IN THE

SUPREME COURT OF FLORIDA

ANTONIO GETHERS,	)	
	)	
Petitioner,	)	
	)	
vs.	)	CASE NO. SC 01-2639
	)	
STATE OF FLORIDA,	)	
	)	
Respondent.	)	
	)	

PETITIONER'S REPLY BRIEF ON THE MERITS

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TABLE OF CONTENTS

AUTHORITIES CITED

CASES CITED

FLORIDA STATUTES

ARGUMENT

WHETHER A DEFENDANT IS ENTITLED TO CREDIT FOR TIME SERVED IN A COUNTY JAIL ON A CONCURRENT SENTENCE EVENTUALLY IMPOSED BY A SECOND COUNTY WHEN THAT SECOND COUNTY HAD LODGED A DETAINER AGAINST THE DEFENDANT WHILE HE WAS IN THE FIRST COUNTY JAIL?

Respondent characterizes the St. Lucie hold placed against Mr. Gethers while he was in the Broward county jail as a request for information and names two separate types of detainers as "a detainer of communication" and a "detainer of consequence." (Respondent's brief-passim) Although the state presents these terms in quotation marks, they are not quoted from any identified source. No case cited by petitioner or respondent refers to any type of detainer as a "detainer of communication" nor distinguishes that there are two such categories of detainers.

All the cited cases, including the Fourth District's Gethers opinion here for review, refer to a detainer as a "hold." No other characterization appropriately arises from the cases discussing credit for time served on detainers. The respondent observes that "the First and Second District Courts do not make any distinctions as to the types of detainers that can be issued."[1] (Resp brief-7). However, since these "types" of

[1] This statement references the First District's decision in Penny v. State, 778 So. 2d 305 (Fla. 1st DCA

detainer terms have been invented by the state for the purpose of submitting its brief to this Court, the decisions in question can hardly be faulted for not distinguishing terms that did not previously exist. Nor is the state's use of quotation marks with the term "detainer of consequence" something that actually appeared or was discussed in the Gethers opinion as the reader might suppose from this statement in Respondent's brief at p 5:

> 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).

Neither at page 832 nor at any other page does the Gethers decision use the term "a detainer of consequence" nor discuss different types of detainers.

Respondent's citations to federal cases (Respondent's brief-6) regarding interstate detainers are not pertinent as those cases do not involve the proper interpretation of section 921.161(1), Florida Statutes, at issue here. Petitioner's case does not concern the established rule that a defendant is only entitled to credit for time served within the discretion of the trial court for time served on a Florida detainer while held in

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2000) and the Second District's decision in Bryant v. State, 787 So. 2d 68 (Fla. 2nd DCA 2001), the cases that directly conflict with Gethers.

a jurisdiction outside of Florida, awaiting transfer to Florida. In Kronz v. State, 462 So.2d 450, 451 (Fla.1985) this court explained that the term "county jail" as used in section 921.161 applies only to Florida jails, so that section 921.161 does not govern an award of credit for time served out-of-state. Combs v. State, 803 So.2d 875 (Fla 5th DCA 2002)(holding that neither Bryant nor Price v. State, 598 So. 2d 215 (Fla. 5th DCA 1992) apply to question of credit for time served in counties other than Florida counties); But see, Mazza v. State, 804 So.2d 613 (Fla. 2 DCA 2002)(Applying Bryant to give defendant credit for time served on Hillsborough detainer once it was lodged against him in Georgia.)

The respondent's second stated point on appeal, that the Broward sentence must have already expired before the St. Lucie sentence was imposed, is not involved in the issue of certified conflict and therefore need not be addressed by the court. Puryear v. State, 2002 WL 188359, 27 Fla. L. Weekly S122, footnote 8 (Fla. Feb 7, 2002). Further, it is speculation for the state to assume the Broward sentence imposed November 15,1999, had been fully served by August 14,2000, the time this sentence from St. Lucie sentence was imposed to run concurrent with any other sentence the defendant was then serving. In the trial court on the hearing for the Motion to Correct Sentencing

Error, the state did not show the actual number of days credit, if any, Mr. Gethers was given on his year and a day Broward sentence imposed on November 15,1999.

The conflict certified in Gethers is troublesome and causes problems throughout the state. Judge Altenbernd recently addressed the issue as "difficult and time-consuming for the courts," noted the conflict between Gethers and Bryant and urged the Legislature to remediate the credit for jail time statute. Blake v. State, 2002 WL 236126, 27 Fla. Law Weekly D456, 437 (Fla. 2nd DCA February 20, 2002), Altenbernd, J, concurring. But this Court need not wait for the Legislature's possible, future action as the district courts have interpreted the statute differently, in decisions that expressly and directly conflict with one another. Thus, this Court may timely provide a solution to the problem that "our prison population contains a group who have received full credit under this circumstance and another group who have not." Altenbernd, concurrence, supra.

A uniform interpretation of the law needs to be established now in light of the confusion. Rivera v. State, 784 So.2d 1170 (Fla. 2DCA 2001)("the fact that a defendant was not officially arrested in the second county has no bearing on his right to receive jail credit while under the first county's hold."). Llamera v. State, 2002 WL 385727, 27 Fla. L. Weekly D413 (Fla.

4th DCA March 13, 2002)(finding defendant may be entitled to more credit for jail time served under Gethers). The fifth district has recently certified the same conflict between Bryant and Gethers for this Court's resolution in Shewbridge v. State, 2002 WL 225867, 27 Fla. L. Weekly D413 (Fla. 5th DCA February 15, 2002)(following Gethers). The third district has not yet directly addressed the issue. Tharpe v. State, 744 So.2d 1256 (Fla. 3rd DCA 1999).

As of today, March 14, 2002, petitioner only has 83 days remaining in the custody of the Department of Corrections before his release date of June 5,2002. www.dc.fl.us/activeinmates (Antonio Gethers # 707982). By now he no longer desires to withdraw his plea due to the failure to credit him with the time served in "the" county jail where St. Lucie's detainer was placed against him. Petitioner recognizes this court's decision might not issue before his sentence expires. Nonetheless, petitioner still hopes for himself and other inmates similarly situated, now and in the future, that this Court will interpret section 921.161 consistent with Daniels v. State, 491 So. 2d 543, 544 (Fla. 1986), and hold that "a defendant['s entitlement] to have his sentence reflect credit for any time served in jail prior to sentencing" applies to "the" jail in Florida wherever

he happenned to serve his pre-trial credit under detainer or under arrest. Daniels is not so rigid as to only allow credit in a jail of a county where the sentence is eventually imposed and neither is the wording of section 921.161(1), Florida Statutes.

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 copy hereof has been furnished to Maria Patullo, Assistant Attorney General, 1515 N. Flagler Dr., 9F, W. Palm Beach, FL 33401 by courier this _____ day of March, 2002.

Attorney for Antonio Gethers

CERTIFICATE OF FONT SIZE

In accordance with the Florida Supreme Court Administrative Order, issued on July 13, 1998, and modeled after Rule 28-2(d), Rules of the United States Court of Appeals for the Eleventh Circuit, counsel petitioner hereby certifies that the instant brief has been prepared with 12 point Courier New type, a font that is not spaced proportionately.

_____

Attorney for Antonio Gethers