IN THE SUPREME COURT OF FLORIDA

TRAVIS TERRELL DAVIS,

Petitioner,

versus CASE NO. SC04-568

STATE OF FLORIDA, Lower Tribunal No. 5D03-3585

Respondent.

APPEAL FROM THE CIRCUIT COURT
IN AND FOR SEMINOLE COUNTY
AND THE FIFTH DISTRICT COURT OF APPEAL

PETITIONER'S BRIEF ON THE MERITS

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PETITIONER'S BRIEF ON THE MERITS

PRELIMINARY STATEMENT

Petitioner was the Defendant and Respondent was the Prosecution in the Criminal Division of the Circuit Court, Eighteenth Judicial Circuit, in and for Seminole County, Florida. In the Brief the Respondent will be referred to as "the State" and the Petitioner will be referred to both by his name ("Mr. Davis") and as he appears before this Honorable Court.

In the brief the following symbols will be used:

"R" - Record on appeal, including transcripts of plea and sentencing proceedings

"SR" - Supplemental record on appeal

STATEMENT OF THE CASE AND FACTS

Petitioner was charged by an information filed in the Circuit Court of Seminole County, Florida, with sale and possession of cocaine. (R 1) On June 30, 2003, he entered a plea of *nolo contendere* as charged, pursuant to an agreement which included the condition that he would be sentenced to 40 months in prison as an habitual offender for sale of cocaine. (R 4-5, 34-42) On October 22, 2003, his motion to withdraw his pleas was denied and he was sentenced as an habitual offender (for sale of cocaine) to concurrent terms totaling 40 months in prison. (R 6-7, 8-9, 10, 16-20, 56-57).

While Petitioner's appeal to the Fifth District Court of Appeal was pending, he filed a motion to correct a sentencing error. Rule 3.800(b)(2), Fla.R.Crim.P. (SR 65-67) At the first hearing on the motion, Mr. Davis had not been transported from the Department of Corrections. Davis v. State, 29 Fla.L.Weekly D672 (Fla. 5th DCA March 18, 2004). The hearing was rescheduled to a date which was more than 60 days from the date that the motion to correct had been filed. Id. On March 18, 2004, the Fifth District Court of Appeal denied Mr. Davis's motion for an enlargement of time and certified conflict with McGuire v. State, 779 So.2d 571 (Fla. 2d DCA 2001). Id. (APPENDIX)

Travis Davis's notice to invoke this Honorable Court's discretionary jurisdiction was filed in the District Court on March 25, 2004.

Summary of Argument

The Florida Rules of Criminal Procedure, through Rule 3.050, currently authorize, for good cause, an extension of time for a trial court to rule on a motion pending appeal to correct a sentencing error. The Fifth District Court of Appeal has listed what it identifies as shortcomings in the way Rule 3.800(b) is currently written, but until and unless the District Court's recommended changes are adopted by a criminal rule revision, extensions of the initial 60-day time limit for ruling on a Rule 3.800(b)(2) motion are authorized. The Second District Court of Appeal's decision in McGuire v. State, 779 So.2d 571 (Fla. 2d DCA 2001), with which the decision in this case has been certified to be in direct conflict, should be approved.

ARGUMENT

RULE 3.050 AUTHORIZES AN EXTENSION OF THE TIME FOR RULING ON A MOTION FILED PURSUANT TO RULE 3.800(b)(2).

Standard of Review

The standard of review for pure questions of law is de novo. D'Angelo v. Fitzmaurice, 863 So.2d 311, 314 (Fla. 2003); Armstrong v. Harris, 773 So.2d 7 (Fla.2000).

Issue Presented

This case presents the question of whether the 60-day period for correcting sentencing errors pending appeal may be extended for good cause. Rule 3.800(b)(2), Fla.R.Crim.P. The Second District Court of Appeal has ruled that Rule 3.050 authorizes a trial court to extend the time to enter an order resolving a Rule 3.800(b)(2) motion when there are good reasons to justify an extension. McGuire v. State, 779 So.2d 571, 573 (Fla. 2d DCA 2001). The Fourth District Court of Appeal has agreed with McGuire. See Moses v. State, 844 So.2d 686 (Fla. 4th DCA 2003), review denied, 858 So.2d 331 (Fla. 2003).

In its denial of Petitioner Travis Davis's motion for an enlargement of time to correct a sentencing error, the Fifth District Court of Appeal certified conflict with McGuire, supra, and held:

> In conclusion, the 60-day time limit embodied in rule 3.800(b) does not contemplate extensions. Moreover, we believe it strikes an appropriate

> balance of allowing the defendant to preserve sentencing errors, and allowing the litigants and the trial court the opportunity to briefly revisit sentencing errors without an undue delay in the appellate process. To allow indefinite extensions based on the nebulous "good cause" standard will result in untold complications to what is now a simple and streamlined process. But even if we are wrong in our conclusion that the 60-day limit makes good sense, the remedy lies with an amendment to the applicable rules, rather than a revision under the guise of interpretation.

Davis v. Fla.L.Weekly DState, (Fla. 5th DCA March 18, 2004) (footnotes omitted).

The District Court's opinion in this case outlines perceived problems and potential abuses and absurdities which could result from allowing extensions of time for resolving a sentencing issue raised by a Rule 3.800(b)(2) motion. As the District Court's conclusion suggests, however, any revision to what the criminal rules currently clearly provide should be through an amendment to the rule adopted by this Honorable Court. Art. V § 2(a), Fla.Const. Petitioner respectfully suggests that McGuire represents a plain reading of the Florida Rules of Criminal Procedure, which provide through Rule 3.050 for an extension of time.

Rule 3.800(b)(1)(B) provides that "If no order is filed within 60 days, the motion shall be considered denied." (Emphasis supplied.) While there may be no or very few excuses for a trial court to fail to enter an "order" within the 60-day period, Petitioner suggests that the entry of an "order" will not in every case be the equivalent of a "disposition" of the motion. Once a legal determination on the merits of the Rule 3.800(b)(2) motion has been made, there can remain an array of "real-world"

circumstances, considerations and obstacles which may necessitate additional time for the *execution* of the timely order or for resolution of the issue presented by the motion. This case presents one example: the trial court scheduled an evidentiary hearing on the motion within the 60-day time period, but Petitioner had not been transported from the Department of Corrections so that the hearing could be held. Davis, 29 Fla.L.Weekly at 672; Appendix, Page 1.

The opinion in this case presents the reasons why three of the Fifth District's judges do not believe that Rule 3.800(b)(2) should be subject to extensions of time. The Second District Court of Appeal's plain reading of the criminal rules demonstrates, however, that it is. See, e.g., McGuire, supra, 779 So.2d at 573 ("Although rule 3.800(b)(2) has no language expressly authorizing extensions of time, this does not distinguish it from most other rules.")

In the opinion in this case, three judges of the Fifth District have listed how trial judges or parties could manipulate or abuse the criminal rules as they are currently written. The opinion also acknowledges that if this Honorable Court agrees with this panel's opinion (that there should be no extensions of time permitted beyond the 60-day period for disposing of a Rule 3.800(b)(2) motion), then the remedy is to amend the criminal rules.

For example, to avert the danger that "the State may also seek an extension, thereby delaying a defendant's right to prompt appellate review of not only sentencing

issues, but all other issues in the direct appeal[,]" a revision might add language addressing extensions of time similar to that which precludes the State from filing motions to increase a defendant's sanctions. Davis v. State, 29 Fla.L.Weekly at D673; Appendix, Page 3. Rule 3.800(b), Fla.R.Crim.P. ("Motions may be filed by the state under this subdivision only if the correction of the sentencing error would benefit the defendant or to correct a scrivener's error.") Likewise, the "good cause" for which Rule 3.050 allows an enlargement of time could be defined or limited, in the case of Rule 3.800(b)(2) motions, to circumstances where an extension of time is necessary to give practical and actual effect to an order that has been timely entered.

If this Honorable Court agrees with this panel of the Fifth District Court of Appeal, that extensions of time might become commonplace and the District Courts' speedy resolution of appeals could become backlogged if trial judges are left to their own discretion to make their own determination of what constitutes "good cause," then the rules could be amended. See Davis v. State, Footnote 1; Appendix, Page 1. The rules could be amended to require parties to demonstrate to the appellate court's satisfaction that an extension of time is necessary. Or, the rules could be amended to read as the panel in this case believes they should, so that Rule 3.050 is expressly inapplicable to proceedings under Rule 3.800(b)(2). As they are written now, however, and as the Second District Court of Appeal has recognized, the criminal rules authorize an extension of time for a trial judge to resolve a Rule 3.800(b)(2)

motion when there are good reasons for it.

CONCLUSION

For the reasons expressed herein, Appellant respectfully requests that this Honorable Court reverse the District Court's decision in this cause, and approve the Second District Court of Appeal's decision in McGuire v. State, 779 So.2d 571 (Fla. 2d DCA 2001).

Respectfully submitted,

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CERTIFICATE OF SERVICE AND CERTIFICATE OF FONT

I HEREBY CERTIFY that a copy hereof has been furnished to the Honorable Charles J. Crist, Jr., Attorney General, by delivery to his basket at the Fifth District Court of Appeal; and by mail to Mr. Travis T. Davis, 11064 N.W. Dempsey Barron Road, Bristol, Florida 32321-9711, this 26th day of April, 2004.

ATTORNEY

I HEREBY FURTHER CERTIFY that the size and style of type used in this brief is 14-point "Times New Roman."

ATTORNEY