IN THE SUPREME COURT OF THE STATE OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v.

JASON RAY ROBBINS,

Respondent.

Case No. SC02-2583
5th DCA No. 5D02-261

ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

MERITS BRIEF OF PETITIONER

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STATEMENT OF THE CASE AND FACTS

On July 25, 2001, Appellee Jason Ray Robbins was stopped for running a red light and arrested for driving under the influence ("DUI"). (R 1-4). A search of his car revealed a substance which field-tested positive for GHB and which Robbins admitted was GHB. (R 3-4). After his arrest, Robbins blew a .079% and a .076% on the breath test and admitted that he had used the GHB found in his car. (R 4). That same day, the arresting officer issued uniform traffic citations for running a red light,[1] DUI,[2] and possession of a controlled substance.[3] (R 6-7). The parties stipulated that the citation for DUI was given to the defendant and filed with the court. (R 32).

On August 28, 2001, an arraignment was scheduled in circuit court at which Robbins appeared. (R 10). Robbins remained on bond or pre-trial release status after the State moved to continue the case. The case was continued until September 18, 2001. (R 10). On September 18, 2001, the State continued the case and Robbins' bond or pre-trial release was continued. The case was reset for October 9, 2001. (R 11). On October 5, 2001, defense counsel below filed a notice of appearance. On October 9, the arraignment was continued by the State; Robbins was kept on bond. (R 12, 14). A written waiver of Robbins' presence had been filed; the case was reset at the State's behest for October 30, 2001. (R 12, 14). On October 30, 2001, the case was continued by the State and reset for November 20, 2001; Robbins remained on bond. (R 15).

The FDLE produced a lab report indicated the substance found in Robbins' car was GHB. This report was dated October 11, 2001.

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[1] § 316.074, Fla. Stat. (2000).

[2] § 316.193, Fla. Stat. (2000).

[3] § 893.13(6)(a) & 893.03(2)(b)(11), Fla. Stat. (2000).

On October 31, 2001, Robbins filed a notice of expiration of speedy trial time, stating that the ninety-day speedy trial period for the DUI had expired. (R 16-17). On November 2, 2001, the state filed a two-count information, charging Robbins with possession of a controlled substance and DUI. (R 18). Robbins filed a motion for discharge on the DUI count, contending that he could not be prosecuted for the misdemeanor offense of DUI since the speedy trial period had expired prior to the filing of the information. (R 20).

At the hearing on the motion to discharge, Robbins argued that the state was not entitled to the benefits of Florida Rule of Criminal Procedure 3.191(f)[4] when the information is filed after expiration of the misdemeanor speedy trial period. (R 52-53,55-56). For this proposition, he relied on Alvarez v. State, 791 So. 2d 574 (Fla. 4th DCA 2001), a case which had recently been reported in the Florida Law Weekly. (R 52-56). The state observed that the reason it had not filed an information until November was that it was awaiting lab results on the GHB. (R 55). The prosecutor attempted to distinguish Alvarez by arguing that Robbins was charged with the DUI by citation within the ninety-day time frame. (R 54-55).

The trial court rejected the state's argument regarding the citation, noting that a citation is sufficient to charge a traffic offense only in county court, not in circuit court. (R 57-58,61). The court agreed that Alvarez was on point, but registered its disapproval of that case and determined not to follow it until it became final. (R 56-63). Accordingly, the trial court denied the motion to discharge, although it acknowledged it would have to follow Alvarez when the opinion became final. (R 22-23,58-63).

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[4]"Consolidation of Felony and Misdemeanor. When a felony and a misdemeanor are consolidated for disposition in circuit court, the misdemeanor shall be governed by the same time period applicable to the felony." Fla. R. Crim. P. 3.191(f).

On November 20, 2001, Robbins filed a second motion for discharge, noting that Alvarez was now final. (R 25-27). At the subsequent hearing on the matter, the prosecutor argued that Alvarez was wrongly decided and reiterated his argument regarding the citation. (R 44-45). The trial court found that it was bound by Alvarez and granted the motion to discharge, dismissing the DUI count. (R 29,46-47). The signed written order was filed January 23, 2002. (R 29). The state timely filed a notice of appeal that same day. (R 33).

On April 4, 2002, the State filed an initial brief with the Fifth District Court of Appeal (DCA) raising one issue for the court's consideration: whether the trial court erred in dismissing Robbins' misdemeanor charge pursuant to the speedy trial rule. Robbins, through appointed counsel, filed an answer brief. The State filed a reply brief. The Fifth DCA affirmed the trial court's dismissal of the misdemeanor DUI charge citing to the cases of Alvarez v. State, 791 So. 2d 574 So. 2d 574 (Fla. 4th DCA 2001) and Livingston v. State, 564 So. 2d 612 (Fla. 1st DCA 1990). State v. Robbins, 830 So. 2d 866 (Fla. 5th DCA 2001). Judge Harris dissented with an opinion. In his opinion, Judge Harris stated:

> The issue in this case is whether the speedy trial period for a misdemeanor provided in Rule 3.191(a), Florida Rules of Criminal Procedure, (90 days) trumps the limitation for such misdemeanor provided in Rule 3.191(f) (180 days) when the consolidation in the circuit court does not occur until after the running of the shorter term. Both the First District in Livingston v. State, 564 So.2d 612 (Fla. 1st DCA 1990), and the Fourth District in Alvarez v. State, 791 So.2d 574 (Fla. 4th DCA 2001), hold that it does. Both cases rely on the committee note accompanying the rule which was specifically *not* adopted by the supreme court when it adopted the rule. See The Florida Bar, 389 So.2d 610 (Fla.1980).
>
> Both Livingston and Alvarez hold that the 90-day limitation, having once expired, cannot be revived by the subsequent consolidation with a felony in the circuit court. But I read rule 3.191(a) as providing a 90-day limitation period for a misdemeanor *only if the rule does not provide otherwise*.

> Since under the facts of this case the rule does provide otherwise, the 90-day limitation period never became effective and thus never expired and any problem concerning a subsequent revival is immaterial.(emphasis in the original).
>
> The rule provides clearly and unequivocally that if a misdemeanor and a felony are consolidated for trial in the circuit court, the misdemeanor is subject to the 180-day limitation. That happened here, hence the 90-day period applicable to misdemeanors tried in the county court is of no concern.
>
> The Livingston court cited Sharif v. State, 436 So.2d 420 (Fla. 4th DCA 1983), which discussed the problem created by rule 3.191 before the 1989 amendment. That court noted that because there was a different speedy trial provision for a misdemeanor and a felony, if the State wished to pursue both a misdemeanor and a felony arising from the same episode in the same proceeding it would have to prepare to try an often complex felony within the compressed time frame provided for a misdemeanor. Hence, said the Sharif court, the addition of section 3.191(b)(2) in 1989, now rule 3.191(b)(f), resolved the problem by creating a uniform speedy trial period of 180 days when the misdemeanor is consolidated with a felony in the circuit court. By holding, as the majority does, that the uniform limitation provided by the amended rule applies only if the consolidation occurs within the 90-day limitation period provided for a misdemeanor, the court has effectively returned us to the pre-amendment state of the law. In our case, as we suspect in many, it was more than 90 days after the arrest that the evidence establishing the felony was available.
>
> I would hold that the 90-day misdemeanor speedy trial rule applies only when prosecution for the misdemeanor occurs in the county court.

Id. at 866-867.

The State filed a motion for rehearing and certification. The Fifth DCA denied rehearing, but certified the following question as one of great public importance:

> WHEN AN INFORMATION CHARGING A DEFENDANT WITH BOTH MISDEMEANOR AND FELONY CHARGES IS FILED AFTER THE EXPIRATION OF THE SPEEDY TRIAL PERIOD FOR MISDEMEANORS, MUST THE MISDEMEANOR COUNTS BE DISMISSED?

Id. at 867.

The State filed a notice to invoke the discretionary jurisdiction of this Court. This Court issued an order postponing a decision on jurisdiction and setting the briefing schedule. Petitioner's brief on the merits follows.

SUMMARY OF THE ARGUMENT

The plain language of the procedural rule provides that when a misdemeanor and a felony are consolidated for disposition in the circuit court, the longer speedy trial rule applicable to felonies applies to both the felony and the misdemeanor. However, a line of cases exist which hold that the state may only claim the benefit of this rule if it files the misdemeanor charge within the 90-day speedy trial period applicable to misdemeanors.

These cases were wrongly decided. Where a rule is clear and unambiguous, it must be given its plain and ordinary meaning. Resort to extrinsic aids and the rules of statutory construction are inappropriate. In this case, the line of cases relied on below improperly grafted onto the rule a limitation (suggested by the committee notes) which is not supported by the plain language of the rule itself. Although this Court expressly declined to adopt these committee notes, this erroneous line of cases has gone ahead and done precisely that, thereby foreclosing application of the rule in a class of cases to which it should, by its plain language, apply. This Court should answer the certified question in the negative and hold that when a felony and a misdemeanor are consolidated for disposition in circuit court, the misdemeanor shall be governed by the same time period applicable to the felony, irrespective of the expiration of the speedy trial period for misdemeanors.

ARGUMENT

ISSUE

THIS COURT SHOULD ANSWER THE CERTIFIED QUESTION IN THE NEGATIVE AND FIND THAT WHEN MISDEMEANOR AND FELONY CHARGES, ARISING OUT OF THE SAME CRIMINAL EPISODE, ARE FILED TOGETHER, THAT BOTH THE MISDEMEANOR AND FELONY CHARGES ARE TIMELY IF FILED WITHIN THE SPEEDY TRIAL WINDOW FOR FELONY CHARGES .

The State appeals from the ruling of the Fifth District Court of Appeal which affirmed the trial court's dismissal of Respondent's misdemeanor DUI charge because the information charging Respondent with both misdemeanor DUI and the felony of possession of a controlled substance was filed after the speedy trial period for misdemeanors had expired. State v. Robbins, 830 So. 2d 866 (Fla. 5th DCA 2002). In so doing, the district court also certified the following question as one of great public importance:

> WHEN AN INFORMATION CHARGING A DEFENDANT WITH BOTH MISDEMEANOR AND FELONY CHARGES IS FILED AFTER THE EXPIRATION OF THE SPEEDY TRIAL PERIOD FOR MISDEMEANORS, MUST THE MISDEMEANOR COUNTS BE DISMISSED?

Id. The State contends that this Court should answer the certified question in the negative and find that when an information charging both a misdemeanor and a felony is filed after the expiration of the misdemeanor speedy trial period, it is not necessary to dismiss the misdemeanor count for violation of the speedy trial rule.

Rule 3.191(f) provides: "When a felony and a misdemeanor are consolidated for disposition in circuit court, the misdemeanor shall be governed by the same time period applicable to the felony." The rule itself places no time restrictions on the

consolidation of the charges.

In affirming the trial court's dismissal of Respondent's misdemeanor count, the Fifth District relied upon Livingston v. State, 564 So. 2d 612 (Fla. 1st DCA 1990), and Alvarez v. State, 791 So. 2d and 574 (Fla. 4th DCA 2001). The issue at bar was first addressed in Livingston v. State, 564 So. 2d 612 (Fla. 1st DCA 1990), where the defendant was initially charged with two felony offenses and the information was amended to include a misdemeanor after the misdemeanor speedy trial time had already run. The First District observed that the 1980 committee note to rule 3.191(b)(2) (now 3.191(f)) states, "To claim benefit under this provision, the crimes must be consolidated before the normal time period applicable to misdemeanors has expired." Finding the committee note "highly persuasive," the Livingston court held that the defendant was entitled to discharge on the misdemeanor count. Id. at 613.

Alvarez held that where the information charging both a felony and misdemeanor is not filed until after expiration of the 90-day misdemeanor period, the State is not entitled to the benefit of 3.191(f) and the defendant must be discharged on the misdemeanor count. Although the trial court in the instant case strongly disagreed with Alvarez, it was bound to follow the Fourth District absent conflict,[5] and therefore granted Robbins' motion for discharge on the authority of Alvarez. Alvarez took the holding in Livingston a step further, applying it to a situation in which the felony and misdemeanor counts were initially charged together in a single information. Alvarez, 791 So. 2d at 575. That is the same factual scenario as exists in this case. (R.18).

Livingston and Alvarez were wrongly decided and should not be upheld. The

[5]See Pardo v. State, 596 So. 2d 665, 666 (Fla. 1992)("The proper hierarchy of decisional holdings would demand that in the event the only case on point on a district level is from a district other than the one in which the trial court is located, the trial court be required to follow that decision.")(quoting State v. Hayes, 333 So. 2d 51, 53 (Fla. 4th DCA 1976)).

fatal flaw found in these cases is Livingston's reliance on the committee note which caused the district court to read into rule 3.191(f) a limitation which is not at all supported by the plain language of the rule itself. When adopting the 1980 amendments to the speedy trial rule, this Court made a point of noting that it did not adopt the committee notes. The Florida Bar In re Rules of Criminal Procedure, 389 So. 2d 610 (Fla. 1980). Unadopted committee notes are not binding, although they may be persuasive if they have not been disavowed. International Village Ass'n, Inc. v. Schaaffee, 786 So. 2d 656, 658 (Fla. 4th DCA 2001). Where such notes are neither adopted nor approved by this Court, they constitute nothing more than "helpful hints." See Bordeaux v. State, 471 So. 2d 1353, 1354 (Fla. 1st DCA 1985). The interpretation of a procedural rule is governed by the intent of this Court in promulgating the rule, not the intent of the rule committee expressed in its notes. D.K.D. v. State, 470 So. 2d 1387, 1389 (Fla. 1985). Indeed, sometimes committee notes are not even accurate. See e.g. Howard v. McAuley, 436 So. 2d 392, 392-393 n.1 (Fla. 2d DCA 1983).

Resort to the committee note in interpreting rule 3.191(f) was inappropriate because the rule is clear and unambiguous. Procedural rules are governed by the same rules of construction as statutes. See Castillo v. Vlaminck de Castillo, 771 So. 2d 609, 610 (Fla. 3d DCA 2000). A rule or statute which is clear and unambiguous must be given its plain and ordinary meaning. Starr Tyme, Inc. v. Cohen, 659 So. 2d 1064, 1067 (Fla. 1995). Courts may not resort to rules of statutory construction or extrinsic aids to interpret a clear and unambiguous rule which conveys a clear and definite meaning. Modder v. American Nat'l Life Ins. Co. of Texas, 688 So. 2d 330, 333 (Fla. 1997)(quoting Holly v. Auld, 450 So. 2d 217 (Fla. 1984)); S.L. v. State, 708 So. 2d 1006, 1008 (Fla. 2d DCA 1998). It is not a judicial function to add words to a clear and unambiguous statute or rule. See National Airlines, Inc. v. Division of

Employment Security of Florida Department of Commerce, 379 So. 2d 1033, 1035 (Fla. 3d DCA 1980); see also Hayes v. State, 750 So. 2d 1, 4 (Fla. 1999); Sarasota Herald-Tribune Co. v. Sarasota County, 632 So. 2d 606, 607 (Fla. 2d DCA 1993).

Additionally, it appears as if any precedential value of Livingston has been called into question by the First District's more recent holding in State v. Jackson, 784 So. 2d 1229, 1230 (Fla. 1st DCA 2001), rev. denied, 805 So. 2d 807 (Fla. 2002). In Jackson, the State originally charged Jackson with, *inter alia*, misdemeanor DUI in the county court. Id. at 1230. The State dismissed the county court charges and filed an information in the circuit court, charging both misdemeanor and felony DUI. Id. The new information was filed after expiration of the misdemeanor speedy trial period, but before expiration of the felony period. Id. While the primary issue was whether the State was estopped from prosecuting Jackson on the misdemeanor DUI where he had been discharged on that offense by the county court, the First District observed that the circuit court information, charging both a felony and misdemeanor, was timely filed within 175 days pursuant to rule 3.191(f). Jackson, 784 So. 2d at 1230-1231. Moreover, the court also looked to the State's motives in filing the second information and found no intent to avoid the effects of the speedy trial rule. Id. at 1231.

The facts of the instant case are, for all practical purposes, indistinguishable from Jackson. Both defendants were arrested and charged with misdemeanor DUI. After the 90-day speedy trial period for misdemeanors had expired, but before the 175-day period speedy trial period for felonies had run, both defendants were charged in circuit court with a felony and a misdemeanor DUI. The ruling in Jackson, allowing the misdemeanor charge to be brought in circuit court properly gives full force and effect to the specific language of Rule 3.191(f). Pursuant to this rule, the speedy trial deadline for the felony *and misdemeanor* charges in circuit court is 175 days. Fla. R. Crim. P. 3.191(f). A defendant should not be in a better position, and the State in a worse

position, where an information alleges the commission of both felony and misdemeanor crimes. The Fifth District erred in affirming the dismissal of Respondent's misdemeanor DUI charge.

As Sharif v. State, 436 So. 2d 420 (Fla. 4th DCA 1983), demonstrates, the 1980 amendment of Rule 3.191(b)(2)[6] was designed to remedy a situation in which the State was required to try consolidated felony and misdemeanor charges within the misdemeanor time frame. Id. at 421. Prior to the amendment, an untenable situation existed for prosecutors in that the State lost misdemeanor cases to speedy trial despite having properly charged them together with related felonies from the outset. Where a rule, or an amendment, is remedial in nature it should be liberally construed to give effect to the remedial intent behind the rule. See City of Tampa v. Hines, 596 So. 2d 160, 162 (Fla. 2d DCA 1992); T.M. v. State, 689 So. 2d 443, 445 (Fla. 3d DCA 1997); 3299 N. Federal Highway, Inc. v. Board of County Commissioners of Broward County, 646 So. 2d 215, 224 (Fla. 4th DCA 1994), rev. denied, 699 So. 2d 690 (Fla. 1997). The rule should be construed in a way that preserves and promotes access to the remedy conferred by the rule. See Joshua v. City of Gainesville, 768 So. 2d 432, 435 (Fla. 2000). The construction of Rule 3.191(f) which requires the State to join the charges exclusively within the misdemeanor speedy trial period, or be forever barred from prosecuting any misdemeanor charges, does not advance the remedy provided by the rule. On the contrary, it limits access to the remedy, thus diminishing the efficacy of the rule amendment.

Rule 3.191(f) is clear and unambiguous, unequivocally stating that when a felony and a misdemeanor are consolidated for disposition in circuit court, the misdemeanor shall be governed by the same time period applicable to the felony. Despite the

[6]Now Rule 3.191(f).

principles discussed above, the Livingston line of cases has grafted a limitation onto the plain language of the rule, foreclosing its application to cases in which the information charging both a felony and misdemeanor is filed after expiration of the 90-day misdemeanor speedy trial period. Such an interpretation essentially provides the State with two separate charging periods - 90 days for cases involving both a felony and misdemeanor, and 175 days for cases involving solely felony charges. Nothing in the plain language of the rule supports such a limitation. Had this Court intended such a result, it could have easily accomplished it by expressly saying so in the rule, or by adopting the very committee notes which it expressly declined to espouse. See National Airlines, 379 So. 2d at 1035 (had legislature intended interpretation urged by petitioner, it would have expressly stated such in statute).

Livingston's requirement that the information be filed within ninety days in order to take advantage of rule 3.191(f) has the effect of preventing use of the rule in a large number of cases where it would otherwise apply under the plain language of the rule. This violates the principle that courts must give full effect to the rule, according it the interpretation which renders its provisions meaningful. See Hawkins v. Ford Motor Co., 748 So. 2d 993, 1000 (Fla. 1999)(quoting Johnson v. Feder, 485 So. 2d 409, 411 (Fla. 1986)); Unruh v. State, 669 So. 2d 242, 245 (Fla. 1996)(quoting Forsythe v. Longboat Key Beach Erosion Control Dist., 604 So. 2d 452, 456 (Fla. 1992)). Even statutes or rules subject to strict construction must not be interpreted so strictly as to weaken the statute or rule and defeat the underlying intent. See St. Surin v. State, 745 So. 2d 514, 515 (Fla. 3d DCA 1999); Sneed v. State, 736 So. 2d 1274, 1275-1276 (Fla. 4th DCA 1999). Yet that is precisely what Livingston and its progeny do in their restrictive definition of rule 3.191(f).

In this case, Respondent was issued a citation for misdemeanor DUI on July 25, 2001. The speedy trial deadline for the misdemeanor filed in county court would have

been July 23, 2001. The speedy trial deadline for the felony of possession of a controlled substance and the misdemeanor SUI filed in circuit court was January 16, 2002. The sole information filed in this case, charging both a felony and misdemeanor, was filed on November 2, 2001. This was well before the speedy trial deadline in January. Neither count should be barred by the speedy trial rule.

Also, Petitioner would note that Florida's speedy trial rule is not a constitutional guarantee. Rather, it is a rule of procedure of which the purpose is to

give the court control of its docket so that guilt or innocence may be determined in a manner consistent with the proper investigation and preparation of the case by the prosecution and, at the same time, guaranteeing to the defendant his constitutional right to a speedy trial. Landry v. State, 666 So. 2d 121, 125 (Fla. 1995). There is, however, nothing magical about the 175-day provision of Rule 3.191 in measuring a defendant's constitutional right to a speedy trial. This Court pronounced the 175-day provision as a practical means for fully implementing the right of speedy trial, pursuant to its power to establish rules of practice and procedure in the courts of this state. State ex rel. Butler v. Cullen, 253 So. 2d 861 (Fla.1971).

Here, Respondent was charged well within the 175 days speedy trial period. The delay in filing the information was not an attempt by the State to evade any speedy trial rights of Respondent. The trial court accepted the State's explanation that the delay in filing the information was due to the wait for lab results on the narcotics found in Robbins' car. (R.59). Therefore, in this case, as in Jackson, there was no improper intent to avoid the effects of the speedy trial rule.

A defendant should not receive a windfall in a situation where the State may not be able to file an informed information prior to the expiration of misdemeanor speedy trial period by having any and all misdemeanor charges dismissed. This result is contrary to the Legislature's intent to charge a defendant with all crimes possible for

each criminal episode. § 775.021(4), Fla. Stat. (2000)(it is the intent of the Legislature to convict and sentence for each criminal offense committed in the course of one criminal episode or transaction and not to allow the principle of lenity as set forth [above] to determine legislative intent. ...).

The restrictive interpretation placed on the amended rule by Livingston v. State, 564 So. 2d 612 (Fla. 1st DCA 1990) and its progeny has put the State on the horns of a dilemma which the rule amendment should have eliminated. In order to avail itself of the benefits of Rule 3.191(f), the State must forego the last eighty-five days of the felony speedy trial period and file its charges within the ninety-day misdemeanor period, or lose any misdemeanor charge forever. Surely, no one benefits from forcing the State to make hasty charging decisions in complex and serious cases. As noted by Judge Harris, "By holding, as the majority does, that the uniform limitation provided by the amended rule applies only if the consolidation occurs within the 90-day limitation period provided by a misdemeanor, the court has effectively returned us to the pre-amendment state of the law." State v. Robbins, 830 So. 2d at 866-867. (Judge Harris' dissent).

The facts of the instant case are distinguishable from those in Coleman v. Eaton, 540 So. 2d 915 (Fla. 5th DCA 1989). In Coleman, the State charged Coleman with two misdemeanors. Id. After ninety days, Coleman moved for discharge and the State subsequently filed an amended information alleging a new felony charge. Id. The trial court held that the new information rendered the motion for discharge moot. Id. However, the district court granted a petition for writ of prohibition, enjoining the State from trying Coleman on the misdemeanor charges. Id. at 916.

The Fifth District's concern in Coleman was that the State not be permitted to use rule 3.191(f) to avoid the operation of the speedy trial rule, as evidenced by its citation to State v. McDonald, 538 So. 2d 1352 (Fla. 2d DCA 1989), for the

proposition that "the State cannot avoid the intent and effect of the speedy trial rule and engineer its own extension of speedy trial limits by dropping misdemeanor charges after a timely motion for discharge is filed and then later refiling felony and misdemeanor charges arising from the same episode, in an attempt to revitalize the misdemeanors." Coleman, 540 So. 2d 915. Here, the trial court specifically distinguished the facts of this case from the type of scenario which occurred in Coleman and found that the State was not trying to "get around" the speedy trial rule. (R.59-60). In this case, the State did not try to revitalize an expired misdemeanor count by filing an amended information with a new felony charge; rather, it only filed one information and the reason it was not filed sooner was that the State had to wait for lab results to confirm the illicit nature of the substance in Robbins' possession. (R 55,59).

This Court should hold that where the State files an information charging both misdemeanors and felonies, the State is entitled to the benefits of Rule 3.191(f) even if the information is filed beyond ninety days, as long as the information is filed within the felony speedy trial period. To hold otherwise places the State in the untenable position of having to file its information within ninety days (thereby forfeiting almost half of the time it would otherwise have under the plain language of the rule) in order to claim the benefit of rule 3.191(f). It is a bad policy to force the prosecution into rushed charging decisions. This Court should follow the plain language of Rule 3.191(f) which specifically states that when a felony and a misdemeanor are consolidated for disposition in circuit court, the misdemeanor shall be governed by the same time period applicable to the felony.

CONCLUSION

Based on the arguments and authorities presented herein, Petitioner respectfully requests this honorable Court answer the certified question in the negative and hold

that when misdemeanor and felony charges, arising out of the same criminal episode, are filed together, that both the misdemeanor and felony charges are timely if filed within the speedy trial window for felony charges.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Merits Brief of Petitioner has been furnished by delivery to James B. Gibson, Public Defender, Seventh Judicial Circuit, 112 Orange Avenue, Suite A, Daytona Beach, Florida 32114, this 10th day of January, 2003.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 14-point Times New Roman, in compliance with Florida Rule of Appellate Procedure 9.210(a)(2).

Respectfully submitted,

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