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

REPLY BRIEF OF PETITIONER

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SUMMARY OF THE ARGUMENT

Respondent's misdemeanor and felony charges were properly consolidated and within the exclusive jurisdiction of the circuit court from the inception of the case. The information was properly filed within the 175-day speedy trial window governing felonies and their accompanying misdemeanor charges. The plain language of Rule 3.191(f) 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. 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 .

Respondent contends that the misdemeanor charge in the instant case was not consolidated with the felony charge prior to the expiration of the misdemeanor speedy trial period. He bases this argument on the fact that the State had not filed an information prior to the expiration of the 90-day speedy trial period governing misdemeanors. (Respondent's Brief on the Merits, p.9). Petitioner asserts, however, that this statement is incorrect. In State v. Reed, 649 So. 2d 227 (Fla. 1995), the State attempted to argue that because there were no charges pending against Reed at the time Reed filed his motion for discharge (i.e., the State had *nol prossed* the information), his motion to dismiss was a nullity. This Court held that such an argument was without merit. "Taken to its extreme, this reasoning would mean that even though a defendant had been arrested and taken into custody, the speedy trial time for the conduct which precipitated the arrest would never begin to run until the State chose to file an information or indictment. This is contrary to both the letter and the spirit of the speedy trial rule." Id. at 229. Therefore, it seems disingenuous for a defendant to argue that he was in custody from the time of arrest for purposes of possible discharge, but, at the same time, did not have charges pending against him.

Additionally, the word "consolidated" as used in Rule 3.191(b)(2), Florida Rules of Criminal Procedure, means "to join together into one whole." Sharif v. State,

436 So. 2d 420, 422 (Fla. 4th DCA 1983). 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." Unlike the comment, the rule itself places no time restrictions on the consolidation of the charges. In any event, in the instant case Respondent was arrested on both charges at the same time, the misdemeanor and felony charges were filed together under the same lower circuit court case number, he was out on bond on both the felony and misdemeanor charges, and he was arraigned on all the charges within the ninety day speedy trial period provided for misdemeanors. The felony possession charge and the misdemeanor DUI charge were clearly joined together into a single unit from the outset of this case. Therefore, Respondent's charges were "consolidated," or joined together as a whole, prior to the expiration of the speedy trial period for misdemeanors.[1]

Respondent also attempts to distinguish the instant case from State v. Jackson 784 So. 2d 1229 (Fla. 1st DCA 2001), cert. denied, 805 So. 2d (Fla. 2002). However, the differences he sets out are without distinction. In Jackson, the speedy trial deadline for Jackson's misdemeanor DUI filed in county court was January 19, 2000. The State filed a *nolo prosequi* with the county court on that charge on January 10, 2000. The information charging Jackson with both the felony and misdemeanor charges was not filed until February 3, 2000. The speedy trial deadline for the felony DUI and misdemeanor DUI filed in circuit court was April 13, 2000. The First District found that because the information filed in circuit court was filed well before the speedy trial deadline of April 13, 2000, it was not barred by the speedy trial rule. Id.

In the instant case, the misdemeanor and felony charges were continually

[1]While Petitioner contends that Livingston v. State, 564 So. 2d 612 (Fla. 1st DCA 1990), was wrongly decided, this fact also distinguishes the instant case from Livingston.

consolidated and pending before the circuit court, giving the circuit court exclusive jurisdiction from the inception of the case. The information was filed outside the 90 day speedy trial rule for misdemeanors, but well within the felony speedy trial rule. Thus, the State in the instant case was entitled to the use of the full 175-day felony speedy trial period to bring its entire case - felony and misdemeanor charges alike. As the court in Jackson stated, "the defendant should not be in a better position than if the county court misdemeanor DUI charge had not been filed." Id. Petitioner asserts that Respondent should not be in a better position than Jackson where no county court misdemeanor DUI charge was filed.

Respondent further contends that to accept the State's interpretation of Rule 3.191 would theoretically allow the State to resurrect any misdemeanor charge whose time had run by filing it along with a felony charge that it may have previously decided against filing upon. (Respondent's Brief on the Merits, p.9). Petitioner would first point out that these are not the facts before this Court. Respondent's argument connotes some type of bad faith on the part of the State - a factor specifically found by the trial court not to exist, and a fact agreed to by Respondent. In any event, charging decisions are exclusively within the province of the State. See Cleveland v. State, 417 So. 2d 653, 654 (Fla. 1982); McKnight v. State, 727 So. 2d 314, 317 (Fla. 3d DCA 1999). Ergo, the State would be perfectly within its rights to amend an information to include all viable charges so long as it complied with all applicable rules. Here, the State did so, filing the information containing both a felony and a misdemeanor count within the 175-day speedy trial deadline governing such cases. Rule 3.191(f) clearly states that the 175-day speedy trial period governs cases containing both felony and misdemeanor charges.

In practical terms, to interpret Rule 3.191 in the manner suggested by Respondent would provide two separate speedy trial periods for felony cases. A 90

day period for charges containing both felony and misdemeanor counts and 175 days for those containing only felony charges. This is precisely the hardship the amendment to 3.191 sought to alleviate. Sharif v. State, 436 So. 2d 420 (Fla. 4th DCA 1983), Such an interpretation would substantially eviscerate the purpose of Rule 3.191(f).

As stated in Petitioner's initial brief, 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 90 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 90 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 Marvin F. Clegg and Christopher S. Quarles, Assistant Public Defenders, Seventh Judicial Circuit, 112 Orange Avenue, Suite A, Daytona Beach, Florida 32114, this 19th day of February, 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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