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IN THE SUPREME COURT OF FLORIDA

CASE NUMBER:

**FILED**  
SID J. WHITE

JUN 4 1983

CLERK, SUPREME COURT

By \_\_\_\_\_  
Deputy Clerk

IN RE: PETITION TO REVISE  
RULE 3.191 FLA.R.CRIM.P.  
and RULE ~~8.180~~ FLA.R.JUV.P.

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COME NOW the State Attorneys of Florida and hereby petition this Honorable Court to revise the provisions of Rule 3.191 of the Florida Rules of Criminal Procedure and Rule 8.180 of the Florida Rules of Juvenile Procedure to effect uniformity in the application of the right to a speedy trial and consistency in the treatment of defendants.

Effective January 1, 1985, this Court promulgated a substantial revision of Rule 3.191, accomplishing the repeal of the remedy of automatic discharge in felony cases by including a notice provision.

The effect of this revision has been to encourage both the State and the defense to seek a speedy trial on the merits of the case. In felony cases the Speedy Trial Rule no longer functions as a procedural escape hatch to avoid prosecution. This Court left untouched the automatic discharge provisions with regard to misdemeanors as set forth in Rule 3.191(i)(2) and took no action with regard to the comparable provisions set forth in Rule 8.180.

The interests of society have been protected in that no backlog in cases has resulted and the rights of defendants to a speedy trial have remained unimpaired. What has resulted, however, is the creation of a dual standard of justice. Juveniles and those charged with less serious crimes can upon occasion take advantage of a rule of procedure to obtain exoneration from their criminal conduct. No reason exists in either logic or expediency to differentiate among criminal defendants.

For the foregoing reasons, Petitioners ask that this Honorable Court amend Rules 3.191 and 8.180 to provide similar remedies for all defendants. The Rules, as amended, would read as follows:

F. TIME OF PROCEEDINGS

RULE 8.180. Speedy Trial

(a) Time. If a petition has been filed alleging a child to have committed a delinquent act, the child shall be brought to an adjudicatory hearing without demand within ninety (90) days of the earliest of the following dates:

- (1) The date the child was taken into custody.
- (2) The date the petition was filed.

(b) Dismissal. If an adjudicatory hearing has not commenced within ninety (90) days, upon motion timely filed with the court and served upon the prosecuting attorney, the ~~petition shall be dismissed with prejudice~~; provided, respondent shall be entitled to the appropriate remedy as set forth in section (j) below. The court before granting such motion shall make the required inquiry under subsection (d) of this rule.

(c) Commencement. A child shall be deemed to have been brought to trial if the adjudicatory hearing begins before the judge within the time provided.

(d) Motion to Dismiss. If the adjudicatory hearing is not commenced within the periods of time established, respondent shall be entitled to the appropriate remedy as set forth in section (j) below unless

- (1) The child has voluntarily waived his right to speedy trial;
- (2) An extension of time has been ordered under (e); or
- (3) The failure to hold an adjudicatory hearing is attributable to the child, a co-respondent in the same adjudicatory hearing, or their counsel; or
- (4) The child was unavailable for the adjudicatory hearing. A child is unavailable if:
  - (i) The child or his counsel fails to attend a proceeding when their presence is required; or

(ii) The child or his counsel is not ready for the adjudicatory hearing on the date it is scheduled. No presumption of non-availability attaches, but if the state objects to dismissal and presents any evidence tending to show non-availability, the child must, by competent proof, establish availability during the term.

(5) The demand referred to in section (f) is invalid.

(6) If the court finds dismissal is not appropriate, the pending motion to dismiss shall be denied, and an adjudicatory hearing shall commence within ninety (90) days of a written or recorded order of denial.

(e) Extension of Time. The period of time established by (a) may be extended as follows:

- (1) Stipulation. Upon stipulation, announced to the court or signed by the child or his counsel and the state.
- (2) Exceptional Circumstances. By written or recorded order of the court on the court's own motion or motion by either party in exceptional circumstances. The order extending the period shall recite the reasons for the extension and the length of the extension. Exceptional circumstances are those which require an extension as a matter of substantial justice to the child or the state or both. Such circumstances include:
  - (i) unexpected illness or unexpected incapacity or unforeseeable and unavoidable absence of a person whose presence or testimony is uniquely necessary for a full and adequate trial;

- (ii) a showing by the state that the case is so unusual and so complex, due to the number of respondents or the nature of the prosecution or otherwise, that it is unreasonable to expect adequate investigation or preparation within the periods of time established by this rule;
  - (iii) a showing by the state that specific evidence or testimony is not available, despite diligent efforts to secure it, but will become available at a later time;
  - (iv) a showing by the child or the state of necessity for delay grounded on developments which could not have been anticipated and which will materially affect the trial;
  - (v) a showing that a delay is necessary to accommodate a co-respondent, where there is a reason not to sever the cases in order to proceed promptly with trial of the respondent;
  - (vi) a showing by the state that the child has caused major delay or disruption of preparation or proceedings, as by preventing the attendance of witnesses or otherwise;
  - (vii) 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.
- (3) By written or recorded order of the court for a period of reasonable and necessary delay

resulting from proceedings including, but not limited to, an examination and hearing to determine the mental competency or physical ability of the respondent to stand trial for hearings or pretrial motions, for appeals by the state, and for adjudicatory hearings of other pending charges against the child.

(f) Speedy Trial Upon Demand

~~(1)~~ If the child has waived his right to Speedy Trial under ~~(d)~~ he shall, by written demand filed with the court and upon service upon the prosecuting attorney, be brought to an adjudicatory hearing within sixty ~~(60)~~ days of filing the demand.

~~(2)~~ A child charged by a petition alleging a delinquent act shall be brought to an adjudicatory hearing within sixty ~~(60)~~ days of filing a written demand with the court and service upon the prosecuting attorney.

Except as otherwise provided by this rule and subject to the limitations imposed by section (g) the child shall have the right to demand a trial within sixty (60) days, by written Demand for Speedy Trial filed with the court and serving upon the prosecuting attorney.

(1) No later than five (5) days from the filing of a Demand for Speedy Trial, the court shall set the matter for report, with notice to all parties, for the express purpose of announcing in open court, receipt of the Demand and of setting the case for trial.

(2) At the report the court shall set the case for trial to commence at a date no less than five (5) days nor more than forty-five (45) days from that date of the report.

(3) The failure of the court to hold such a report date on a Demand which has been properly filed shall not interrupt the running of any time periods under this section.

(4) In the event that the child shall not have been brought to trial within fifty (50) days of the filing of the Demand, the child shall have the right to the appropriate remedy as set forth in section (j) below.

(g) Demand for Speedy Trial; Effect. A demand for speedy trial shall be deemed a pleading by the respondent that he is available for the adjudicatory hearing, has diligently investigated his case, and that he is prepared or will be prepared for the adjudicatory hearing within five (5) days. A demand may not be withdrawn by the child, except on order of the court, with consent of the State or on good cause shown. Good cause for continuance or delay on behalf of the accused shall not thereafter include nonreadiness for the adjudicatory hearing, except as to matters which may arise after the demand for the adjudicatory hearing is filed and which could not reasonably have been anticipated by the accused or his counsel.

(h) Dismissal after Demand. If an adjudicatory hearing has not commenced within ~~sixty (60)~~ fifty (50) days after a demand for speedy trial, upon motion timely filed with the court having jurisdiction and served upon the prosecuting attorney, the child shall ~~forever be dismissed from the delinquent act~~ have the right to the appropriate remedy as set forth in section (j) below; provided, the court ~~before granting such motion shall make~~ has made the required inquiry under (d).

(i) Effect of Mistrial, Appeal, or Order of New Trial. A child who is to be tried again or whose adjudicatory hearing has been delayed by an appeal by the state or the respondent, shall be brought to trial within ninety (90) days from the date of the declaration of a mistrial by the trial court, the date of

an order by the trial court granting a new trial, or the date of receipt by the trial court of a mandate, order or notice of whatever form from an appellate or other reviewing court which makes possible a new trial for the respondent, whichever is last. If the child is not brought to trial within the prescribed time periods, the child shall be entitled to the appropriate remedy as set forth in section (j) below.

(j) Remedy for Failure to Try Respondent within the Specified Time.

- (1) No remedy shall be granted to any respondent under this Rule until the court shall have made the required inquiry under section (d).
- (2) The respondent may, at any time after the expiration of the prescribed time period, file a motion for discharge.
- (3) No later than five (5) days from the date of the filing of a motion for discharge, the court shall hold a hearing on the motion, and unless the court finds that one of the reasons set forth in section (d) exists, shall order that the respondent be brought to trial within 10 days. If the respondent is not brought to trial within the 10 day period through no fault of the respondent, the respondent shall be forever discharged from the crime.

RULE 3.191. Speedy Trial

(i) Remedy for Failure to Try Defendant within the Specified Time.


- (1) No remedy shall be granted to any defendant under this Rule until the court shall have made the required inquiry under section (d) (3).

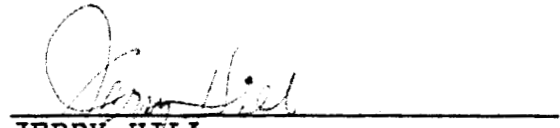
(2) In the case of a defendant charged with a misdemeanor, the defendant shall upon motion timely made with the court at the expiration of the prescribed time period, be forever discharged from the crime.

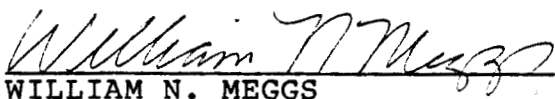
(2) (3) In the case of a defendant charged with a felony. The defendant may, at any time after the expiration of the prescribed time period file a motion for discharge.


(3) (4) No later than 5 days from the date of the filing of a motion for discharge, the court shall hold a hearing on the motion, and unless the court finds that one of the reasons set forth in Section (d)(3) exists, shall order that the defendant be brought to trial within 10 days. If the defendant is not brought to trial within the 10 day period through no fault of the defendant, the defendant shall be forever discharged from the crime.

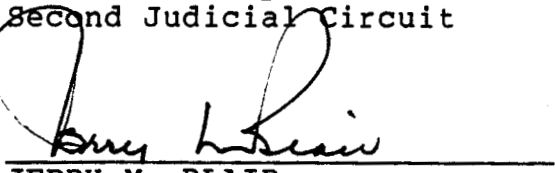
Respectfully submitted,

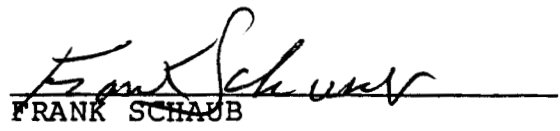
  
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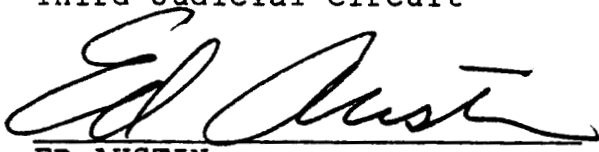
  
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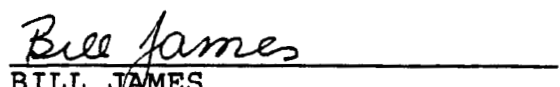
  
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