

IN THE TENTH JUDICIAL CIRCUIT
IN AND FOR POLK COUNTY, FLORIDA

CASE NO.: VV-17
LT NO.: MM18-007819

LEVI JONATHAN,

Appellant,

vs.

STATE OF FLORIDA,

Appellee.

OPINION OF THE COURT

This is an appeal from the county court of Polk County. Judge Hope Pattay presided. This Court has jurisdiction. The Court has reviewed the several claims of error by the Appellant.

First, the Appellant complains that he was denied a speedy trial. However, the record indicates that the Appellant waived speedy trial on December 10, 2018. The Appellant has not directed this Court to any part of the appellate record that contradicts this waiver or that establishes that a contradiction was addressed by the lower tribunal. "If a defendant has not waived his speedy trial rights and he has not been charged or tried within the speedy trial period, the defendant must take affirmative action once the speedy trial period has expired (on or after 175 days of arrest for a felony) by filing a notice of expiration of speedy trial." Wallace v. State, 189 So. 3d 1022, 1028 (Fla. 3d DCA 2016) (citing State v. Nelson, 28 So. 3d 570, 575 (Fla. 2010)). Therefore, this Court concludes that the Appellant waived his right to speedy trial, and thus his speedy trial rights were not violated.

The Appellant also requests this Court to review the jury selection process, asserting in the Initial Brief that the jury did not demographically reflect a jury of his peers. Although the claim is not entirely clear, this Court infers that the Appellant is suggesting that the content of the jury was unfairly manipulated by the State. This inference is in part based upon the assertion in Appellant's Reply Brief that "women of minority" who could have sided with the Appellant were rejected by the state. The record suggests that the Appellant purposefully excluded the transcript of the jury selection from the appellate record. The transcript of the trial establishes that the jury was selected on a Monday and that the jury heard the evidence later in the week, specifically on August 2, 2019. In the Appellant's Designations to the Court Reporter, the Appellant designated for transcription only the proceedings on August 2, 2019, and further made a specific note, seemingly for the benefit of the court reporter, that only the evidentiary portion was designated. Thus, this Court is unaware whether the Appellant raised an objection during jury selection and if so, what the trial court decided on this issue. Therefore, this Court must determine that the Appellant's claim of the State improperly excluding a member of a group from the jury is not supported by the appellate record.

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The Appellant also raises claims of malicious prosecution and that the trial judge should have disqualified herself because she was biased against the Appellant. The record does not support either of these two claims. Further, these claims were not preserved in the lower tribunal and may not be raised for the first time on appeal.

Two of the Appellant's claims of error concern the sentence. Specifically, the Appellant asserts that the sentence exceeds the statutory maximum because the Appellant was given probation for one year and was required to serve six months in jail, and further asserts that such a sentence is vindictive. The Appellant was charged with committing two crimes by Information: Count One, Trespass on School Grounds, a misdemeanor of the second degree, carrying a maximum incarceration of sixty days in the county jail; and Count Two, Resisting Officer Without Violence, a misdemeanor of the first degree, carrying a maximum incarceration of one year in the county jail. The jury found the Appellant guilty of both charges and the Appellant was sentenced to sixty days in the county jail on Count One, and one year of probation on Count Two with special conditions of probation including 180 days in the county jail and to stay away from any Polk State College campus. The trial judge provided that the Appellant would have the benefit of concurrently run terms such that while serving his sixty days on Count One, he would also be satisfying sixty of the 180 days that were required as a condition of the probation. The maximum incarceration that may have been imposed was sixty days on Count One and a consecutive term not exceeding one year on Count Two. A term of incarceration as a condition of the supervisory probation occurs during the probationary term not in addition to it. Placing a defendant on probation is not "generally considered a 'sentence,' and a defendant may be sentenced subsequently in the event of a violation of probation. Landeverde v. State, 769 So. 2d 457, 462 (Fla. 4th DCA 2000) (citing State v. Summers, 642 So. 2d 742, 744 (Fla. 1994) (citing Villery v. Florida Parole & Probation Comm'n, 398 So. 2d 1107 (Fla. 1980))). "When a defendant is placed on probation, the court must stay and withhold the imposition of sentence regardless of whether adjudication of guilt is withheld." Id. (citing §948.01(2), Fla. Stat.; Fla. R. Crim. P. 3.790(a); Villery, 398 So. 2d at 1110). This Court concludes that the Appellant's claims of an illegal or vindictive sentence are without merit.

Finally, the Appellant claims the trial court erred by not granting his motion for judgment of acquittal for insufficient evidence. This Court has applied a *de novo* standard of review. See Lynch v. State, 293 So.2d 44 (Fla. 1974). Before denying the motion, the trial court heard argument that a reasonable juror could find evidence of guilt based upon the witness testimony presented by both the State and the Appellant. Specifically, the parties presented the school dean and a number of law enforcement officers who provided evidence, if viewed in the light most favorable to the State, that the Appellant was not on the school campus for a lawful purpose, that the Appellant's use of the voice amplification system was not permitted, that the Appellant refused to follow the protocol of Polk State College, that the Appellant refused to leave after being instructed by the law enforcement officers to do so several times and over an extended period of time, that the Appellant refused to provide his identification or provide a name, that the arrest of the Appellant was lawful based on the Appellant's conduct, and that the Appellant resisted an officer by refusing to provide any identification information, requiring the law enforcement officers to call for a fingerprint scanner to identify the Appellant, and refusing to step out of the patrol car for the scanning of his fingers. The trial court properly concluded that the conduct of the Appellant prior to and during the lawful arrest created a question of fact for the jury.

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The Court, having carefully considered the briefs of the parties, the record and the applicable law, finds no reversible error.

Accordingly, the Judgment and Sentence of the county court is AFFIRMED.

ORDERED this 19th day of November, 2020.


ELLEN S. MASTERS, Chief Judge

Copies furnished to:

Levi Jonathan, Appellant
Victoria J. Avalon, Assistant State Attorney
Honorable Hops Pattey
Honorable Robert Fegers

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IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT, POST OFFICE BOX 327, LAKE LAND, FL 33802-0327

March 23, 2021

CASE NO.: 2D21-0048

L.T. No.: VV-17,

MM-18-7819

LEVI JONATHAN

v.

STATE OF FLORIDA

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

This proceeding is dismissed for petitioner's failure to comply with this court's order dated February 9, 2021.

SILBERMAN, VILLANTI, and STARGEL, JJ., Concur.

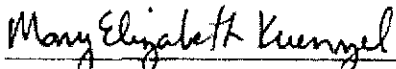
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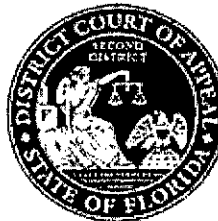
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LEVI JONATHAN

td


Mary Elizabeth Kuenzel
Clerk



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Supreme Court of Florida

THURSDAY, AUGUST 18, 2022

CASE NO.: SC22-362

Lower Tribunal No(s):

2D21-48; 532018MM007819A000WH; VV-17

LEVI JONATHAN

vs. STATE OF FLORIDA

Petitioner(s)

Respondent(s)

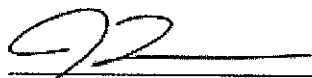
This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution, and the Court having determined that it should decline to accept jurisdiction, it is ordered that the petition for review is denied.

No motion for rehearing will be entertained by the Court. See Fla. R. App. P. 9.330(d)(2).

MUÑIZ, C.J., and CANADY, LABARGA, COURIEL, and GROSSHANS, JJ., concur.

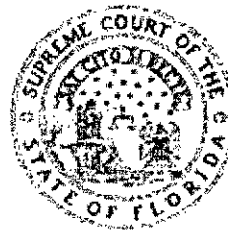
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John A. Tomasino

Clerk, Supreme Court



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C. SUZANNE BECHARD

LEVI JONATHAN

HON. MARY BETH KUENZEL, CLERK

HON. ROBERT DALE GRODE II, JUDGE

HON. STACY M. BUTTERFIELD, CLERK

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IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327

February 09, 2021

CASE NO.: 2D21-0048

L.T. No.: VV-17,

MM-18-7819

LEVI JONATHAN

v.

STATE OF FLORIDA

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

Within fifteen days, petitioner shall show cause why this petition for certiorari, filed on January 6, 2021, is untimely to review the circuit court's opinion rendered on November 19, 2020. See Fla. R. App. P. 9.100(c)(1).

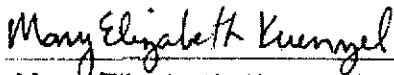
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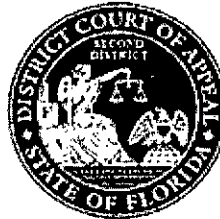
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td


Mary Elizabeth Kuenzel
Clerk



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IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327

February 23, 2022

CASE NO.: 2D21-0048

L.T. No.: VV-17,
MM-18-7819

LEVI JONATHAN

v. STATE OF FLORIDA

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

Petitioner's motion for reinstatement is denied.

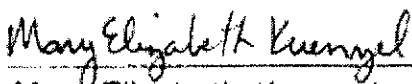
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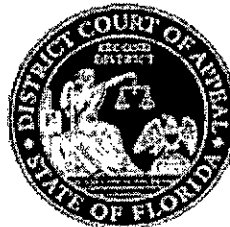
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Mary Elizabeth Kuenzel
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IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT, POST OFFICE BOX 327, LAKE LAND, FL 33802-0327

March 11, 2022

CASE NO.: 2D21-0048
L.T. No.: VV-17,
MM-18-7819

LEVI JONATHAN

v. STATE OF FLORIDA

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

Petitioner's second motion for reinstatement is denied. *See Roy v. State*, 211 So. 2d 554 (Fla. 1968) (holding that the filing of a mandate has no relevance to the jurisdictional time limit for filing a petition for writ of certiorari, which must be filed within 30 days of rendition of the order to be reviewed); *see also Miller v. State*, 781 So. 2d 1146 (Fla. 1st DCA 2001) (rejecting the petitioner's argument that the time for invoking the appellate court's jurisdiction is measured from the issuance of the circuit court mandate). A further motion for reinstatement will not be considered.

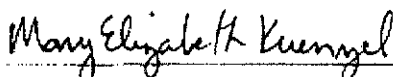
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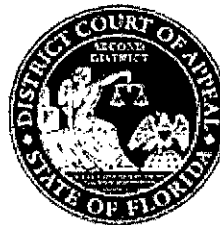
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