

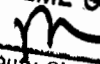
IN THE SUPREME COURT OF FLORIDA

FILED

SID J. WHITE

MAR 25 1985

CLERK, SUPREME COURT

By 
Chief Deputy Clerk

STATE OF FLORIDA,

Petitioner,

vs.

CASE NO: 66,616

NATHAN RUSSELL DARBY,

Respondent.

RESPONDENT'S BRIEF ON THE MERITS

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STATEMENT OF THE CASE AND FACTS

The respondent accepts the petitioner's Statement of the Case and Facts.

ARGUMENT

ISSUE

CONVENIENCE TO THE STATE OF TRYING CO-
DEFENDANTS TOGETHER IS NOT A SUFFICIENT
REASON IN AND OF ITSELF TO EXTEND AN
OBJECTING DEFENDANT'S SPEEDY TRIAL TIME
AND DENY HIS MOTION TO SEVER WHEN A DELAY
IS NECESSARY TO ACCOMMODATE A CODEFENDANT.

This case presents a factual situation and an issue which arises frequently in the trial courts of this jurisdiction. Codefendants approach their scheduled joint trial date but one of the codefendants finds it necessary to secure a continuance of his trial to a date which is beyond the speedy trial period. In order to protect his right to a speedy trial, the other codefendant seeks a severance pursuant to Rule 3.152(b)(1), Florida Rules of Criminal Procedure, which provides that the Court shall order a severance of defendants and separate trials upon a showing that such order is necessary to protect a defendant's right to a speedy trial. The prosecutor resists and counters with a motion to extend speedy trial in accordance with Rule 3.191(d)(2)(ii) and (f)(5), Florida Rules of Criminal Procedure, which provides that the Court may extend speedy trial upon a showing that a delay is necessary to accommodate a codefendant and that there is reason not to sever the cases in order to proceed promptly with the trial of the defendant. The "reason" not to sever given by the prosecutor is that it would be more convenient for the state to prosecute both defendants in a single trial, rather than have to conduct two separate trials.

In reviewing the orders of the trial courts which were confronted with the foregoing situation, the First, Second and Fourth District Courts of Appeal have held that a defendant's right to a speedy trial takes precedence over the mere convenience to the state of trying him and his codefendant together. Therefore, when confronted with the foregoing situation the appellate courts have held that a trial judge should grant the defendant's motion for severance and deny the state's motion to extend speedy trial. Westlake v. Miner, 460 So.2d 430 (Fla. 1st DCA, 1984); Darby v. State, 10 F.L.W. 378 (Fla. 1st DCA, Feb. 11, 1985); Rico v. State, 10 F.L.W. 25 (Fla. 2d DCA, Dec. 19, 1984); and Bustos v. Fleet, 461 So.2d 1039 (Fla. 4th DCA 1985). Also see Machado v. State, 431 So.2d 337 (Fla. 2d DCA, 1983).

The foregoing opinions of the First, Second and Fourth District Courts of Appeal are firmly based upon sound policy considerations and are well reasoned in law. Public dissatisfaction with a system whereby defendants were brought to trial only when convenient for the prosecutor was the whole reason for creation of the right to speedy trial. If mere convenience to the state were to be the overriding concern, Article I, Section 16 of the Constitution of the State of Florida would not provide defendants with a constitutional right to a speedy trial; Section 918.015, Florida Statutes, which gives defendants the right to a speedy trial and directs this Court to provide procedures through which such right shall be realized, would never have been enacted by the Florida Legislature; and

Rule 3.191, Florida Rules of Criminal Procedure, would not have been adopted by this Court. These constitutional, statutory and procedural directives clearly express the priorities of the people of Florida, their legislators and the leaders of their judicial branch of government. A criminal justice system which provides for a trial only when such is convenient for the prosecutor is not acceptable. Both the accused and the general public deserve and rightfully expect resolution of criminal cases within a reasonable period of time. Such can never be realized, however, if prosecutorial convenience is given preference over the defendant's constitutional, statutory, and procedural right to a speedy trial. But such would be the exact result should this Court allow the lofty purposes of these provisions of law to be thwarted by allowing trial courts to regard trivial reasons for delay, such as prosecutorial convenience, as being "exceptional circumstances" justifying orders extending speedy trial. Avoidance of such results was the obvious reason for the language in Rule 3.191(f), Florida Rules of Criminal Procedure, which provides that "Exceptional circumstances shall not include general congestion of the court's docket, lack of diligent preparation or failure to obtain available witnesses, or other avoidable or foreseeable delays." Rather, exceptional circumstances are only circumstances which justify delay "as a matter of substantial justice to the accused or the state or both."

Despite petitioner's arguments to the contrary, State v. Littlefield, 457 So.2d 558 (Fla. 4th DCA 1984), is not inconsistent with the holdings of the courts in Westlake, Darby, Rico and Bustos (supra). Littlefield, in fact, was cited as precedent for the holdings in Rico and Bustos. Any notion that the Fourth District Court of Appeal holding in Littlefield conflicts with the holding of the First District Court of Appeal in Westlake must be discarded in light of the Fourth District Court of Appeal opinion in Bustos. There the Fourth District Court of Appeal granted the petition for writ of prohibition, certified the identical question which was certified by the Westlake Court and cited Littlefield as authority for its holding.

Further, petitioner places great emphasis on the fact that respondent did not file a demand for speedy trial. Such reliance is misplaced. Rule 3.191(a)(1), Florida Rules of Criminal Procedure, provides for a trial within 180 days of arrest for a felony "without demand". Rule 3.191(a)(2), Florida Rules of Criminal Procedure, independently provides for a trial within 60 days if a demand is made. Nevertheless, petitioner seems to imply that a demand for speedy trial under (a)(2) should be made in order to make the provisions of (a)(1) applicable. Petitioner further seems to imply that respondent's failure to demand a speedy trial under (a)(2) somehow amounts to laches or bad faith. Respondent would simply say that he has found no legal precedent for petitioner's construction of sub-sections (a)(1) and (a)(2) of Rule 3.191, Florida Rules of Criminal Procedure,

nor is there anything within the record from the trial court to indicate that the respondent "sat on his rights", acquiesced in his codefendant's motions for continuance or failed to take appropriate actions to preserve his right to speedy trial.

Next petitioner contends that respondent was not entitled to discharge because Rule 3.191(d)(3), Florida Rules of Criminal Procedure, provides that a motion for discharge may be denied where it is shown that "the failure to hold trial is attributable to ... a codefendant in the same trial." The Fourth District Court of Appeal considered and rejected this argument in Littlefield, supra, a case upon which petitioner relies herein. This Court should also reject this argument for at least two reasons. First, the record from the trial court does not indicate that the lower court made a finding that the failure to hold the trial of respondent within the speedy trial time was attributable to a codefendant. Secondly, the failure to hold the trial of respondent within the speedy trial time was, in fact, attributable to nothing more nor less than the trial court's decisions to deny respondent's motion to sever and to grant the prosecutor's motion to extend speedy trial, both decisions being based on the trial court's determination that convenience to the prosecutor should be given preference over respondent's right to a speedy trial.

As petitioner, by this failure to raise the argument, obviously recognizes, the provision in Rule 3.191(d)(3), Florida Rules of Criminal Procedure, authorizing denial of a motion for discharge where it is shown that "a time extension has been

ordered under (d)(2)", is also of no assistance to petitioner. This is so because this Court clearly stated in State ex rel. Girard v. McNulty, 348 So.2d 311 (Fla. 1977), that an invalid extension of speedy trial is not a basis for denial of a subsequent motion for discharge.

Finally, petitioner asserts that a trial court's ruling that an exceptional circumstance exists should be treated as a conclusive finding of fact. Petitioner has a mistaken notion as to what is a factual determination and what is a mixed question of law and fact. The following factual findings, and these alone, are supported by the record from the trial court:

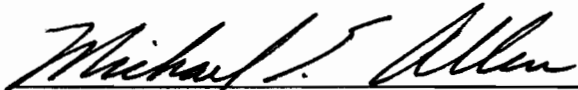
1. The codefendant needed a continuance.
2. The prosecutor wanted one trial, rather than two, since all the evidence was the same and since a prosecution witness would otherwise have to make two trips to Tallahassee from Miami.

From these skeletal findings, the trial court reached a legal conclusion that an exceptional circumstance existed. Such conclusion does not preclude review by this Court. If it did, procedural speedy trial could very well become an extinct right and orders of extension never reviewable. What petitioner actually argues is that a trial court absolutely cannot abuse its discretion in this regard and such is patently unreasonable.

CONCLUSION

The opinion of the First District Court of Appeal, which answers the certified question in the negative, is squarely in accord with the holdings of the Second District Court of Appeal and the Fourth District Court of Appeal. The holdings of these courts are firmly based upon sound policy considerations and are well reasoned in law. Petitioner has provided this Court with no persuasive reason to disturb the prevailing precedents.

Respectfully submitted,

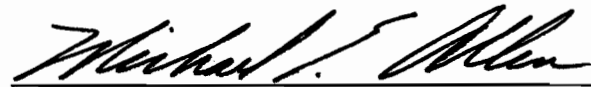


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Respondent's Brief on the Merits has been furnished to Thomas H. Bateman, III, Assistant Attorney General, The Capitol, Tallahassee, Florida, and to Nathan Russell Darby, 16120 N.W. 37th Place, Miami, Florida, this 25th day of March, 1985.



MICHAEL E. ALLEN