IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO.SCO1-2639

ANTONIO GETHERS

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

RESPONDENT'S ANSWER BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

Petitioner was the Defendant and Respondent was the prosecution in the Criminal Division of the Circuit Court of the 19th Judicial Circuit, in and for St. Lucie County, Florida. Respondent was the Appellee and Petitioner was the Appellant in the Fourth District Court of Appeal. In this brief, the parties shall be referred to as they appear before this Honorable Court except that Respondent may also be referred to as the State.

All emphasis in this brief is supplied by Respondent unless otherwise indicated.

The following symbols will be used:

IB = Appellant's Initial Brief in the Fourth District Court of Appeal;

SR = Supplemental record on Appeal

MH = Hearing on the Appellant’s Motion to correct sentencing error;

R = Record on Appeal

CP = Change of plea and sentencing hearing transcript

IM = Appellant’s Brief on the Merits in the Florida Supreme Court

References to the transcript will include the symbol and page number, for example (CP 2), refers to page two in the change of plea and sentencing hearing transcript.

STATEMENT OF THE CASE AND FACTS

Respondent accepts petitioner's statement of the case and facts for purposes of this appeal in so far as it presents an accurate, objective and non-argumentative recital of the procedural history and facts in the record, and subject to the additions and clarifications set forth in the argument portion of this brief and in the district court’s opinion.

SUMMARY OF THE ARGUMENT

The issuance of a detainer from an out of county authority to another county where a defendant is being held in custody on pending charges, acts solely as a request for information once the defendant's case is disposed or the defendant is released on bond in the case. In order for the out of county authority to have the defendant held on the out of county charges, the execution of the warrant for those charges must occur or some other act with the detainer must occur in order to keep the defendant in custody. Computation of jail credit would begin once some act attributed to the prolongation of the defendant's incarceration. Therefore, where a detainer is issued, seeking information only, a defendant should not be credited for jail time served from the date of its issuance. Computation for jail credit should only start upon the execution of an out of county warrant on a defendant, or upon the issuance of a detainer, one not only seeking information on the defendant but one which acts to

hold the defendant in custody.

In the case at hand, the out of county detainer was not attributable to the appellant remaining in the Broward County jail, but rather, it was the appellant's felony crime and sentence imposed in Broward County that caused his detention.

ARGUMENT

POINT I

THE FOURTH DISTRICT COURT WAS CORRECT IN FINDING THE SAINT LUCIE TRIAL COURT DID NOT ERR IN DENYING THE APPELLANT'S REQUEST SEEKING CREDIT FOR JAIL TIME SERVED UPON THE ISSUANCE OF A DETAINER.

The Fourth District Court of Appeal holds there is a conflict between the districts which focuses on the following issue:

> Where a defendant has pending criminal charges in multiple Florida counties, how extensive is the credit to which a defendant is entitled for the time he spends in jail in one county?

Gethers v. State, 798 So. 2d 829, 830 (Fla. 4th DCA 2001). Otherwise stated, does the issuance of "a detainer of communication," one which seeks information only between jurisdictions, or the issuance of "a detainer of consequence,"

one in which an out of county warrant is executed or one that does some other act to prolong the defendant's incarceration, start the calculation for credit for jail time served?

The Fourth District Court certified conflict with the First District Court of Appeal in Penny v. State, 778 So. 2d 305 (Fla. 1st DCA 2000)and with the Second District Court of Appeal in Bryant v. State, 787 So. 2d 68 (Fla. 2d DCA 2001).

In Penny, the First District Court of Appeal held the issuance of an out of county warrant triggers the calculation of jail credit for the out of county charges. The District Court of Appeal stated the fact that the out of county warrant was not formally executed nor transmitted in a detainer from an out of county authority, had no bearing on a defendant's right to receive jail credit from the date the warrant was issuance. Id. In Bryant, while the defendant was incarcerated in Escambia County, a detainer was issued upon the defendant from another county. When the defendant appeared in the other county to answer to charges committed there, the defendant sought credit for jail time served from the date that county issued the detainer. The Second District Court of Appeal agreed with the ruling in Penny, and found the defendant shall receive credit for jail time served while in Escambia County starting from the date the out of county detainer was issued.

Id. at 70. The Court held the fact that a defendant is not officially arrested on an out of county warrant has no bearing on his rights to receive jail credit while under the first county's hold.

Unlike the decisions in Penny and Bryant, the Fourth District Court of Appeal found that only upon the issuance of a particular type of detainer, "a detainer of consequence", one which acts to prolong a defendant's stay in custody on out of county charges, does the computation of jail credit begin. Gethers v. State, 798 So. 2d 829, 832 (Fla. 4th DCA 2001). In the case at hand, the Fourth District found the detainer transmitted was not of consequence and held computation for jail credit did not begin with its issuance. Id.

The Fourth District Court of Appeal explained, "[t]he filing of a detainer and the service of an arrest warrant are legally distinct actions. Gethers at 832. In any particular case, the state may issue a detainer or serve an arrest warrant or both." (Citing to Orozco v. United States Immigration and Naturalization Service, 911 F.2d 539,541 (Fla.11th Cir.1990)). Id. "[T]he filing of a detainer is an informal process advising prison officials that a prisoner is wanted on other pending charges and requesting notification prior to the prisoner's release." (Citing to United States v.

Mauro, 436 U.S. 340, 358, 98 S. Ct. 1834, 1846 (1978)). "Rather than requiring the immediate presence of the prisoner, a detainer merely puts the officials of the institution in which the prisoner is incarcerated on notice that the prisoner is wanted in another jurisdiction for trial upon his release from prison. Id. Further action must be taken by the receiving State in order to obtain the prisoner." Id.

Therefore, the filing of a detainer, one seeking information only, does not have the same result as the service of an arrest warrant. Some other action must be taken by the out of county authorities to secure the defendant's detention. The execution of the out of county warrant is such an action. The Fifth District Court of Appeal follows this same logic, as explained in Price v. State, 598 So. 2d 215 (Fla. 5th DCA 1992).(Finding computation for jail credit on out of county charges begins upon the execution of the out of county warrant on the defendant who is jailed on unrelated charges in another county).

Unlike the decision in Gethers, the decisions in the First District Court of Appeal, as expressed in Penny, and the Second District Court of Appeal, as expressed in Bryant, expand the meaning of a detainer. The First and Second District Courts of Appeal do not make any distinctions as to

the types of detainers that can be issued. They hold, regardless of whether the detainer attributes to the defendant's length in custody or not, computation of jail credit begins upon its issuance. Further, these two Districts include the issuance of a warrant into the mean of a detainer. This, they say, also triggers the calculation for computing jail credit. By doing this, these two Districts presume the out of county authorities intend something more than simple information. They presume the out of county authorities will act on the detainer or warrant. The actions of the First and Second Districts work to subsume the power of other jurisdictions, without the authority to do so.

The State requests this Court to hold there is a distinction

between "a detainer of communication," one which seeks information only between jurisdictions, and "a detainer of consequence," one in which an out of county warrant is executed or one that does some other act to prolong the incarceration of a defendant. As a result, this Court should then find computation for jail time credit would start only upon the issuance of "a detainer of consequence". Accordingly, we ask this Court to adopt the reasoning of the Fourth District Court of Appeal and affirm the judgment and

sentence imposed by the trial court.

POINT II

WHETHER A DEFENDANT MAY BE AWARDED WITH JAIL CREDIT FOR THE TIME SERVED IN ANOTHER COUNTY, WHILE BEING SENTENCED IN ANOTHER COUNTY ON UNRELATED CHARGES.

The appellant submits the issue in this case is:

> "Whether a defendant is entitled to credit for time served in a county jail on a concurrent sentence eventually imposed in a second county when that second county had lodged a detainer against the defendant while he was in the first county jail?" (IM 8).

In handling this issue and keeping in mind the above issues on detainers, one must look to Florida Statute (1999), section 921.161(1)for a resolution:

> A sentence of imprisonment shall not begin to run before the date it is imposed, but the court imposing the sentence shall allow a defendant credit for all of the time she or he spent in ***the*** county jail before sentence.
> (Emphasis added).

Gethers v. State, 798 So. 2d 829, 830 (Fla. 4th DCA 2001). The language in this statute is clear and unambiguous. " It is a well settled rule of statutory construction that unambiguous language is not subject to judicial construction, however wise it

may seem to alter the plain language." State v. Jett, 626 So.2d

691, 693 (Fla. 1993). "Where the plain language of a statute is

unambiguous, there is no need for judicial interpretation." T.R.

v. State, 677 So.2d 270, 271 (Fla. 1996). As the Fourth District

Court of Appeal stated:

> The statute refers to "***the***" county jail, not "any" county jail. This choice of article suggests a narrow reading of the statute; it contemplates the typical situation where a defendant spends time in jail awaiting final resolution of a case in the county where the charges are pending. The statute was not written to accommodate the mobile, prolific offender whose criminal transgressions span the state.

Gethers v. State, 798 So. 2d 829, 830 (Fla. 4th DCA 2001).

Further stated in Daniels v. State, 491 So. 2d 543, 545 (Fla. 1986), this Court held, "a defendant receives pre-sentence jail-time credit on a sentence that is to run concurrently with other sentences." Id. at 545. However, this Court made a specific distinction from those cases where a defendant does not receive concurrent sentences on multiple charges, "in such a case the defendant is not entitled to have his jail time credit pyramided by being given credit on each sentence for the full time he spends in jail awaiting." Id. at 545.

In Daniels, the defendant, obtained multiple charges within the same county. While on probation for trespass, the defendant was arrested for three new felony charges. As the defendant awaited sentencing on the felony charges, a violation of probation warrant was issued and executed upon the defendant in jail. The defendant was sentenced on the three felony charges and subsequently, he was sentenced on his violation of probation case. The trial court imposed four concurrent sentences and only credited the defendant with jail time served on the violation of probation, not the three felony charges. This Court held the defendant, under these circumstances, was entitled to have the credit for jail time served applied to all of the charges, as the sentences imposed ran concurrently. Id. at 544.

The First and Second District Court of Appeal have expanded the interpretation of Daniels to apply credit for jail time served to a defendant who has charges in different counties in the state, where the sentence imposed runs concurrently, and once an out of county detainer has been issued. Again, these two districts do not distinguish between a detainer seeking information only from a detainer of consequence. See Bryant v. State, 787 So. 2d 68 (Fla. 2d DCA 2001)(credit for jail time served on concurrent sentences in

multiple counties begins to accrue upon the issuance of a detainer); Rivera v. State, 784 So. 2d 1170 (Fla. 2d DCA 2001); Penny v. State, 778 So. 2d 305 (Fla. 1st DCA 2000); Travis v. State, 724 So. 2d 119 (Fla. 1st DCA 1998).

In order to address the issue of when credit for jail time is to accrue on concurrent sentences imposed between counties, it must first be determined if the computation begins upon the issuance of a detainer, as previously discussed. Once this is resolved, then it must be determined if the sentence imposed in fact runs concurrent with the sentence in another county. In this case, the appellant assumes, the sentence imposed in Saint Lucie County actually ran concurrent with the Broward County sentence. The State submits this is not so.

Florida Statute 921.16(1), requires that "[s]entences of imprisonment for offenses not charged in the same indictment, information, or affidavit shall be served consecutively unless the court directs that two or more of the sentences be served concurrently." Further, this Court held that "when, pursuant to section 921.161(1), a defendant receives pre-sentence jail time credit on a sentence that is to run concurrently with other sentences, those sentences must reflect the credit for time served." Daniels v. State, 491 So. 2d 543, 545 (Fla.

1986).

On August 8th, 2000, the Court in Saint Lucie County sentenced the appellant to three years in the Department of Corrections (CP 21). The Court further stated that the sentence is to "run concurrently with any previous prison sentence imposed in other counties with credit for seventy five days time served" (CP 21). At the sentencing hearing, counsel for the appellant pleaded to the Court to have the sentence run concurrent with the sentence imposed in Broward County (CP 12, MH 2, 21). However, the appellant completed his Broward County prison sentence of one year and one day prior to being sentenced in Saint Lucie County (MH 6, 7, 21, 22). He was arrested in Broward County on June 4, 1999, and remained in their custody for charges of driving with a suspended license (CP 10). He was then sentenced on those charges on November 15, 1999. According to Florida Statute 921.161(1) (1999), "the court imposing a sentence shall allow a defendant credit for all of the time he spent in the county jail before sentence," would have necessarily followed the appellant received jail credit for pre-sentence time served from June 4, 1999 through November 15, 1999 (CP 10). At the time he appeared for sentencing in Saint Lucie County on August 8th, 2000, the Broward prison sentence was over and the

appellant was finishing an unrelated sentence imposed by Charlotte County (CP 8, MH 21, 22).

The record of the sentencing hearing in Saint Lucie County, shows the trial court orally pronounced the sentence was ordered "as to both counts ... to run concurrently and run concurrently with any previous prison sentence imposed in other counties" (CP 20, 21). This language is surplusage based on the following reasoning. Pursuant to Florida Statute 921.16(2), the "statutory language infers that there must be an existing sentence to impose a sentence concurrent thereto." Richardson v. State, 432 So. 2d 750 (Fla. 2d DCA 1983). "It is not possible to serve a sentence concurrently with a sentence not in existence." Ex Parte Sams, 67 So. 2d 657 (Fla. 1953), Richardson v. State, 432 So. 2d 750, 751 (Fla. 2d DCA 1983). The sentence imposed in Saint Lucie County could not possibly run concurrently with the Broward County sentence, as it had expired. Further, if the trial court intended the petitioner to be awarded with credit for time served on the out of county charges, as the petitioner requested, the trial court would have imposed a time served sentence. Rather, the court sought to have the petitioner serve a sentence beyond his previous sentences, as evidenced in the sentence of thirty six months in prison. Therefore, the sentence involved must

then be served consecutively as the Broward sentence had ended and no other Broward sentence existed in order to run concurrent with. The language imposed at sentencing is surplusage. Ricks v. State,478 So. 2d 869 (Fla. 1st DCA 1985).

However, should this Court find that the appellant was in fact sentenced concurrently to the Broward County sentence and the petitioner is entitled to additional credit for jail time served, the next factor to consider is when to begin the computation for the jail time served.

The appellant alleged in his initial brief that he is entitled to all jail time served as of the time the Saint Lucie bench warrant was issued on June 22, 1999. The teletype and report that followed, indicated the appellant was not booked on the warrant for failure to appear on the Saint Lucie County charges but rather, a detainer was issued. The detainer did not attribute to the appellant's restraint in the Broward County jail, state prison, or Charlotte County jail. It was the appellant's criminal cases that in those counties that held him in custody (SR 5). Accordingly, the appellant should not be entitled to any jail credit from June 22, 1999 as that was merely the date the Saint Lucie County bench warrant was issued but not actually transmitted between

counties(SR 5). Further, jail credit should not be computed from August 24, 1999 nor August 25, 1999. It was only on August 24, 1999 that information on the warrant was transmitted from Saint Lucie County to Broward County and ultimately, on August 25, 1999, Broward County confirmed appellant was the correct person (SR 4, 5). There was no action taken on this detainer that attributed to the appellant's remaining in custody. Rather, the appellant was sentenced to the department of corrections and was sent there to serve his time. The detainer issued by Saint Lucie County did not attribute to the prolongment of appellant's Broward sentence. Therefore, the appellant would not receive any additional credit on the Saint Lucie County sentence for time spent in the Broward County jail. This Court should uphold the Saint Lucie court's decision to credit the appellant with that actual time he spent in the Saint Lucie County jail awaiting his sentence, a total of seventy five days. To do otherwise would allow this appellant and future defendants to have a windfall of jail credit awarded to them for their action of committing crimes across the counties of this State.

CONCLUSION

WHEREFORE, based on the above and foregoing arguments and

authorities cited therein, the State of Florida respectfully submits that the decision of the **Fourth District Court of Appeal** should be **UPHELD** and the judgment and sentence imposed by the trial court should be **AFFIRMED**.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing respondent's brief on the merits by Courier to: MARGARET GOOD-EARNEST, Assistant Public Defender, Criminal Justice Building/6th Floor, 421 Third Street, West Palm Beach, FL 33401, this _____day of February, 2002.

_____

OF COUNSEL

CERTIFICATE OF TYPE SIZE AND STYLE

In accordance with the Florida Supreme Court Administrative Order, issued on July 13, 1998, Respondent hereby certifies that the instant brief has been prepared with 12 point Courier New type, a font that is not spaced proportionately.