

0A 7-1-87

IN THE SUPREME COURT OF FLORIDA

DAVID TAL-MASON, )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 STATE OF FLORIDA, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

CASE NO. 69,508

**FILED**  
SID J. WHITE

MAY 13 1987

CLERK, SUPREME COURT

By [Signature]  
Deputy Clerk

APPEAL FROM THE DISTRICT COURT  
OF APPEAL, FOURTH DISTRICT OF FLORIDA

REPLY BRIEF OF PETITIONER

Richard A. Belz, Esquire  
and  
Jeffrey M. Leukel, Esquire  
Attorneys for Petitioner

Florida Institutional Legal Services, Inc.  
2614 SW 34th Street  
Gainesville, Florida 32608  
(904) 377-4212

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CONTENTS	i
TABLE OF CITATIONS	ii
ARGUMENT IN RESPONSE AND REBUTTAL	1
SECTION 921.161(1), FLORIDA STATUTES, SHOULD BE INTERPRETED SO AS TO ALLOW CREDIT FOR ALL PRE-TRIAL TIME A CONVICTED DEFENDANT HAS SPENT IN FLORIDA COUNTY JAILS, FLORIDA MENTAL HEALTH FACILITIES, AND FLORIDA HOSPITALS FOR PHYSICAL ILLNESSES.	1
CONCLUSION	3
CERTIFICATE OF SERVICE	

TABLE OF CITATIONS

Page

CASES:

Allen v. Illinois,  
\_\_ U.S. \_\_, 106 S.Ct. 2988 (1986). 1

Kronz v. State,  
462 So.2d 450 (Fla. 1985). 2

STATUTES:

Section 921.161(1), Florida Statutes. 1, 2, 3

ARGUMENT IN RESPONSE AND REBUTTAL

SECTION 921.161(1), FLORIDA STATUTES, SHOULD BE INTERPRETED SO AS TO ALLOW CREDIT FOR ALL PRE-TRIAL TIME A CONVICTED DEFENDANT HAS SPENT IN FLORIDA COUNTY JAILS, FLORIDA MENTAL HEALTH FACILITIES, AND FLORIDA HOSPITALS FOR PHYSICAL ILLNESSES.

I.

The State claims the Supreme Court of the United States has rejected Mr. Tal-Mason's argument:

that the effect of the confinement rather than the purpose should be the determinative factor of whether to grant [county jail time] credit. [emphasis in original].

(Answer Brief, pp. 4-5).

The case cited by the State in support of this proposition shows the exact opposite. In the words of our nation's highest Court:

As the Court reaffirms today, the fact that a State attaches a "civil" label to a proceeding is not dispositive. ... Such a label cannot change the character of a criminal proceeding. ... Moreover, the words "criminal case" in the Fifth Amendment have been consistently construed to encompass certain proceedings that have both civil and criminal characteristics. And, of course, a State's duty to respect the commands in the Fifth Amendment cannot be avoided by the names it applies to its procedures or to the persons whom it accuses of wrongful conduct. It is the substance of the Illinois procedure, rather than its title, that is relevant to our inquiry. Neither the word "civil" nor the unsettling term applied by the State - "sexually dangerous person" - should be permitted to obscure our analysis. [citations and footnotes omitted].

Allen v. Illinois, \_\_\_ U.S. \_\_\_, 106 S.Ct. 2988, 2996 (1986).

In other words, the substance (i.e., the effect) of the confinement in a criminal case is the proper focus of attention and not the name given to the procedure.

## II.

Section 921.161(1), Florida Statutes, reads as follows:

A sentence of imprisonment shall not begin to run before the date it is imposed, but the court imposing a sentence shall allow a defendant credit for all of the time he spent in the county jail before sentence. The credit must be for a specified period of time and shall be provided for in the sentence. [emphasis added].

This Honorable Court has held that Section 921.161(1), Florida Statutes, only requires the granting of credit for county jail time spent in Florida jails, not credit for out-of-state county jail time. Kronz v. State, 462 So.2d 450, 451 (Fla. 1985).

Most certainly, Kronz did not address (let alone mention) the issue of Section 921.161(1), Florida Statutes, in the context of mental health facilities.

But, if Kronz means what it says on its face, then how can a criminal defendant who goes to the local hospital for a physical illness receive county jail time credit, since he is no longer "in the county jail"? The State concedes a defendant does (and should) get such credit, but argues it is because:

the charges against him are not suspended, nor are they affected in any way. Those persons, when taken to the hospital, remain incarcerated on the criminal charges.

(Answer Brief, pp. 11-12).

The State can not have it both ways. Either Section 921.161(1), Florida Statutes, should be strictly interpreted to allow credit only for time actually spent "in" a Florida county jail [a construction the State concedes is in error and which Mr. Tal-Mason certainly rejects]; or, it should be interpreted to allow credit for all pre-trial time spent in Florida county jails, Florida mental health facilities, and Florida hospitals for physical illnesses.

CONCLUSION

For the reasons above stated, and for the reasons developed in the Initial Brief, the Petitioner, David Tal-Mason, asks this Honorable Court to interpret Section 921.161(1), Florida Statutes, so as to allow credit for all pre-trial time a convicted defendant has spent in Florida county jails, Florida mental health facilities, and Florida hospitals for physical illnesses.

Respectfully submitted,



RICHARD A. BELZ, ESQUIRE

and


JEFFREY M. LEUKEL, ESQUIRE

Attorneys for Petitioner, David Tal-Mason

Florida Institutional Legal Services, Inc.  
2614 SW 34th Street  
Gainesville, Florida 32608  
(904) 377-4212

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to Georgina Jimenez-Orosa, Esquire, Assistant Attorney General, 111 Georgia Avenue, Suite 204, West Palm Beach, Florida 33401, by United States Mail this 12<sup>th</sup> day of May, 1987.

  
\_\_\_\_\_  
RICHARD A. BELZ, ESQUIRE