

No. L.T. CASE NO:

87-39510

IN THE

SUPREME COURT OF THE UNITED STATES

CARLOS VILLAVICENCIO — PETITIONER
(Your Name)

vs.

STATE OF FLORIDA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Third DISTRICT COURT OF APPEALS, Miami, Florida.
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

CARLOS VILLAVICENCIO

(Your Name)

OKALOOSA CORRECTIONAL INSTITUTION
3189 COLONEL GREG MALLOY Road
(Address)

CRESTVIEW, FLORIDA 32539

(City, State, Zip Code)

N/A

(Phone Number)

Provided to

Okaloosa Correctional Institution

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QUESTION(S) PRESENTED

Whether the prosecution (State of Florida) after Petitioner has been arrested in Dade County, Florida "Miami" and charged with two counts of First-Degree Murder in December 1987, and in February 1988, the State announced a "no action" dismissing the homicide charges and release Petitioner from jail on his own recognizance, but did not file an information nor indictment before the "no action" was announced, and approximately 2 years 10 months later December 1990, the State filed an indictment charging Petitioner with the same two homocides, facts, events, and circumstances, does the circuit court of the Eleventh Judicial Circuit, in and for, Dade County, Florida, retain jurisdiction.

Where the State filed the indictment after Petitioner's speedy trial time of 175 days pursuant to 3.191(a), Florida Rules Criminal Procedure had expired approximately 6 or 7 terms of the speedy trial time?

Petitioner says no! and states infra:

ARGUMENT

Petitioner Contends The Trial Court Was Divested Of Jurisdiction

After The Speedy Trial Period Had Expired Pursuant To Rule

3.191(a), Florida R. Crim. P. (1987).

In December 1987, In Dade County, Florida The Petitioner was arrested and charged with two counts of first-degree murder in February 1988, Prior to the filing of information or an indictment. The State announced a "No Action" and Petitioner was released on his own recognizance, approximately two years and ten months later, in December 1990, the Petitioner was rearrested based upon the same charges and conduct of the initial arrest, at which time the speedy trial time has expired approximately seven times, in violation of Florida Rule Criminal

Procedure 3.191(a), in which petitioner was available for trial. There had been no continuances and petitioner did not contribute to any delays, which by Rules 3.191(a), Petitioner was “as a matter of law” entitled to be discharged where no fault of Petitioner’s was contributed to the speedy trial delays.

Rule 3.191(a), Provides that the intent and effect of this rule shall not be avoided by the State by entering a Nolle Prosequi to a crime charged and by prosecuting a new crime grounded on the same conduct or criminal episode. Although the state announced a “no action” in the case at bar, a no action is defined as a dismissal of pending charges before an information or indictment has been filed. *State v. Clifton*, 895 So. 2d 513 (Fla. 5th DCA 2005) (Holding that a no action and a Nolle Prosequi both signify that the state intends to terminate the prosecution and proceeded no further) because the speedy trial time is triggered at the point of arrest, as a matter of law the state may not refile charges based on the same conduct after the speedy trial time has expired, thereby divesting the trial court of jurisdictions and entitling Petitioner to discharge. *State v. Williams*, 791 So. 2d 1088 (Fla. 2001) (The Florida Supreme Court holding that the speedy trial begins to run when an accused is arrested and continue to run even if the state does not act until after the expiration of that speedy trial period. The state may not file charges based on the same conduct after the speedy trial period has expired). See also, *State v. Jiminez*, 44 So. 3d 1230 (Fla. 5th DCA 2010) (Holding that this time period is not tolled by the State filing a nolle prosequi, no action, or simply taking no action after taking the defendant is taken into custody. Thus, once a defendant is taken into custody, the State must file its charging document within the speedy trial time period. Failure to do so precludes the State from prosecuting the defendant and entitles the defendant to immediate discharge) *C.F. Lewis v. State*, 357 So. 2d 725 (Fla. 1978)

In the case of Accord Allied Fidelity Insurance Co. v. State, 408 So. 2d 756 (Fla. 3rd DCA 1982). held that a “no action” has the same effect as nolle prosequi for purposes of releasing surety form obligation to produce the petitioner.) By the fact that the trial court, in the absence of a charging document, had no jurisdiction over the case at bar when the speedy trial time expired and petitioner was re-arrested based upon the same events and conduct and appointed the same defense attorney, the Petitioner convictions and sentences is presently null and void in violation of the speedy trial time divesting the trial court of jurisdiction. See State v. Nelson, 26 So. 3d 570 (Fla. 2010); State v. Brady, 985 So. 2d 656 (Fla. 2nd DCA 2008).

To no fault of the Petitioner, it would be a denial of due process of law and a fundamental injustice not to discharged the Petitioner where the speedy trial expired approximately seven times before the State filed an information or indictment. The due process clause of the 14th Amendment provides:

“No person shall be deprived of life, liberty, or property, without first due process of law.”

Thus, the facts of this case show a clear denial of due process of law, and fundamental error by the trial court. Justice mandates that the Petitioner be forthwith discharged where the trial court’s jurisdiction was divested after the speedy trial had well expired. State v. Williams, 791 So. 2d 1088 (Fla. 2001).

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

reported at N/A; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the 3rd DCA N/A court appears at Appendix B/C to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was N/A.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was May 1, 2018.
A copy of that decision appears at Appendix A.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

As a matter of law, the State of Florida have violated Petitioner's Sixth and Fourteenth Amendments Constitutional rights to due process of law, where the State of Florida, purposely waited approximately two (2) years and ten (10) months before invoking the Eleventh Judicial Circuit Court jurisdiction, in and for, Dade County, Florida, Miami, by filing an indictment in December 1990, where as Petitioner was initially arrested December 1987, with the State announcing a "no action" releasing the Petitioner on his own recognizance; as a result, Petitioner's speedy trial period expired approximately 6 to 7 terms of the speedy trial period pursuant to Rule 3.191(a), Fla. R. Crim. P., causing the Petitioner to suffer prejudice where key defense witnesses have either died or can no longer be located, memory loss; Petitioner has suffered anxiety, oppression and the opportunity to properly prepare a defense which is all a violation of the Sixth and Fourteenth amendments.

STATEMENT OF THE CASE

1. Petitioner was arrested in Dade County, Florida on Homicide charges, in December 1987;
2. In February 1988, the State announced a "no action" dismissing the homicide charges and the Petitioner was released from jail on his own recognizance;
3. In December 1990, approximately two years and ten months later, the State erroneously re-arrested the Petitioner, pursuant to an indictment based upon the same charges and circumstances of the initial arrest;
4. Subsequently, Petitioner was taken to trial by jury and found guilty of two counts of First-Degree Murder and sentenced to two consecutive life imprisonment sentence;
5. Petitioner would state he has no motions, petitions, appeals, or pleadings pending in any other court at this time. The Florida Supreme Court and the Third District Court of Appeal, Miami, Florida, decline to address the merits of this fundamental issue. See Appendices A, B, C;
6. Thus, the issue at bar is a manifest injustice and a denial of due process of law that should be considered at anytime.

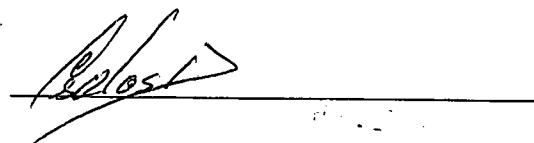
REASONS FOR GRANTING THE PETITION

The reason for granting Certiorari: Release is to prevent a continuation of injustice where the facts, case-laws, Rules and the United States Constitution have been undisputedly violated, "as a matter of law," by the State of Florida.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: August 27, 2018.