

Supreme Court of Florida

No. 73,741

RE: AMENDMENT TO FLORIDA
RULE OF CRIMINAL PROCEDURE
3.191 (SPEEDY TRIAL)

[May 4, 1989]

PER CURIAM.

The state attorneys of Florida petition this Court to consider a proposed amendment to Florida Rule of Criminal Procedure 3.191 pursuant to Florida Rule of Judicial Administration 2.130. We have jurisdiction. Art. V, § 2(a), Fla. Const.

The proposed rule change provides similar procedures for dismissal for failure to abide by the speedy trial rule in both misdemeanor and felony cases. The intended effect of the amendment is to repeal the remedy of automatic discharge in misdemeanor cases. We agree with the state attorneys that there is no reason to treat misdemeanor cases in a manner different from felony cases. Therefore, we grant the petition and hereby adopt rule 3.191 as amended.

Appended to this opinion is the amended Florida Rule of Criminal Procedure 3.191. Deletions are indicated by use of struck-through type and new language is indicated by underscoring. All rules and statutes in conflict with the following rule are hereby superseded as of the effective date of these rules. These amendments shall become effective July 1, 1989, at 12:01 a.m.

It is so ordered.

EHRlich, C.J., and OVERTON, McDONALD and GRIMES, JJ., Concur
KOGAN, J., Dissents with an opinion, in which SHAW and BARKETT, JJ.,
Concur

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF
FILED, DETERMINED. THE FILING OF A MOTION FOR REHEARING SHALL
NOT ALTER THE EFFECTIVE DATE OF THESE RULES.

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.

KOGAN, J., dissenting.

I dissent. I agree with the Criminal Procedure Rules Committee of The Florida Bar in strongly opposing the state attorneys' petition to amend rule 3.191.

The proposal before us is an example of consistency for the sake of consistency, with no reason of substantive value supporting the change. On the contrary, there is substantial reason to reject the proposed change.

At the time the "window" provision was proposed for felony cases, it was felt there were certain cases in which the potential damage to societal interests was serious enough to outweigh the defendant's rights to a technical dismissal for failure to grant a speedy trial. No such necessity exists in misdemeanor cases. Although some misdemeanor cases are serious in nature, they do not rise to a level that the societal harm overrides the necessity for a strict speedy trial rule.

Therefore, I would reject the proposed change in Florida Rule of Criminal Procedure 3.191.

SHAW and BARKETT, JJ., Concur

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