

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC17-1014
Lower Court Case No. 4D15-4853

LUIS BORN-SUNIAGA,

Petitioner,

STATE OF FLORIDA,

Respondent,

ON REVIEW FROM THE DISTRICT COURT OF APPEAL
FOURTH DISTRICT, STATE OF FLORIDA

PETITIONER'S JURISDICTIONAL BRIEF

A. RANDALL HAAS, ESQ.
633 Southeast Third Avenue
Suite 301
Ft. Lauderdale, Florida 33301
Telephone: 954-763-9211
Email: randall@randallhaas.com
Florida Bar No. 655200

RECEIVED, 06/09/2017 04:53:26 PM, Clerk, Supreme Court

TABLE OF CONTENTS

PAGE NO.

TABLE OF CONTENTS..... ii

TABLE OF CITATIONS iii

STATEMENT OF THE CASE AND FACTS 1

SUMMARY OF THE ARGUMENT 2

JURISDICTIONAL STATEMENT 3

ARGUMENT 3

The decision of the Fourth District Court in this case is certified to be in direct conflict with *Puzio v. State*, 969 So.2d 1197 (Fla. 1st DCA 2007); *State v. McCullers*, 932 So.2d 373 (Fla. 2d DCA 2006); *State v. Drake*, 209 So.3d 650 (Fla. 2d DCA Feb. 1, 2017); *Cordero v. State*, 686 So.2d 737 (Fla. 3d DCA 1997); and *State v. Gantt*, 688 So.2d 1012 (Fla. 3d DCA 1997)

CONCLUSION..... 5

CERTIFICATE OF SERVICE 5

CERTIFICATE OF COMPLIANCE WITH FONT REQUIREMENT 6

TABLE OF CITATIONS

CASES	PAGE NO.
<i>Cordero v. State</i> , 686 So. 2d 737 (Fla. 3d DCA 1997).....	2, 4-5
<i>Puzio v. State</i> , 969 So. 2d 1197 (Fla. 1 st DCA 2007).....	2, 4
<i>State v. Drake</i> , 209 So. 3d 650 (Fla. 2d DCA 2017).....	2, 4
<i>State v. Gantt</i> , 688 So.2d 1012 (Fla. 3d DCA 1997).....	2, 5
<i>State v. Jimenez</i> , 44 So. 3d 1230 (Fla. 5 th DCA 2010).....	1, 3
<i>State v. McCullers</i> , 932 So. 2d 373 (Fla. 2d DCA 2006).....	2, 4
<i>State v. Morris</i> , 662 So.2d 378 (Fla. 4 th DCA 1995).....	1, 3
<i>State v. Naveira</i> , 873 So. 2d 300 (Fla. 2004)	3-4
<i>State v. Nelson</i> , 26 So. 3d 570 (Fla. 2010)	3-4
<i>Thompson v. State</i> , 1 So. 3d 1107 (Fla. 4 th DCA 2009).....	1, 3

Rules

Florida Rule of Criminal Procedure 3.191.....1, 2, 3, 5

Florida Rule of Appellate Procedure 9.0303

STATEMENT OF THE CASE AND FACTS

Petitioner filed a motion for discharge in the trial court because he was not notified, prior to the expiration of the speedy trial period, that charges had been filed against him. On December 2, 2015, the trial court heard evidence and argument on Petitioner's motion. Petitioner demonstrated and the trial court concluded that the State did *nothing* (no notices, no arrest, etc.) and made "no effort" to alert Petitioner that it had filed felony charges against him. As a result, and pursuant to binding precedent, the trial court granted Petitioner's motion for discharge.

The State appealed the ruling to the Fourth District Court of Appeal. According to the State, the trial court erred in granting the motion to discharge because the State is entitled to the recapture window when it timely files charges and the remedy of discharge is only available when a defendant files a notice of expiration of the speedy trial period under Florida Rule of Criminal Procedure 3.191. Following *State v. Jimenez*, 44 So. 3d 1230, 1236 (Fla. 5th DCA 2010) in which the Fifth District ruled that the State's failure to notify the defendant of the charges until after the expiration of the speedy trial period did not result in automatic discharge and that the defendant must file a notice of expiration to trigger the Rule, the Fourth District reversed the trial court's order.

In doing so, the Fourth District receded from *State v. Morris*, 662 So.2d 378 (Fla. 4th DCA 1995) and *Thompson v. State*, 1 So. 3d 1107 (Fla. 4th DCA 2009).

These cases held that the State is not entitled to the recapture period when the defendant is misled into believing he does not need to file a notice of expiration. The Fourth District Court also certified its decision to be in direct conflict with *Puzio v. State*, 969 So.2d 1197 (Fla. 1st DCA 2007); *State v. McCullers*, 932 So.2d 373 (Fla. 2d DCA 2006); *State v. Drake*, 209 So.3d 650 (Fla. 2d DCA Feb. 1, 2017); *Cordero v. State*, 686 So.2d 737 (Fla. 3d DCA 1997); and *State v. Gantt*, 688 So.2d 1012 (Fla. 3d DCA 1997).

SUMMARY OF THE ARGUMENT

The Fourth District Court of Appeals ruled that the State's failure to notify the Petitioner of the charges until after the expiration of the speedy trial period did not result in automatic discharge and that the Petitioner was required to file a notice of expiration to trigger Florida Rule of Criminal Procedure 3.191 despite the defendant not knowing of the pending charges. The Fourth District Court receded from its prior decisions and certified its decision to be in direct conflict with *Puzio v. State*, 969 So.2d 1197 (Fla. 1st DCA 2007); *State v. McCullers*, 932 So.2d 373 (Fla. 2d DCA 2006); *State v. Drake*, 209 So.3d 650 (Fla. 2d DCA Feb. 1, 2017); *Cordero v. State*, 686 So.2d 737 (Fla. 3d DCA 1997); and *State v. Gantt*, 688 So.2d 1012 (Fla. 3d DCA 1997).

JURISDICTIONAL STATEMENT

This Court has discretionary jurisdiction to review a decision of a district court of appeal that expressly and directly conflicts with a decision of the supreme court or another district court of appeal. Fla. R. App. P. 9.030(a)(2)(A)(iv); Fla. Const. Art. V, § 3(b)(3).

ARGUMENT

THE DECISION OF THE FOURTH DISTRICT COURT IN THIS CASE IS CERTIFIED TO BE IN DIRECT CONFLICT WITH *PUZIO V. STATE*, 969 SO.2D 1197 (FLA. 1ST DCA 2007); *STATE V. MCCULLERS*, 932 SO.2D 373 (FLA. 2D DCA 2006); *STATE V. DRAKE*, 209 SO.3D 650 (FLA. 2D DCA FEB. 1, 2017); *CORDERO V. STATE*, 686 SO.2D 737 (FLA. 3D DCA 1997); AND *STATE V. GANTT*, 688 SO.2D 1012 (FLA. 3D DCA 1997)

The Fourth District Court of Appeal interpreted Florida Rule of Criminal Procedure 3.191 to require a defendant to file a notice of expiration upon the State's failure to try him within the required time period. The Fourth District held that if the defendant fails to do so, discharge is an improper remedy regardless of whether the defendant is even aware that charges were filed against him. Siding with the Fifth District's decision in *State v. Jimenez*, 44 So. 3d 1230, 1236 (Fla. 5th DCA 2010) the Fourth District Court determined its earlier decisions conflicted with this Court's decision in *State v. Naveira*, 873 So. 2d 300 (Fla. 2004) and *State v. Nelson*, 26 So. 3d 570, 579 (Fla. 2010) and receded from its own rulings in *Morris* and *Thompson*. However, the facts and issues addressed in *Naveira* and *Nelson* are not

the same as this case. (Both involved the taking of a continuance and the effect of that delay when the state is entitled to the recapture period). And, the Fourth's earlier decisions correctly held that the State should not receive more time when the defendant was misled to believe that he was not facing charges.

As the Fourth District Court concedes, and expressed, its decision in this case directly conflicts with decisions from three other District Courts that hold that the State's failure to notify the defendant of pending charges within the speedy trial period deprives it of the benefit of the recapture period. *Puzio v. State*, 969 So. 2d 1197, 1200-01 (Fla. 1st DCA 2007) (Finding "when the State's actions have deprived the defendant of the ability to assert his right to a speedy trial, it would thwart the purpose of the rule to allow the State to pursue charges by means of the recapture period."); *State v. McCullers*, 932 So. 2d 373, 375–76 (Fla. 2d DCA 2006) ("A defendant's right to file a notice of expiration is similarly defeated even where charges are filed before expiration of the speedy trial period if the State has previously acted affirmatively to terminate its prosecutorial efforts but then has filed charges without rearresting or otherwise giving notice to the defendant before expiration of the period."); *State v. Drake*, 209 So. 3d 650, 652 (Fla. 2d DCA 2017) ("Where a defendant could not have known that he needed to file a notice of expiration because the information was concealed from him, immediate discharge is appropriate."); *Cordero v. State*, 686 So. 2d 737, 738 (Fla. 3d DCA 1997) (Holding

that “[t]he reason for this rule makes perfect sense,” as it prevents the state from receiving additional time to try a defendant after lulling him into believing it would not proceed); *State v. Gantt*, 688 So. 2d 1012, 1013 (Fla. 3d DCA 1997) (“To allow the state an additional fifteen days in which to bring the defendant to trial, in view of the State's inaction, would impermissibly prejudice the defendant's speedy trial rights. This unredressable injustice in contravention of procedural rules cannot be allowed.”). These cases properly interpreted Rule 3.191. Thus, this Court should reaffirm their interpretation by accepting discretionary review and quashing the contrary decision of the District Court below.

CONCLUSION

This Court has discretionary jurisdiction to review the decision below. Petitioner respectfully requests that this Court exercise this discretion, quash the Fourth District’s decision and discharge the Petitioner.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been filed with this Court electronically and served via email on Assistant Attorney General Kimberly Acuna, Esq., 1515 N. Flagler Drive, 9th Floor, West Palm Beach, Florida 33401, at Kimberly.Acuna@myFloridalegal.com this 9th day of June, 2017.

/s/ A. Randall Haas
A. RANDALL HAAS, ESQ.

CERTIFICATE OF COMPLIANCE WITH FONT REQUIREMENT

I HEREBY CERTIFY that the foregoing computer-generated brief is in Times New Roman 14-point font in compliance with Florida Rules of Appellate Procedure 9.100(1).

/s/ A. Randall Haas
A. RANDALL HAAS, ESQ.