IN THE SUPREME COURT OF FLORIDA

ANTONIO GETHERS,

Appellant,

vs. CASE NO. SC01-2639

STATE OF FLORIDA,

Appellee.

______________________________________/

PETITIONER'S BRIEF ON MERITS

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PRELIMINARY STATEMENT

Petitioner was the defendant in the Criminal Division of the Circuit Court of the Nineteenth Judicial Circuit, In and For St. Lucie County, Florida, and the appellant in the District Court of Appeal, Fourth District. Respondent was the prosecution and appellee in the lower courts. The parties will be referred to as they appear before this Court.

STATEMENT OF THE CASE AND FACTS

Petitioner, Antonio Gethers plead no contest to charges in St. Lucie County of attempted burglary of a structure and possession of burglary tools. His motion to correct sentencing error pending appeal under 3.800(b)(2) was denied by the circuit court. The Fourth District Court of Appeals affirmed in a decision that held that Gethers was not entitled to credit for time served while he was incarcerated in the Broward County Jail for charges unrelated to the St. Lucie burglary charges, even though St. Lucie had issued a detainer to the Broward County Jail. Gethers v. State, 798 So.2d 829 (Fla. 4th DCA 2001). The relevant facts were summarized in the district court's decision:

> On February 19, 1999, appellant Antonio Gethers was arrested on burglary charges in St. Lucie County. He bonded out of jail. In April, the state filed an information charging Gethers with attempted burglary of a structure and possession of burglary tools.
>
> On June 4, 1999, in Broward County, Gethers was arrested for driving with a suspended license. On June 22, 1999, the circuit court of St. Lucie County issued a warrant for Gethers's failure to appear for a hearing on his pending burglary charges.
>
> On August 24, 1999, the St. Lucie County Sheriff sent a teletype communication to the Broward County Sheriff. The communication requested that Broward "place a hold" on Gethers based on the active warrant for failure to appear in St. Lucie County. Broward County responded on August 25, that Gethers was subject to an "out of co hold-fel" for the warrant arising from the St. Lucie County charges.

On November 15, 1999, Gethers pled guilty to the Broward charge of driving with a suspended license. He was sentenced to one year and one day in the Department of Corrections. He was taken to the state prison to begin serving his sentence. A short while later, he was transported from prison to Charlotte County, where he was sentenced to eighteen months for a community control violation.

Finally, on May 26, 2000, Gethers was transported to St. Lucie County to answer the burglary charges. Gethers's attorney and the state entered into plea negotiations, but were unable to strike a deal. The two sticking points were whether the defendant's prior record required a prison sentence under the sentencing guidelines and the extent of credit for time served to which Gethers was entitled.

Gethers entered an open plea of no contest to the court. After hearing from the attorneys regarding sentencing, the court gave Gethers an opportunity to address the court directly. He requested a below guidelines prison sentence of not more than eighteen months, with 343 days of jail credit, so the sentence would end at the same time as his Charlotte County sentence.

The circuit court determined that the June 22, 1999 warrant had never been executed on Gethers and that the August 24, 1999 teletype communication amounted only to a detainer. Therefore, the trial court ruled that Gethers was entitled to credit for only the seventy-five days he had actually spent in the St. Lucie County jail. Gethers then moved to withdraw his plea and set the matter for trial. The trial court denied the motion and sentenced Gethers to thirty-six months in the Department of Corrections concurrent "with any previous prison sentence imposed in other counties," with credit for seventy-five days time served.
Gethers filed a motion to correct sentencing error pursuant to Florida Rule of Criminal Procedure 3.800(b)(2). The circuit court denied the motion relying on Price v. State, 598 So. 2d 215 (Fla. 5th DCA 1992).

Gethers, supra at 830-831.

On appeal of the circuit court's denial of the motion to correct sentencing error, Petitioner argued that he was entitled to credit for time served on the St. Lucie burglary charges from the date that St. Lucie issue a detainer to Broward County Jail, where Gethers was incarcerated on unrelated charges. The District Court rejected this argument holding that "Gethers was entitled to credit for only the seventy-five days spent in the St. Lucie County jail awaiting resolution of the St. Lucie County charges." Id. at 832.

The District Court reasoned that this result was mandated by a proper interpretation of Section 921.161(1), Florida Statutes (2000), which provides:

> A sentence of imprisonment shall not begin to run before the date it is imposed, but the court imposing a sentence shall allow a defendant credit for all of the time she or he spent in the county jail before sentence. The credit must be for a specified period of time and shall be provided for in the sentence.

The District Court reasoned that:

> 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 charges are pending. The statute was not written to accommodate the mobile, prolific offender whose criminal transgressions span the state.
>
> The proper reading of section 921.161(1) is that a defendant

> is entitled to credit for each day in jail attributable to the charge for which a sentence is pronounced. Nothing in the statute suggests that a day in jail has some metaphysical credit value dependent on the number of cases a defendant has pending around the state. The statute should not be construed so that the credit value of a day in jail expands with the number of cases a defendant has pending in different Florida counties. We doubt that the legislature wrote section 921.161 to reward recidivism.

The district court's decision acknowledged that two other district courts in Bryant v. State, 787 So. 2d 68 (Fla. 2nd DCA 2001) and Penny v. State, 778 So. 2d 305 (Fla. 1st DCA 2000), have found that a defendant is entitled to credit for time served against a county B sentence for all time spent in county A's jail after the placement of a detainer. Nonetheless, the Fourth District followed the conflicting precedent of Price, but certified conflict with Bryant and Penny.

Notice to invoke discretionary review was timely filed. This brief on the merits follows in accordance with the briefing schedule set by this Court's order of December 4, 2001.

SUMMARY OF ARGUMENT

The decisions of the district court of appeal are in conflict on the defendant's entitlement to credit for time served in the county jail on a detainer lodged by another county. The Fourth District in Petitioner's case opted for the minority view, that the other county's warrant must actually be executed before credit for time served accrues under a detainer. If the defendant is only given credit against one county's sentence, and not the other county's concurrent sentence, then the defendant may be effectively denied any credit whatsoever for the time he spent in the county jail, undermining the purpose of Section 921.161(1). See Jenkins v. Wainwright, 285 So.2d 5 (Fla.1973)(holding that equal credit must be given for concurrent sentences because a failure to grant equal credit results in the denial of any credit whatsoever.). The Fourth District denied petitioner credit, because his incarceration in the Broward County Jail was not "solely attributable" to the St. Lucie detainer. However, the Court in Daniels v. State, 491 So.2d 543 (Fla. 1986), granted the defendant credit on all sentences for time served in the County Jail, while arrested for three felony charges and an unrelated warrant for trespassing that was issued after the arrest. None of the charges were the "sole" cause, but each was a concurrent cause, of Daniel's incarceration in the County Jail. Likewise, a detainer, which is an instruction to the jailor county to hold the detainee in custody, contributes to the detainee's incarceration, and is a concurrent cause of it, along with the charges emanating from the jailor

county. Thus, the county issuing the detainer, who effectively jails the detainee by proxy, should grant the detainee credit for time served in the County Jail, even though a warrant has not actually been executed.

ARGUMENT

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?

In the State of Florida, when a defendant is incarcerated in the jail of one county, and another county issues a detainer for unrelated charges, the amount of credit for time served awarded by the county issuing the detainer depends upon the District in which the case arises. Bryant v. State, 787 So. 2d 68 (Fla. 2nd DCA 2001)(en banc decision) ("When a defendant seeks jail credit on a case for the time that the defendant is incarcerated in another county, there is conflict between the district courts of appeal as to whether credit should be awarded from the date a detainer was issued or the date a defendant was actually arrested."). The First and Second Districts hold that the defendant is entitled to credit for time served from the date the detainer was issued. Id. Rivera v. State, 784 So.2d 1170 (Fla. 2nd DCA 2001)(citing Bryant "even though Rivera was not arrested on the Charlotte County warrants until November 1999, he would be entitled to jail credit on the Charlotte County sentence for any time served after Charlotte County issued a detainer against him."). Penny v. State, 778 So. 2d 305 (Fla. 1st DCA 2000)(holding defendant entitled to credit while under another county's hold even if not officially arrested); Travis v.

State, 724 So.2d 119 (Fla. 1st DCA 1998) (holding defendant entitled to jail credit when warrant is transmitted or issued to another county and that county incarcerates the defendant on unrelated charges); Pearson v. State, 538 So.2d 1349, 1350 (Fla. 1st DCA 1989) (holding that where first county's warrant was transmitted to second county that was holding defendant in jail, "defendant deemed to be in custody under warrants for both counties"); But see Wiggins v. State, 654 So.2d 1017, 1018 (Fla. 1st DCA 1995)("We reject Wiggins' claim that the period of time served runs from the date the detainer was filed.").

In the Fourth and the Fifth Districts, a defendant is denied credit for time served from the date a detainer is issued. Price v. State, 598 So.2d 215 (Fla. 5th DCA 1992) (holding that credit for time served does not begin to accrue until the date of arrest on a warrant, not the date a detainer is issued); Toomajan v. State, 785 So.2d 1285 (Fla. 5th DCA 2001)("we agree with the court's conclusion that issuance of a hold or detainer is not sufficient to entitle a defendant to credit for time served in another jurisdiction."); Gethers, supra, 798 So.2d 829; but see Wright v. State, 589 So.2d 382 (Fla. 4th DCA 1991) (citing to Pearson in a 3.850 summary reversal indicating a defendant may be entitled to credit from the time detainer was issued). The Third District has expressly declined to decide the issue. Tharpe v. State, 744 So.2d 1256, 1257 (Fla. 3d DCA 1999) (noting different opinions between districts as to when a defendant is entitled to jail credit; declining to reach matter because not addressed by

the parties).

Thus, similarly situated criminal defendants are treated differently in terms of amount of credit for time served, possibly significant lengths of time, depending on which District Court has jurisdiction over the sentencing county. Under this Court's jurisdiction to resolve conflicts among the district courts, Art. V, Sections 3(b)(3) & (4), Florida Constitution, this Court should establish a rule of uniform applicability across the state, so that defendants who are incarcerated in one county under separate criminal charges and under a detainer issued by another county are treated equally. This Court should hold, in accordance with the position of the First and Second Districts, that a defendant is entitled to credit for time served from the date a detainer is issued, because from that date, the defendant's incarceration is attributable to *both* the charges filed by the county that is jailing the defendant, as well as the detainer issued by the other county.

The Court in Gethers, 798 So.2d 829 recognized that "[t]he seminal case in this area is [Daniels v. State, 491 So.2d 543 (Fla. 1986)]." Daniels, who was on probation for trespassing, was arrested and held in jail on three new felony charges of kidnaping, burglary, and attempted sexual battery. Fifteen days later, while Daniels was still in jail, a warrant was issued for violation of probation. Upon conviction of the three new felony charges, the court revoked Daniels' probation for trespassing and sentenced Daniels to one year on that charge, with credit for time served while he was in the

county jail. However, the court did not credit Daniels with time served toward the three new felony offenses, for which he was sentenced to twenty-two years for kidnaping, and five years each for burglary and attempted sexual battery, even though Daniels was sentenced concurrently on all four charges.

In that situation, this Court held that where "a defendant receives pre-sentence jail-time credit on a sentence that is to run concurrently with other sentences, those sentences must also reflect the credit for time served." Id. at 545. The Court reasoned that a contrary "position on this issue would effectively deny Daniels any credit whatsoever for the time he spent in jail while awaiting trial and thereby render meaningless the legislative directive that a defendant receive credit for all the time served." Id. The sentencing judge granted Daniels credit for only the shortest sentence, the one year sentence for the trespassing charge, which was to run concurrent with the 22 year sentence for kidnaping, and the five year sentences for burglary and attempted sexual battery. Thus, Daniel would have been, in substance, denied any credit for the time he spent in the county jail, unless, as the Court required, he is awarded credit against all four concurrent sentences.

In the case at hand, Gethers was being held in the county jail by two different counties, St. Lucie for the burglary charges and Broward for the driver's license charges, unlike Daniels who was being held by one county for four separate criminal charges. Nonetheless, regardless of the situs or trans-county nature of the defendant's

new crimes, the reasoning of Daniels remains true. If the defendant is only given credit against one county's sentence, and not the other county's concurrent sentence, then the defendant may be effectively denied any credit whatsoever for the time he spent in the county jail, undermining the purpose of Section 921.161(1). See Jenkins v. Wainwright, 285 So.2d 5 (Fla.1973)(holding that equal credit must be given for concurrent sentences because a failure to grant equal credit results in the denial of any credit whatsoever.). Under the position of Price and Gethers, the defendant's credit for time served against multiple sentences depends on the situs of the separate crimes, whether committed in the same or different counties, but the reasoning of Daniels does not support such a distinction.

The Court in Gethers also found a distinction from Daniels based on the fact that Gethers was not being formally held by St. Lucie, but merely under a St. Lucie detainer while being held by Broward County in the Broward County Jail. Thus, the Court in Gethers reasons, Gethers was in a different position than Daniels, who was being held for the new felony charges as well as the trespass charges, under an arrest warrant for the later. The court in Gethers extrapolated:

> According to case law, the execution of an arrest warrant is very different from the placement of a detainer[1]. We have distinguished between the lodging of a detainer and an arrest for the purpose of triggering the running of speedy trial time. *See State v. Fives*, 409 So. 2d 221 (Fla. 4th DCA 1982); *see also Edwards v. Allen*, 603 So. 2d 514 515-16 (Fla. 2d DCA 1992).

> A similar distinction holds for the purpose of applying *section* 921.161(1). The fifth district has held that for the purpose of measuring mandatory jail time credit, "the filing of a detainer does not have the same result as the service of an arrest warrant." *Price*, 598 So. 2d at 217; *see Toomajan v. State*, 785 So. 2d 1275 (Fla. 5rh DCA 2001); *Wiggins v. State* 654 So. 2d 1017 (Fla. 1st DCA 1995). "The 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." *Price*, 598 So. 2d at 217 (quoting *Orozco v. United States Immigration and Naturalization Serv.*, 911 F. 2d 539, 542 n. 2 (11th Cir. 1990). Further action must be taken by the jurisdiction placing the detainer in order to obtain the prisoner.
>
> ______
>
> [1] We do not reach the issue of whether there should be a distinction between the execution of an arrest warrant and the placement of a detainer in computing a *section* 921.161(1) jail time credit.

Gethers v. State, supra at 832.

Petitioner contends it is irrelevant that the county filing the detainer has not formally "obtained" the prisoner and taken him into custody in its county jail. The important point is that the prisoner is held on behalf of the county issuing the detainer, by the county in which the prisoner sits in the county jail. The county issuing the detainer has, in substance, jailed the prisoner by proxy. As the court noted in its en banc decision in Bryant, supra at 70:

> We note, however, that a detainer can limit the ability of an inmate to be released from custody. *Black's Law Dictionary* defines a detainer, in part, as "the restraint of a man's personal liberty against his will," and as a "request filed by criminal justice agency with institution in which

> prisoner is incarcerated, asking institution either to hold prisoner for agency or to notify agency when release of prisoner is imminent." *Black's Law Dictionary* at 449 (6th ed.1990).

It is excessively formalistic for the court in Gethers to argue that St. Lucie was not holding Gethers, but had merely issued a detainer. Rather, once St. Lucie issued its detainer, Broward County was holding Gethers, in part, on behalf of St. Lucie County, as well as on the Broward County charges. There is nothing to indicate that if Broward County had dismissed its pending driver's license charges, it would have released Gethers from custody. Likewise, the Court in Daniels rejected the State's argument that, while immediately following arrest Daniels was being jailed for only the new felony charges, and that after the warrant issued for violation of probation, Daniels was being jailed only for the violation of probation. The Court said:

> Had the probation violation allegation been dismissed, there is nothing in the record to indicate that Daniels would not have remained in custody pending trial on the kidnaping, burglary, and attempted sexual battery charges. The fact that a warrant for Daniels' probation violation was executed while he was in custody on the felony charges does not mean that he was no longer in custody on those charges.

Daniels at 544.

If Broward County had dismissed its pending driver's license charges, Gethers' would have remained in custody under the detainer from St. Lucie. This undermines the Gethers court's assertion that: "[Gethers'] period of incarceration was the result of criminal conduct unrelated to the St. Lucie County case." St. Lucie was partially

responsible for Gethers' confinement in the Broward County Jail, and it is only fair that St. Lucie should grant Gethers credit for time served while incarcerated under St. Lucie's detainer.

The Court in Gethers made much of that fact that, in addition to the St. Lucie detainer, Gethers was also incarcerated for separate Broward County charges. The Court said:

> [T]hat concern is better addressed by allowing for jail time credit on a detainer only when the detainer is the sole reason prolonging incarceration. Thus, if a defendant is arrested in county A, county B lodges a detainer, and the defendant pleads to time served on county A's charges, the defendant is entitled to credit for the time spent in county A's jail awaiting transport to county B to answer those charges.

Gethers at 832.

However, the Court in Daniels rejected a standard based on sole causation in favor one based on concurrent causation. Daniels was incarcerated simultaneously for the new felony charges as well as the trespass charge, under an arrest warrant. None of the charges were the sole cause of Daniels' incarceration, but were all concurrent causes. Nonetheless, the Court awarded Daniels credit for time served on sentences for all the charges. Likewise, since the St. Lucie detainer and the Broward charges were both causative factors contributing to Gethers' incarceration, he should be entitled to credit for time served on both the St. Lucie and the Broward sentences.

Further, the Gethers court based its holding on a hyper-technical interpretation

of the articles used in Section 921.161(1): The Court reasoned that:

> 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 charges are pending. The statute was not written to accommodate the mobile, prolific offender whose criminal transgressions span the state.

Gethers at 831.

However, the statute *does not* say "the county jail where charges are pending and where sentence is ultimately imposed," and does not exclude, on its face, a situation where the defendant is in "the" county jail, in a different county than the one where charges are pending. The rest is speculation on the part of the Fourth District.

Lastly, the Fourth reasoned:

> Nothing in the statute suggests that a day in jail has some metaphysical credit value dependant on the number of cases a defendant has pending around the state. The statute should not be construed so that the credit value of a day in jail expands with the number of cases a defendant has pending in different Florida counties. We doubt that the legislature wrote section 921.161 to reward recidivism.

Id. at 831.

First, calling it a "reward" begs the question, for a reward is the giving of something to which the recipient is not already entitled. For instance, a Christmas bonus to an employee is a "reward," whereas a monthly paycheck under a contract is not a "reward." And, that is the very question at hand, whether a defendant is entitled

to the credit based on the issuance of a detainer. It does not advance the argument one way or the other to call it a reward. Rather, the question is whether, given the reasoning in Daniels, there is any indication that the legislature would have intended to treat recidivists differently depending on whether they committed multiple crimes in the same county or in different counties where the defendant is in custody for the crimes in the county jail under a detainer. There is no basis in the statute nor in logic to distinguish Daniels from this case.

Second, Petitioner is not arguing that "a day in jail has some metaphysical credit value dependant on the number of cases a defendant has pending around the state." Rather, Petitioner is arguing that, if credit from time served under a detainer is denied for concurrent sentences, then a defendant may be effective denied any credit whatsoever. Such an interpretation would be inconsistent with the plain meaning of credit for county jail time served statute. Petitioner does not claim jail credit for all outstanding charges throughout the state ("metaphysical" or not) but only those on which a detainer has been filed.

CONCLUSION

Petitioner no longer desires to withdraw his plea in the instant case but asserts the decision below is wrongfully decided and urges this Court to accept the Second District's en banc decision in Bryant and the First District's decision in Penny as the law of this state regarding credit for time served under a detainer.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy hereof has been furnished by courier, to CELIA TERENZIO, Assistant Attorney General, 1655 Palm Beach Lakes Blvd., Suite 300, West Palm Beach, Florida 33401, this _____ day of DECEMBER, 2001.

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief has been prepared in compliance with the font standards required by Florida Fla. R. App. P. 9.210. The font is Times New Roman, 14 point.

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