Point font and that a copy has been furnished to Robert Krauss, Assistant Attorney General, Office of the Attorney General, 2002 North Lois Avenue, Suite 700, Tampa, Florida 33607, on the _____ day of July, 2001

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