

IN THE SUPREME COURT OF THE STATE OF FLORIDA

DANA SHEWBRIDGE,)
)
 Petitioner,)
)
 vs.)
)
 STATE OF FLORIDA,)
)
 Respondent.)
 _____)

Case No. SC 02-427

**APPEAL FROM THE DISTRICT COURT
OF APPEAL, FIFTH DISTRICT**

PETITIONER'S BRIEF ON THE MERITS

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

BARBARA C. DAVIS
ASSISTANT PUBLIC DEFENDER
FLORIDA BAR NO. 0410519
112 Orange Avenue, Suite A
Daytona Beach, Florida 32114
(386) 252-3367

COUNSEL FOR THE PETITIONER

TABLE OF CONTENTS

	<u>PAGE NO.</u>
TABLE OF CONTENTS	i
TABLE OF CITATIONS	ii
STATEMENT OF CASE AND FACTS	1
SUMMARY OF ARGUMENT	3
ARGUMENT	4
THE DECISION OF THE LOWER COURT SHOULD BE REVERSED; CREDIT FOR TIME SERVED SHOULD BE AWARDED WHEN A DEFENDANT IS DETAINED IN ANOTHER FLORIDA COUNTY.	
CONCLUSION	10
CERTIFICATE OF SERVICE	11
CERTIFICATE OF FONT	11

TABLE OF CITATIONS

<u>CASES CITED:</u>	<u>PAGE NO.</u>
<u>Amos v. State</u> , 26 Fla. L. Weekly D 2201 (Fla. 2d DCA 2001)	8
<u>Bain v. State</u> , 784 So.2d 1168 (Fla. 2d DCA 2001)	8
<u>Bryant v. State</u> , 787 So.2d 68 (Fla. 2d DCA 2001)	2, 4
<u>Daniels v. State</u> , 491 So.2d 543 (Fla. 1986)	5
<u>Gethers v. State</u> , 798 So.2d 829 (Fla. 4 th DCA 2001)	2, 4
<u>Green v. State</u> , 450 So.2d 1275 (Fla. 5 th DCA 1984)	6
<u>Kronz v. State</u> , 462 So.2d 450 (Fla. 1984)	8
<u>Locke v. State</u> , 787 So.2d 104 (Fla. 2d DCA 2001)	8
<u>Pearson v. State</u> , 538 So.2d 1349 (Fla. 1 st DCA 1989)	7
<u>Penny v. State</u> , 778 So.2d 305 (Fla. 1 st DCA 2000)	2, 4
<u>Price v. State</u> , 598 SO.2d 215 (Fla. 5 th DCA 1992)	2, 5
<u>Tharpe v. State</u> ,	9

744 So.2d 1256 (Fla. 3d DCA 1999)

Travis v. State, 7
724 So.2d 119 (Fla. 1st DCA 1998)

Wright v. State, 7
589 So.2d 382 (Fla. 4th DCA 1991)

OTHER AUTHORITIES CITED:

Rule 3.800(b) 2

Section 921.161(1) 5, 8

Section 921.162(1), Florida Statutes (1999) 4

IN THE SUPREME COURT OF THE STATE OF FLORIDA

DANA SHEWBRIDGE,)
)
 Petitioner,)
)
vs.)
) Case No. SC 02-427
STATE OF FLORIDA,)
)
 Respondent.)
-----)

STATEMENT OF THE CASE AND FACTS

Appellant was charged in Case No. 97-CF-25019 with one count of Burglary of a Dwelling and eight counts of Uttering a Forged Instrument (R 48-50).

Appellant was charged in Case No. 97-CF-28158 with four counts of Uttering a Forged Instrument (R 60-61). He entered into a plea agreement on both cases (R 94-95). He was sentenced on both cases to 34.875 months incarceration followed by two years probation (R 128-146).

Appellant served his time in prison and was released on probation.

Affidavits and amended affidavits of violation for both cases were filed (R 158, 161, 163, 166). Appellant admitted the violations (R 177-178). He was sentenced on both cases to five years incarceration, concurrent (R 181-194).

At the sentencing hearing, Appellant requested credit for time served while he

was held by detainer in Leon County (R 20-21). The warrant was issued on September 14, 2000 (R 156, 159). Appellant was sentenced on April 17, 2001 (R 1-23). Appellant was only given credit for 35 days time served (R 183, 192).

Appellant filed a Rule 3.800(b) motion requesting the trial judge correct the credit for time served (Supp. R 207-212). The trial judge denied the motion, but acknowledged conflict between the Fifth District Court of Appeal and the Second and First District Courts of Appeal (Supp. R 213-225).

On appeal to the Fifth District Court of Appeal, the court ruled:

Dana Shewbridge appeals the trial court's order denying his motion under Rule 3.800(b) Florida Rules of Criminal Procedure, for additional jail time credit while he was incarcerated in Leon County, Florida for charges unrelated to the instant case. A detainer had been served under the instant case while Shewbridge was incarcerated under the Leon County Case.

The court then affirmed the denial of credit for time served for the reasons stated in Gethers v. State, 798 So.2d 829 (Fla. 4th DCA 2001) and certified conflict with Bryant v. State, 787 So.2d 68 (Fla. 2^d DCA 2001) and Penny v. State, 778 So.2d 305 (Fla. 1st DCA 2000). The court also cited Price v. State, 598 So.2d 215 (Fla. 5th DCA 1992) as supporting authority.

SUMMARY OF ARGUMENT

There is a conflict between the Fifth and First and Second District Courts of Appeal regarding whether a defendant is entitled to credit for time served once a detainer from another jurisdiction is served. The Fifth District cases hold that the person must be arrested on the charge. The Second and First Districts have ruled that a defendant is entitled to credit once the detainer is served. If the reasoning of the Fifth District were accepted, the State could manipulate a defendant's prison sentence by serving the detainer, but not making a formal arrest. Through a technicality in the law, a defendant could be held on charges but not receive credit for the time he serves. By manipulating the system the State could effectively increase the a sentence beyond the statutory maximum, thus creating a *de facto* illegal sentence.

ARGUMENT

THE DECISION OF THE LOWER COURT
SHOULD BE REVERSED; CREDIT FOR TIME
SERVED SHOULD BE AWARDED WHEN A
DEFENDANT IS DETAINED IN ANOTHER
COUNTY.

The warrant on Petitioner was issued on September 14, 2000, in Brevard County, but he was not arrested on it until March 14, 2001 (R 156, 159, 168). Appellant was held in Leon County on the warrant, but was not given credit for time served while being held on the detainer from Brevard County. Section 921.162(1), Florida Statutes (1999) provides:

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 she or 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.

Appellant was given credit for 35 days time served for the time he served in the Brevard County jail, (R 183, 192) but was given no credit for time held in the Leon County jail on the Brevard warrant. In affirming the denial of credit for time served, the Fifth District relied on Gethers v. State, 798 So.2d 829 (Fla. 4th DCA 2001) and certified conflict with Bryant v. State, 787 So.2d 68 (Fla. 2d DCA 2001) and Penny v. State, 778 So.2d 305 (Fla. 1st DCA 2000). The court also cited Price v. State,

598 So.2d 215 (Fla. 5th DCA 1992) as supporting authority.

In Gethers, the court interpreted this Court's case of Daniels v. State, 491 So.2d 543 (Fla. 1986) in holding that a defendant should only received credit for time served while being held on a detainer if the detainer was the "sole reason prolonging incarceration." Gethers, 798 So.2d at 832. In Daniels, this court held that a defendant should received credit for time served after a detainer is filed on each pending case only if the sentences ran concurrently. Daniels, 491 So.2d at 545. The Gethers court noted that Section 921.161(1) refers to "the" county jail, not "any" county jail. Therefore, the court reasoned, the statute should be read narrowly and the better construction would be to apply credit only if the detainer is the sole reason for being detained, regardless of whether the sentences were concurrent.

Under Gethers, a defendant would only get credit for time he was awaiting transport from another county. Gethers, 798 So.2d at 832. The court did not reach the issue of whether there should be a distinction between the execution of an arrest warrant and the placement of a detainer in computing a section 921.161(1) jail time credit. Gethers, 798 So.2d fn.1. The court did cite Price, however, as authority that a detainer only serves to hold a suspect for another jurisdiction but further action must be taken – the filing of an arrest warrant – to obtain the

prisoner. Gethers certified conflict with Bryant and Penny¹. Id. at 833.

In Price, the Fifth District noted that Daniels disapproved its holding in Green v. State, 450 So.2d 1275 (Fla. 5th DCA 1984) in awarding credit on concurrent sentences, then went on to distinguish Daniels as follows:

We find that, because the sentences imposed were concurrent, the defendant is entitled to credit for the time, if any, that he spent in jail in Alachua County pursuant to the Volusia County charges.

However, the record is unclear on whether the defendant was actually arrested on the Volusia County charges pursuant to the detainer. The answer is crucial to this appeal and to the determination of its outcome. The filing of a detainer and the service of an arrest warrant are legally distinct actions. In any particular case, the State may issue a detainer or serve an arrest warrant or both. In Orozco v. United States Immigration and Naturalization Service, 911 F.2d 539, 541 n. 2 (11th Cir. 1990), the court noted that “[t]he filing of a detainer is an information process advising prison officials that a prisoner is wanted on other pending charges and requesting notification prior to the prisoner’s release.” . . .

Price, 598 So.2d at 217. The court went on to find that it is the arrest warrant, not the filing of a detainer, that triggers jail time credit. Daniels became transformed into a tool for the prosecution to extend jail sentences. Under Price, the State

¹The case is presently before this Court which has reserved ruling on jurisdiction. Gethers v. State, Case No. SC01-2639.

could hold a defendant in another county on a detainer *ad infinitum* and simply not serve an arrest warrant. This elevates form over substance. In effect, the defendant is held in custody on a detainer, but since it is not considered a “formal” arrest, jail time credit is not triggered. Gethers then refined Price by allowing credit on a served detainer, with or without an arrest, if the detainer was the sole reason the defendant remained in custody.

Between the issuance of Price and Gethers, the First and Second District Courts of Appeal held that a defendant is entitled to jail time credit when he is held on a detainer from another county. In Penny, the court stated that the fact a defendant is not “officially arrested” has no bearing on the right to jail credit while under a hold from another county. Penny, 778 So.2d at 306. See also, Travis v. State, 724 So.2d 119 (Fla. 1st DCA 1998), Pearson v. State, 538 So.2d 1349 (Fla. 1st DCA 1989), and Wright v. State, 589 So.2d 382 (Fla. 4th DCA 1991). In Bryant, the Second District court acknowledged the conflict between First District cases such as Penny and the Fifth District case of Price. Bryant, 787 So.2d at 68. The court then stated:

We note, however, that a detainer can limit the ability of an inmate to be released from custody. *Black’s Law Dictionary* defines a detainer, in part, as “the restraint of a man’s personal liberty against his will,” and as a “request filed by criminal justice agency with

institution in which prisoner is incarcerated, asking institution either to hold prisoner for agency or to notify agency when release of prisoner is imminent.” *Black’s Law Dictionary* at 449 (6th ed. 1990).

Distinguishing between an arrest on a warrant and the receipt of a detainer can significantly affect the amount of credit time awarded to a defendant. We agree with the First District’s holding in *Penny*, 778 So.2d 305, that the fact that a defendant was not officially arrested in the second county has no bearing on his right to receive jail credit while under the first county’s hold. .

..

Bryant, 787 So.2d at 70. The reasoning in Bryant exposes the hypertechnical interpretation of Section 921.161(1) in Price. See also, Bain v. State, 784 So.2d 1168 (Fla. 2d DCA 2001), Amos v. State, 26 Fla. L. Weekly D 2201 (Fla. 2d DCA 2001), and Locke v. State, 787 So.2d 104 (Fla. 2d DCA 2001).

This Court in Daniels stated that an interpretation such as that in Price would “effectively deny Daniels any credit whatsoever for the time spent in jail while awaiting trial and thereby render meaningless the legislative directive that a defendant receive credit for all the time served.” Daniels, 471 So.2d at 545. The distinction in Price between “the” county and “any” county is a distinction without a difference. In Kronz v. State, 462 So.2d 450, 451 (Fla. 1984) this Court explained that the term “county jail” as used in section 921.161 applied only to Florida jails for purposes of awarding jail credit, not out-of-state jails. This Court

has interpreted “the” county jail to mean Florida county jails. This is consistent with Bryant and Penny which are the better-reasoned cases. At the present time, defendants are not receiving jail credit in the trial courts of the Fourth and Fifth Districts, but are receiving such credit if they happen to commit a crime in the jurisdiction of the First and Second District courts. The Third District has declined to rule on the issue. Tharpe v. State, 744 So.2d 1256, 1257 (Fla. 3d DCA 1999).

CONCLUSION

Based upon the foregoing arguments, and the authorities cited therein, the Petitioner respectfully requests that this Honorable Court accept jurisdiction to resolve the conflict among district courts and reverse the ruling of the District Court of Appeal in this case.

Respectfully submitted,

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

BARBARA C. DAVIS
ASSISTANT PUBLIC DEFENDER
FLORIDA BAR NO. 0410519
112 Orange Avenue, Suite A
Daytona Beach, Florida 32114
Phone: 386/252-3367

COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been delivered to the Honorable Robert Butterworth, Attorney General, 444 Seabreeze Blvd., Fifth Floor, Daytona Beach, Florida 32118, and mailed to: Mr. Dana A. Shewbridge, Inmate # 141083, Marion Correctional Institution, P.O. Box 158, Lowell, Florida 32663-0158, on this _____ day of March 2002.

BARBARA C. DAVIS
ASSISTANT PUBLIC DEFENDER

CERTIFICATE OF FONT

I hereby certify that the size and style of type used in this brief is point proportionally spaced Times New Roman, 14 pt.

BARBARA C. DAVIS
ASSISTANT PUBLIC DEFENDER