

25-502

No. 2025-

In The
Supreme Court of the United States

CHRISTINA PAYLAN, M.D.

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

**On Petition for Writ of Certiorari
to the Florida Second District Court of Appeal
2D2025-0467**

PETITION FOR WRIT OF CERTIORARI

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ORIGINAL

QUESTION PRESENTED

Does the State of Florida violate Petitioner's Sixth Amendment Right to speedy trial applicable to the State through the Fourteenth Amendment, by commencing a prosecution following a *nolle prosequi* and refileing the same charges when the time to file criminal information had already elapsed by 12 days as per Florida's speedy trial rule?

PARTIES TO THE PROCEEDING

Petitioner is Christina Paylan, M.D.

Respondent is State of Florida

PRELIMINARY STATEMENT

The Florida Court of Appeal is the final appellate court for all non-capital criminal proceedings in the State of Florida. Unless there is a written opinion from the Court of Appeals, there is no appeal to the Florida Supreme Court. Therefore, the unelaborated *per curiam* affirmance in this case is the final, highest *unappealable* order.

In Florida, and at all times relevant, Florida's speedy trial rule pursuant to Florida Rule of Criminal Procedure, Rule 3.191 (a) required that the state file information 175 days from the date of the arrest. Where the State violates this rule, Florida law mandates that the remedy is discharge of the criminal information.

This 175-day deadline applies even where the State of Florida files a *nolle prosequi*, and then comes back to refile the same charges against the same defendant. Therefore, even where there is an interruption in the proceedings by way of State of Florida filing a *nolle prosequi*, the 175-day time period must be adhered to, and if not, then the defendant is entitled to full discharge. See *Florida Rules of Criminal Procedure Rule 3.191(a)*.

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PETITION FOR WRIT OF CERTIORARI

OPINIONS AND RULINGS BELOW

The unelaborated decision of Florida Second District Court of Appeal appears at Appendix, ("App") A designated as Paylan v. State 413 So.3d 260 (Fla.2nd DCA 2025) (*per curiam* affirmance).

JURISDICTION

Florida Second District Court of Appeal, as the final pathway of judicial review in Florida for non-capital cases, denied Petitioner's postconviction appeal from denial of a motion for discharge on speedy trial grounds filed after trial and conviction. This Court's jurisdiction is invoked under Article III of the US Constitution, and 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS INVOLVED

Under the Sixth Amendment to the United States Constitution is the right to have speedy trial for the accused. Remedy for violation of speedy trial, under both state and federal law, is discharge of criminal information and/or indictment.

In *Klopper v. North Carolina*, 386 U.S. 213, (1967), this Court held that the Sixth Amendment standards governing speedy trial are made obligatory on the States by the Fourteenth Amendment Due Process Clause.

The textual reference in the Constitution does not dictate that a motion for discharge must be brought before a conviction and therefore a motion for discharge filed after a conviction is not foreclosed by the Constitution.

States cannot circumvent a speedy trial violation based on passage of time to file a motion for discharge because the issue is jurisdictional and States must address speedy trial discharge motions at any time, even after a trial and a conviction.

STATEMENT OF THE CASE

Dr. Christina Paylan is a cosmetic surgeon who was tried and convicted based on a single prescription written on July 1, 2011 for controlled substance, Demerol, in anticipation of a July 8, 2011 surgery for a cosmetic procedure on a patient, Carole Morales. Petitioner was charged pursuant to Fla.Stat. § 893.13(7)(a)(9) (2011), attempting to obtain controlled substances by fraud, and Fla. § 817.568(2)(a) (2011), criminal use of personal information because the patient's driver's license was obtained in the intake process as a patient as is routinely done in every doctor's office in the United States.

The singular evidence that the state used at trial was the statement of the husband and wife claiming that they purportedly never intended to have a surgical procedure by Petitioner in order to criminalize the single prescription written by Petitioner on July 1, 2011.

The case proceeded to trial and Petitioner was convicted in 2014. In spite of facts revealed during post-conviction investigation that the patient and her husband had struck an undisclosed sweetheart deal with the state attorneys wherein their son would receive a favorable 5-



year sentence reduction from his 15-year prison sentence in Florida State Prison for his armed trafficking conviction, Petitioner's postconviction appeal process is still ongoing.

A. Constitutional Framework

Petitioner has a federal constitutional violation because State of Florida violated Petitioner's constitutional right to speedy trial under the Sixth Amendment to the United States Constitution by filing a *nolle prosequi* in a criminal case and then refiling the same charges after Florida's speedy trial time frame of 175-days had already elapsed pursuant to Florida Rule of Criminal Procedure, Rule 3.191(a).

The Fourteenth Amendment Due Process Clause makes it obligatory on the State of Florida to discharge Petitioner because Petitioner's speedy trial was violated.

B. Factual Background

1. On December 29, 2024, Petitioner filed her motion for forever discharge based on speedy trial violation.
2. As of December 29, 2024, Petitioner had been tried and convicted for more than ten years on a single prescription that Petitioner had written for patient, Carole Morales. The prescription was written for patient's surgical procedure that was scheduled for July 8, 2011. The date on the prescription is July 1, 2011.
3. State of Florida did not file an opposition to the motion for discharge filed ten years after the conviction.

4. The circuit court, which was the trial court, denied the motion for discharge without addressing the most salient issue, to wit, the trial court lacking jurisdiction in light of the speedy trial violation and therefore there being no deadline for Petitioner to bring a motion for forever discharge of the criminal information.
5. The trial court did not address the substance of whether speedy trial had occurred. Instead, the trial court addressed only the fact that the motion for discharge was untimely. The appellate court affirmed without opinion.
6. Petitioner had previously filed two pre-trial motions for discharge which were also erroneously denied by both trial court and appellate court due in part because Petitioner having not specifically articulated in these motions that the date of arrest for the case at issue for speedy trial was July 1, 2011, even though the documents and exhibits overwhelmingly established that it was, thereby establishing that the State had violated the 175-day rule to file information when they refiled the same charges after filing a *nolle prosequi* in the original case.
7. The underlying facts of Petitioner's prosecution involve three (3) arrests of Petitioner in 2011, all based on the same criminal episode.
8. For the first two (2) arrests, executed on June 9, 2011, and July 1, 2011, the Florida Court of Appeals properly discharged the prosecutions as being predicated on the same criminal episode and having violated the 175-day rule on February 3, 2014. *App B*.

9. The third (3rd) arrest, on October 28, 2011, which was also part and parcel of the same criminal episode as the July 1, 2011 arrest, fell through the cracks as two pretrial motions for discharge were erroneously denied by Florida courts, and then the speedy trial violation overlooked by attorneys that Petitioner hired during postconviction phase.
10. The prosecution on the third (3rd) arrest went to trial and Petitioner was convicted on July 31, 2014, under Hillsborough County Circuit Court case number 14-CF-5764 (predecessor case number was 11-CF-15977) because the State filed *nolle prosequi* and then refiled the same information after the 175-day deadline passed).
11. The operative date of the third (3rd) arrest, for purposes of speedy trial violation under Florida's Speedy Trial Rule 3.191(a), was July 1, 2011.
12. On November 3, 2011, the State filed information against Petitioner. This was initially filed as Hillsborough County Circuit Court case number 11-CF-15977. The charges again related back to criminal episode for the arrest that took place on July 1, 2011.
13. On February 20, 2024, the State's motion for trial continuance was denied.
14. Immediately after the State's trial continuance was denied, the State filed *nolle prosequi* in the original criminal case, 11-CF-15977. The order issued by the trial judge in denying the motion for trial continuance was scathing and unfavorable to the State for its tactics of intentional delay.

15. The State's grounds for the *nolle prosequi* was impermissible under Florida law.
16. On April 22, 2014, the State refiled the same charges that were in Case Number 11-CF-15977. The new case number assigned was 14-CF-5764.
17. Upon refiled and in judge shopping in order to get rid of the trial judge who had previously denied State their trial continuance, on May 5, 2014, the State filed a motion to disqualify the same judge. Motion to disqualify was granted and there was a new successor judge assigned to the case.
18. When the State refiled the case following its *nolle prosequi*, the clock on the 175-day deadline to file information did not stop, and the State was required to remain within this 175-day filing deadline.
19. The State missed this deadline by twelve (12) days upon refiled on April 22, 2014.
20. On July 26, 2014, the refiled Case Number 14-CF-5764 went to jury trial resulting in a guilty verdict.
21. On February 1, 2017, Defendant's direct appeal in Case No. 14-CF-5764 was affirmed by the intermediate court of appeal, the Second District Court of Appeal in a *per curiam* denial in an unelaborated decision.
22. From 2017 through 2022, Petitioner represented by counsel, filed post-conviction motions. No postconviction attorney of record recognized this twelve (12) day missed deadline upon refiled by the State. Therefore no motion for discharge was filed on behalf of

23. Petitioner for ten years after the conviction until Petitioner filed her motion for discharge on December 29, 2024.
24. On January 30, 2025, the trial court denied Petitioner's motion for discharge, citing to delay in bringing the motion.
25. Petitioner appealed to the Second District Court of Appeal which affirmed the denial in an unelaborated *per curiam* affirmance on May 28, 2025. *App A*.

This Petition for Writ of Certiorari now follows.

REASONS FOR GRANTING THE PETITION

Because a speedy trial violation divests a trial court of jurisdiction, the judgment of conviction must be vacated. Any conviction obtained by the State after its jurisdiction was divested is a nullity and void.

Moreover, because right to speedy trial is a constitutional right, "the denial to the accused of a constitutional right does one of two things,-it either ousts the court of jurisdiction to enter a judgment of conviction, or it deprives the record of all legal virtue, and a judgment of conviction entered thereon is a nullity, it having nothing to support it. *McMicking v. Schields*, 238 U.S. 99, 105 (U.S. 1915).

I. **FLORIDA'S INTERMEDIATE APPELLATE COURT ERRED IN *PER CURIAM* DENIAL OF APPEAL INVOLVING SPEEDY TRIAL VIOLATION**

Failure to afford a public trial, an impartial trial, notice of charges, or compulsory service, as opposed to denial of right to speedy trial, can ordinarily be cured by providing those guaranteed rights in a new trial. *Strunk v. U.S.*, 412 U.S. 434 (U.S.Ill. 1973).

Right to a speedy trial is not a theoretical or abstract right but one rooted in hard reality on need to have charges promptly exposed. *Dickey v. Fla.*, 398 U.S. 30 (U.S.Fla. 1970). Remedy to denial of speedy trial is a full discharge. *Strunk v. U.S.*, 412 U.S. 434 (U.S.Ill. 1973), *See also Diaz v. State*, 627 So.2d 125 (Fla. 5th DCA 1993), and *State v. Agee*, 622 So.2d 473 (Fla.1993).

On May 28, 2025, Florida's Intermediate Appellate Court denied in an unelaborated *per curiam* decision Petitioner's appeal from denial of a motion for discharge based on grounds that Petitioner's constitutional right to speedy trial was violated when the State of Florida used up more than of its allotted 175-days to file information against Petitioner.

Jurisdiction conferred on the trial court is lost if the State does not comply with its obligations to timely file information pursuant speedy trial rule in Rule 3.191(a). Even where there is a conviction, a speedy trial violation requires reversal of conviction and full discharge. *See Dickey v. Fla.*, 398 U.S. 30 (U.S. 1970),

holding that an accused who was tried and convicted eight (8) years after criminal acts were allegedly committed was denied his right to a speedy trial, and conviction required reversal.

The speedy trial violation in this case is especially onerous because the nolle prosequi State filed was to circumvent a trial judge's order denying the State of Florida's motion for continuance. Intentional delay weighs heavily calculated to hamper the defense, in determining whether constitutional right to speedy trial has been violated. *Strunk v. U.S.*, 412 U.S. 434 (U.S. Ill. 1973).

The trial court lost jurisdiction to try Petitioner's case on April 10, 2014, because April 10, 2014, was the 175th day to file information after filing *nolle prosequi* and then refile the same charges. The refiled charges were not effectuated until April 22, 2014, making the State of Florida twelve (12) days too late to file criminal information.

Because the trial court had no jurisdiction to try defendant as of April 22, 2014, the trial that was held on July 28, 2014 that resulted in a conviction is a nullity and is void *ab initio*.

II. FLORIDA'S 175-DAY DEADLINE TO FILE INFORMATION DOES NOT CHANGE EVEN WHEN THERE IS AN INTERRUPTION BY THE STATE FILING A *NOLLE PROSEQUI* AND THEN REFILING THE SAME CHARGES

Florida law is clear, the State may not utilize *nolle prosequi* to extend the speedy trial period. "To allow the

State to unilaterally toll the running of the speedy trial period by entering a *nolle pros* would eviscerate the rule- a prosecutor with a weak case could simply enter a *nolle pros* while continuing to develop the case and then refile charges based on the same criminal episode months or even years later, thus effectively denying an accused the right to a speedy trial while the State strengthens its case." *State v. Agee*, 622 So. 2d 473 (Fla. 1993).

Fla. R. Crim. P. 3.191 also clearly states that the intent and effect of subpart (o) of the 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 or otherwise by prosecuting new and different charges based on the same conduct or criminal episode, whether or not the pending charge is suspended, continued, or is the subject of entry of a *nolle prosequi*."

This is precisely what how the State behaved in Petitioner's case.

Therefore, if the State takes longer than 175 days to file information, under Florida's speedy trial rules, Rule 3.1919a), the State is not entitled to a recapture period. *See Ortiz-Lopez v. State*, 311 So.3d 319 (Fla. 2d DCA 2020). The remedy for this is total discharge of criminal charges.

In the instant case, on April 22, 2014, the State refiled the same charges based on the same criminal episode that had an original arrest date of July 1, 2011, after filing a *nolle prosequi* on February 20, 2014. Because

more than 175-days elapsed upon refile, Petitioner was and is entitled to a full discharge. *State v. Agee*, 622 So.2d 473 (Fla.1993).

Moreover, no waiver by defendant under these circumstances can be valid or considered because in order for waiver to hold any weight, the State first has to be operating within the speedy trial rule.

Under Florida law and speedy trial rules, the expiration of speedy trial is based on the following factors: (1) the original date of arrest, and (2) whether the charges are part of same criminal episode from the prior arrests. See *Garrett v. State*, 87 So. 3d 799 (Fla. 1st DCA 2012) ("the speedy trial time period begins to run when an accused is taken into custody and continues to run even if the State does not act until after the expiration of the period"); *State v. Agee*, 622 So.2d 473 (Fla.1993) (the State may not refile charges once it had entered a *nolle prosequi* and the speedy trial period had run).

Further, in *State v. Clifton*, 905 So.2d 172 (5th DCA 2005), the Court of Appeal concluded that:

[T]he state may not circumvent the purpose and intent of the speedy trial rule by: 1) entering a nolle prosequi of the charges and waiting to refile them until after the speedy trial period has expired; 2) voluntarily dismissing the charges before they are formally filed and filing formal charges after the time limit has expired; or 3)

taking no action after the defendant is arrested and waiting until after the speedy trial period has expired to file formal charges.

In these instances, the state has essentially abandoned the prosecution and the recapture provisions of the rule do not apply, with the result that the defendant must be discharged.” Clifton, 905 So. 2d at 176 (emphasis added).

Under *Clifton, supra*, the Florida appeals court determined that prosecution had been abandoned and defendant was entitled to discharge.

III. FACTORS INVOLVING SPEEDY TRIAL VIOLATION IN FLORIDA IRREFUTABLY REQUIRE PETITIONER'S DISCHARGE

Speedy trial factors to be considered in Petitioner's motion for discharge are:

A. Original Date of Arrest

When calculating speedy trial, original date of arrest is the operative date. “[T]he date of the original arrest is the focal point for speedy trial considerations, irrespective of changes made in charges.” *Weed v. State*, 411 So. 2d 863, 865 (Fla. 1982).

B. Same Criminal Episode

Under Florida law, a re-arrest for the same conduct or the same criminal episode triggers the speedy trial period. “Trial court misapplied the ‘criminal episode’

standard of speedy trial rule by placing a great emphasis on the ongoing investigation of the police officers, rather than the actions of defendant; whether crimes formed part

of the same criminal episode depended on the activities of the defendant, not the activities of the police investigating the defendant." *State v. Baynham*, 72 So. 3d 796 (Fla. 4th DCA 2011).

Petitioner was arrested on three separate dates for the same criminal episode involving allegation of obtaining controlled substances by fraud and criminal use of personal information: June 9, 2011, July 1, 2011 and October 28, 2011.

The criminal report affidavit, ("CRA") for the October 28, 2011 arrest, states in part:

On July 1, 2011, Dr. Christina Paylan provided a prescription written for 100 mg/ml (10 ampules) of Demerol (opiate derivative) to the Habana Hospital Pharmacy. The prescription was written for Carole Morales from Dr. Christina Paylan's business with Paylan's signature. Dr. Christina Paylan provided the prescription to the pharmacy with a copy of Carole Morales' insurance card and a copy of Carole Morales Florida drivers license. (emphasis added)

Petitioner was also arrested on July 1, 2011.

The CRA goes on to further explain:

Approximately two hours later Dr. Paylan boarded a flight to Atlanta Georgia and was subsequently arrested on a warrant for three (3) counts of *Obtaining a Controlled Substance by Fraud* while on bond for Trafficking in a Controlled Substance.

Count I of Information in the originally filed case under 11-CF-15977 states:

CHRISTINA B PAYLAN, on the 1st day of July, 2011, in the County of Hillsborough and State of Florida, did knowingly and *unlawfully acquire or obtain or attempt to acquire or obtain possession of a controlled substance*

The language in the Information filed in Case No. 11-CF-15977, specifically as to Count I, tracks the language for the original arrest made on July 1, 2011.

July 1, 2011 being the original date of arrest for the charges, **November 3, 2011** being the original date of State of Florida filing criminal information, and the State having filed a nolle prosequi on **February 20, 2014**, waiting subsequently 49 days to refile the same charges as Case No. 14-CF-5764 on **April 22, 2014**, Petitioner's constitutional rights to speedy trial was violated under state and federal law.

At the time of the *nolle prosequi* on February 20, 2014, the State of Florida had already used up 126 days of its allotted 175 days to file its information, leaving only 49 days if it wanted to *nolle prosequi* and then refile. The State of Florida took 62 days, instead of 49 days, to refile the same charges on April 22, 2014, which brought about the speedy trial violation.

Because the speedy trial had expired upon refile on April 22, 2014, the trial court was divested of jurisdiction in Case No. 14-CF-5764 which is subject to immediate discharge. See *Garrett v. State*, 87 So. 3d 799. (Fla. 1st DCA 2012), holding that charges filed after the expiration of speedy trial are subject to immediate discharge and the State is not entitled to a recapture period. See also *State v. Williams*, 791 So. 2d 1088, 1091 (Fla. 2001) where Florida Supreme Court held that if the State fails to file charges until after the 175 days has lapsed from the date of the arrest, then there is nothing more that is required of the defendant but to file a motion for discharge.

Even where the third motion for discharge was not filed until ten years after trial and conviction, Petitioner is still entitled to full discharge.

CONCLUSION

For all the foregoing reasons, Petitioner respectfully moves this Honorable Court to grant this Petition for Writ of Certiorari, directing the Second District Court of Appeal in Florida to vacate its denial of Petitioner's appeal involving speedy trial violation, and enter a new order granting Petitioner's request discharging the criminal case against Petitioner.

Dated: August 26, 2025.

Respectfully submitted,

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