

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,                   :  
                  Petitioner,                   :  
v.                                       :  
  CASE NO. SC09-1772  
DWIGHT A. PEARSON,               :  
                  Respondent.               :

JURISDICTION BRIEF OF RESPONDENT

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On Review from the District Court  
of Appeal, First District,  
State of Florida

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## STATEMENT OF THE CASE AND THE FACTS<sup>1</sup>

Pearson was arrested on March 1, 2007, on Leon County, Florida, warrants.

The warrants were executed by law enforcement in the State of Georgia.

Initially, Pearson was booked into a county jail in Georgia pending his extradition back to Florida.

Pearson was subsequently charged with crimes occurring in Georgia, based on items found during a search upon his arrest.

Pearson was found guilty of at least some of those Georgia charges and served a sentence of incarceration as a result.

On September 15, 2008, Pearson arrived at the Leon County Jail.

On September 26, 2008, the state filed an information charging Pearson with twelve crimes involving counterfeiting, grand theft and fraud.<sup>2</sup>

The information was filed 579 days after Pearson's arrest.

Pearson filed a motion for speedy trial discharge, arguing that the information was filed more than 175 days after his arrest, and that the only tolling provision that governed

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<sup>1</sup>The facts are taken from the opinion of the First District Court of Appeal below.

<sup>2</sup>Actually there were two informations and a total of fourteen counts, all for crimes for which Pearson had been arrested March 1, 2007, but for purposes of jurisdiction, Respondent is simply reporting events as described in the district court opinion.

out-of-state prisoners, Florida Rule of Criminal Procedure 3.191(e), did not toll the time because no indictment or information had been filed.

The trial court agreed that subsection (e) did not apply.

However, the trial judge stated that the delay in bringing Pearson to trial could be attributed to him because the delay was a result of his criminal activity in Georgia that preceded the March 1, 2007, arrest. Therefore, the trial court denied the motion for discharge.

Pearson filed a petition for writ of prohibition in the First District Court of Appeal.

The First District granted the petition and ordered the trial court to discharge Pearson.

The State of Florida now seeks review in this Court.

#### SUMMARY OF ARGUMENT

There is no conflict between the decision in Williams v. State, 946 So.2d 1191 (Fla. 4th DCA 2006), and the decision in this case because in Williams there was no arrest on Florida charges to start speedy trial running, while in this case the defendant was arrested on Leon County Florida warrants. There is dictum in the Williams opinion, however, saying that even if the Williams defendant had been arrested on Florida charges, speedy trial would have been delayed by Rule of Criminal Procedure 3.191(e) because he was in federal custody. The Williams opinion

also reveals, not in connection with the tolling of speedy trial, that no indictment or information had been filed, and because of that, the dictum seems to suggest that 3.191(e) delays speedy trial without regard to the filing of an indictment or information. The opinion never made this suggestion explicit, however, and never addressed the language of 3.191(e) that limits the delay of speedy trial for out-of-Florida defendants to those as to whom a Florida indictment or information has been filed. Indeed, the Williams opinion does not indicate any recognition that there was a limitation in 3.191(e) that needed to be addressed. The unstated implication in Williams, never explained, contained in statements that had no effect on the outcome of the case, does not create real confusion in the law, and does not warrant the exercise of this Court's conflict jurisdiction.

#### ARGUMENT

ISSUE: ANY POSSIBLE CONFLICT IS WITH DICTUM,  
AND REVIEW IS NOT WARRANTED.

Rule of Criminal Procedure 3.191(a) provides:

Speedy Trial without Demand. Except as otherwise provided by this rule, and subject to the limitations imposed under subdivisions (e) and (f), every person charged with a crime shall be brought to trial within 90 days of arrest if the crime charged is a misdemeanor, or within 175 days of arrest if the crime charged is a felony. ...

Subsection (e) of rule 3.191 provides:

Prisoners outside Jurisdiction. A person who is in federal custody or incarcerated in a

jail or correctional institution outside the jurisdiction of this state or a subdivision thereof, **and who is charged with a crime by indictment or information issued or filed under the laws of this state**, is not entitled to the benefit of this rule until that person returns ...

(Emphasis added.)<sup>3</sup> Thus, subsection (a) grants speedy trial rights to all defendants, subject to the limitations of sections (e) and (f). Subsection (e) delays the running of the speedy trial times for defendants who: (1) are in federal or out-of-state custody; *and* (2) have been charged in Florida by indictment or information. A defendant in custody in another state, arrested on a Florida warrant, but not charged by indictment or information in Florida, like Pearson, is not denied the benefits of the rule, according to the plain language of subsection (e). (Subsection (f) governs the speedy trial period for misdemeanors consolidated with felonies and is not pertinent to the issue in this case.)

The State asserts the existence of jurisdiction in this Court based on conflict with Williams v. State, 946 So.2d 1191 (Fla. 4th DCA 2006), on the issue of:

Does Florida's speedy trial commence when, concurrent with an arrest based upon Florida charges, an entity outside the jurisdiction of this State takes custody of the defendant based upon charges arising from that entity's separate jurisdiction?

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<sup>3</sup>Also, State v. Williams, 791 So.2d 1088 (Fla. 2001), holds that when the State fails to file an indictment or information within 175 days after a felony arrest, the defendant is entitled to discharge.

State Jurisdiction Brief, p. 3. Actually, neither this case nor Williams involved “concurrent” arrests. In this case, as the facts in the First District opinion indicate, Pearson was arrested in Georgia on Florida charges, and “subsequently” arrested on Georgia charges. In Williams, there was an arrest on federal charges and no arrest on Florida charges. In Respondent’s view, the issue on which the State asserts conflict should be seen instead as whether Rule of Criminal Procedure 3.191(e) delays the speedy trial period for defendants in out-of-Florida custody even when no information or indictment has been filed.

There is no conflict between *the decision* in Williams and *the decision* in this case, because in Williams there was no arrest on Florida charges at the pertinent time. Thus, in Williams, denying the defendant’s motion for discharge was correct without considering the application of 3.191(e). As the Williams court stated:

Because the trial court determined based upon disputed facts that he was not taken into custody on state charges in 2000, the speedy trial period did not commence. \*\*\* There is competent substantial evidence to support these factual findings, even though some conflicting evidence was offered. We therefore defer to the findings of the trial court. That means that Williams was never in state custody for purposes of the commencement of the speedy trial rule.

946 So.2d 1192,1194.

In contrast, in this case, as stated in the District Court opinion, Dwight Pearson was arrested March 1, 2007, "on Leon County warrants." Thus, in Williams, the defendant was *not arrested* on his pertinent charges more than 175 days before a charging document was filed, and in this case, the defendant was *arrested* on his pertinent charges more than 175 days before a charging document was filed. This distinction means there is no conflict between the two decisions.

The Williams opinion does contain dictum, however, suggesting conflict with both rule 3.191(e) and with the opinion of the First District in this case. The Williams opinion contains the following language:

**Even if** his 2000 arrest was on state charges, Florida Rule of Criminal Procedure 3.191 prevented the commencement of speedy trial time in this case because Williams remained in federal custody until he was returned to Florida to face state charges.

946 So.2d 1192 (emphasis added), and, after quoting 3.191(e), the Williams court stated:

Thus, rule 3.191(e) prevents the rule-based speedy trial period from running while the accused is in federal custody. See *State v. Mitchel*, 768 So.2d 1223, 1224 (Fla. 3d DCA 2000). Here, **even assuming** that Williams was first arrested by the CSPD, and that the arrest constituted a state arrest, the FBI took custody of Williams that very day. Thus, the Florida speedy trial period did not commence until after he was returned to Florida.

946 So.2d 1194 (emphasis added).

These statements in Williams were incorrect because no



indictment or information had been filed at the time the defendant claimed speedy trial had run, so subsection (e) did not actually prevent speedy trial from running. Although the Williams opinion quoted the text of rule 3.191(e), including the clause, “and who is charged with a crime by indictment or information issued or filed under the laws of this state,” which limits tolling to defendants who have been charged by indictment or information, the opinion did not refer to this language at all, and did not give any explanation for why this language should be ignored.

The statements in the Williams opinion about what would have happened if the defendant had been arrested on Florida charges were not necessary to the decision. Because there was no arrest on state charges, there was no speedy trial period that could have been tolled. In fact, the expressions in the Williams opinion, “even if” and “even assuming” indicate that the Fourth District itself did not consider its statements about 3.191(e) to be necessary to its decision.

The sole precedent the Williams opinion cited for the proposition that even if Williams had been arrested at the pertinent time on state charges, subsection (e) would have tolled speedy trial, was State v. Mitchel, 768 So.2d 1223 (Fla. 3d DCA 2000). In Mitchel, however, an information had been filed, so subsection (e) did toll speedy trial when the defendant was taken into federal custody. The Williams opinion does not refer to

this factual difference with Mitchel and does not seem to recognize that 3.191(e)'s tolling applies only with the filing of an information or indictment.

This Court has accepted jurisdiction based on the misapplication of dictum in this Court's opinions, as in the case cited by the State, Cowan Liebowitz & Latman, P.C. v. Kaplan, 902 So.2d 755 (Fla. 2005). This is different from conflict between the dicta of district courts, but if this Court were to take jurisdiction based on conflict of the decision of one district court with the dictum of another, doing so would make most sense when the dictum squarely addressed the issue on which conflict is asserted. That issue here is whether the language of rule 3.191(e), "and who is charged with a crime by indictment or information issued or filed under the laws of this state," should be ignored. It cannot be said that the Fourth District in Williams addressed this issue. If Williams had referred to the language that limits tolling to those defendants who have been charged by indictment or information, and had given some reason why this language should be treated as having no effect on the operation of the rule, then the Williams decision could be seen as creating confusion in the law, and it might well make sense to accept jurisdiction despite the conflict being with dictum. Given the lack of any such analysis in Williams, it is not actually clear what rule of law can be inferred from the Williams dictum. To the extent that the dictum in Williams suggests a

view of rule 3.191 that is contrary to the First District decision in this case, that implication is relatively obscure, and confusion in the law as a result of conflict with the decision in this case is unlikely.

#### CONCLUSION

There is no conflict between the *decision* in Williams and the *decision* in this case. To the extent there are statements in Williams that suggest a rule of law inconsistent with the decision in this case, those statements are dictum, and those statements are also inconsistent with the language of rule 3.191(e). Given the clear language of the rule, the failure of Williams to address that language, the failure of Williams to actually express a rule that conflicts with the decision in this case, and the fact that the conflicting implication in Williams comes from statements that are dictum, the conflict between the Williams dictum and this case is not likely to cause confusion in the law. Whatever conflict there is between the Williams dictum and the decision in this case does not warrant the exercise of jurisdiction by the Court.

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ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Jurisdiction Brief of Respondent has been furnished by U.S. mail to Michael T. Kennett, Assistant Attorney General, Counsel for the State of Florida, The Capitol, PL-01, Tallahassee, FL 32399-1050, on this \_\_\_\_\_ day of October, 2009.

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STEVEN A. BEEN

CERTIFICATE OF COMPLIANCE WITH FONT REQUIREMENTS

I HEREBY CERTIFY that this petition complies with the font requirements of Fla. R. App. Proc. 9.100(1). This petition was printed in Courier New 12-point font.

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STEVEN A. BEEN