IN THE SUPREME COURT OF FLORIDA

CASE NO. SC09-490
THIRD DCA CASE NO. 3D08-676

ROMAN RAMIREZ,

Petitioner,

vs.

CHARLES HEARON McCRAVY,

Respondent.
_____/

PETITIONER'S BRIEF ON JURISDICTION
On Discretionary Review from the Third District Court of Appeal

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INTRODUCTION

Petitioner ROMAN RAMIREZ, pursuant to Fla. Const. art. V, §3(b)(3); Fla.R.App.P. 9.030(a)(2)(A)(iv); and 9.120(d), petitions the Court to exercise its discretionary jurisdiction on the basis that the Third District Court of Appeal's Opinion, dated February 18, 2009, ("Opinion")[1], directly conflicts with a prior decision of this Court, a prior decision of the Fifth District Court of Appeal, and the Third District's own precedent.

Specifically, by holding that this Court's Administrative Tolling Orders do not suspend a statute of limitations, the Opinion directly conflicts with this Court's decision in *Hankey v. Yarian*, 755 So.2d 93 (Fla. 2000), which determined that the word "toll" means "suspend" when used in the statutory limitations context.

The Opinion also directly conflicts with the Fifth District Court of Appeal's decision in *Sullivan v. State*, 913 So.2d 762 (Fla. 5th DCA 2005), which held that this Court's Administrative Tolling Orders operated to "toll" the running of the speedy trial period. The Opinion also conflicts with the Third District's own decision in *State v. Hernandez*, 617 So.2d 1103 (Fla. 3d DCA 1993), which also applied the Court's Tolling Orders to "toll" the running of the speedy trial period.

[1] *Ramirez v. McCravy*, ___ So.2d ___, 2009 WL 383578 (Fla. 3d DCA, February 18, 2009).

BACKGROUND

After the trial court held that the Plaintiff's action was time barred, the Third District Court of Appeal was asked to determine whether certain of this Court's Administrative Tolling Orders operated to "toll" the statute of limitations in a personal injury action. The Third District answered the question in the negative.

The Plaintiff's cause of action accrued on March 3, 2003, when he was involved in an automobile accident. Mr. Ramirez filed his lawsuit on March 7, 2007 - - four years and four days after the accident occurred. (R 5-6).

The trial court entered summary judgment in favor of the Defendant, finding that his action was time barred.

Mr. Ramirez relied upon six (6) of this Court's Administrative Tolling Orders, which were issued between the time that his cause of action accrued (March 3, 2003) and the time in which it ordinarily would have expired (March 3, 2007).[2] Each of the relevant Tolling Orders states that "all time limits authorized

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[2] The applicable Tolling Orders were issued after Hurricanes Frances, Jeanne, Katrina, Wilma and Rita, and Tropical Storm Ernesto, encompassing the following time periods:

(1) AOSC04-95 September 1- 7, 2004 (Hurricane Frances);
(2) AOSC04-163 September 23 - 27, 2004 Hurricane Jeanne);
(3) AOSC05-41 August 24 - 29, 2005 (Hurricane Katrina);
(4) AOSC05-56 September 16-21, 2005 (Hurricane Rita);
(5) AOSC05-74 October 21 - 31, 2005 (Hurricane Wilma) ; and,

by rule and statute applicable to civil (inclusive of circuit and county), family, domestic violence, probate, traffic, and small claims proceedings are tolled from ... ." (Opinion at 1). Ramirez argued that the intervening Tolling Orders, in the aggregate, by their very language operated to suspend the statute of limitations, giving him an additional 31 days to file his Complaint, until April 3, 2007. (R 77-104).

Affirming the trial court's summary judgment in favor of McCravy, the Third District held that "[t]o toll means to suspend or interrupt. There is nothing intrinsic in the language that requires tacking extra day at the end of a four year period." (Opinion at *2).

ARGUMENT

I. The Opinion Conflicts With This Court's Decision in *Hankey v. Yarian*, 755 So.2d 93 (Fla. 2000)

The question before the Third District was a pure question of law. Does a Florida Supreme Court Administrative Tolling Order operate to toll a statute of limitations? The Third District held that it does not.

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(6) AOSC06-36 August 25 - 31, 2006 (Tropical Storm Ernesto).

The Third District's Opinion conflicts with this Court's decision in *Hankey v. Yarian*, 755 So.2d 93 (Fla. 2000), in which this Court dealt with the tolling provisions of the Medical Malpractice Act, Fla.Stats. §766.106(4). Examining the language of §766.106(4),[3] this Court ultimately concluded:

> Because the word "toll" has been consistently used by the Legislature and interpreted by the courts to mean "suspend" when used in a statutory limitations context, we conclude that it was intended to have the same meaning in section 766.106(4). ... We agree with the Fourth District's concise explanation in *Rothschild* that: "Since a tolling provision interrupts the running of the statutory limitations period, the statutory time is not counted against the claimant during that ninety-day period. In essence, the clock stops until the tolling period expires and then begins to run again."

Hankey, supra at 97, quoting *Rothschild v. NME Hospitals, Inc.*, 707 So.2d 954 (Fla. 4th DCA 1998).

This Court also recognized that the "tolling" language in Fla.Stats. §90.051

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[3] Section 766.106(4) provides, in pertinent part:

> [D]uring the 90-day period, the statute of limitation is tolled as to all potential defendants. Upon stipulation by the parties, the 90-day period may be extended and the statute of limitations is tolled during any such extension. Upon receiving notice of termination of negotiations in an extended period, the claimant shall have 60 days or the remainder of the period of the statute of limitations, whichever is greater, within which to file suit.

Fla.Stats. §766.106(4).

has been "routinely and consistently interpreted as suspending the running of the statute of limitations time clock until the identified condition is settled." *Hankey, supra* at 96, *citing Abbott v. Kiser*, 654 So.2d 640 (Fla. 4th DCA 1995).

By recognizing that to "toll" means to suspend or interrupt, but then concluding that there "is nothing intrinsic" about this Court's use of the word "toll" in the Tolling Orders "that requires tacking extra days at the end of a four year period, the Third District's Opinion conflicts with this Court's decision in *Hankey v. Yarian, supra*.

II. The Opinion Conflicts With the Fifth District's Decision in *Sullivan v. State*, 913 So.2d 762 (Fla. 5th DCA 2005)

Applying this Court's Administrative Tolling Orders in *Sullivan v. State*, 913 So.2d 762 (Fla. 5th DCA 2005), the Fifth District determined that the statutory speedy trial period was tolled during the period covered by three of the Court's Tolling Orders, also issued after successive hurricanes in 2005.

> During the time between Appellant's arrest and the expiration of the speedy trial period, three administrative orders of the Supreme Court of Florida were entered wherein "all time limits authorized by rule and statute affecting the speedy trial procedure" were "tolled" in Seminole County due to hurricanes Charley, Frances and Jeanne for a cumulative tolling period of 15 days. Although the lower court and counsel for the parties had considered the effect of the tolling orders for Charley and Jeanne, they had overlooked the order for hurricane Frances, of which we take judicial notice. Fla. Admin.

> Order No. AOSC04-88 (Sept. 15, 2004). When all three tolling orders are considered, the Notice of Expiration of Speedy Trial was premature and subject to a motion to strike.

Sullivan, supra at 763.

The Opinion attempts to distinguish the application of the Tolling Orders to *rules*, such as the speedy trial rule, from *statutes*, such as Fla.Stats. §95.11, but the Tolling Orders make no such distinction.[4] The Tolling Orders toll "all time limits authorized by ***rule and statute*** applicable to civil (inclusive of circuit and county), family, domestic violence, probate, traffic, and small claims proceedings ... ." (Opinion at 2). Nothing in the Tolling Orders demonstrates that they are intended to be strictly construed when applied to statutes, but liberally construed when applied to rules.

The Opinion conflicts with the Fifth District's decision in *Sullivan, supra*, because nothing in the Tolling Orders supports the Third District's interpretation. The language of the Orders is clear - - the clock effectively stops ticking on "***all time limits authorized by rule and statute*** applicable to civil proceedings ... ,"

[4] Specifically, the Opinion states: "[W]e conclude that the orders should be strictly construed in the context of statutes, as opposed to rules," implying that the Orders should be liberally applied in the context of rules and strictly applied in the context of statutes. (Opinion at 2). Again, however, there is nothing in the Tolling Orders to suggest that the Court intended for the Orders to have anything other than a single effect, i.e. to "toll."

necessarily including Fla.Stats. §95.11. (Tolling Orders)(emphasis added).

By holding otherwise, the Third District's Opinion conflicts with *Hankey v. Sullivan, supra.*

The Opinion Conflicts With the Third District's Own Decision in *State v. Hernandez*, 617 So.2d 1103 (Fla. 1993)

Finally, the Opinion conflicts with the Third District's own decision in *State v. Hernandez*, 617 So.2d 1103 (Fla. 3d DCA 1993). In *Hernandez*, the Third District applied the Hurricane Andrew Tolling Order to *all* time limits for two weeks, beginning on August 24, 1992. The defendant filed a demand for speedy trial on June 29, 1992. The State inadvertently allowed the defendant's 50-day period speedy trial period to elapse. On August 18, 1992, the defendant filed a Motion to Discharge. The trial court ordered that the defendant be forever discharged, if he was not brought to trial within 10 days. *See Hernandez*, 617 So.2d at 1103. During this ten-day period, Hurricane Andrew struck and this Court issued its Administrative Tolling Order, tolling "all time limits authorized by rule and statute" for two weeks, beginning on August 24, 1992. Notwithstanding the tolling order, the trial court discharged the defendant on September 9, 1992. *Id.* On appeal, this Court determined that the defendant's discharge was premature and reversed the trial court, explaining that the Supreme Court's order:

> ...[S]erved to toll the running of the speedy trial window

> period in this case. Consequently, five days of the 10-day window had elapsed prior to August 24th, and the window *was tolled* from August 24th through September 6th. Thereafter, the window *resumed running* on September 7th. Clearly, only eight days of the window period had elapsed when the defendant was discharged on September 9th. His discharge was, therefore, premature and is reversed.

See Id.

In this case, during the time periods encompassed by the Tolling Orders pertinent to the time period between March 3, 2004, and March 3, 2007, the clock effectively stopped ticking on "all time limits authorized by rule and statute applicable to civil proceedings ... ," necessarily including Fla.Stats. §95.11. The Third District's Opinion holds otherwise, imposing a requirement - - that the litigant show that any given emergency foreclosed him from complying with deadlines - - which the Tolling Orders do not contain.

As a practical matter - - and a matter of public policy - - the Tolling Orders should be applied across the board to all litigants. A litigant should not have to wonder whether a particular Florida Supreme Administrative Order affects his or her lawsuit on a case-by-case basis.

CONCLUSION

We respectfully request that the Court exercise it discretionary jurisdiction to resolve the conflict between the Third District's Opinion in this case and this

Court's decision in *Hankey v. Yarian*, 755 So.2d 93 (Fla. 2000), the Fifth District's decision in *Sullivan v. State*, 913 So.2d 762 (Fla. 5th DCA 2005), and the Third District's own decision in *State v. Hernandez*, 617 So.2d 1103 (Fla. 1993).

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was sent by U.S. Mail to: NEIL ROSE, ESQ., *Counsel for Defendant*, Bernstein, Chackman & Liss, 1909 Tyler Street, 7th Floor, Hollywood, Florida 33021; and BERNARD BUTTS, JR., ESQ., *Trial Counsel for Plaintiff*, 1790 West 49th Street, Suite 210, Hialeah, Florida 33012, this 18th day of March, 2009.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Jurisdictional Brief has been computer generated in Time New Roman 14-point font, in compliance with Fla.R.App.P. 9.210(a).

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