

IN THE CIRCUIT COURT FOR THE
NINTH JUDICIAL CIRCUIT, IN
AND FOR ORANGE COUNTY,
FLORIDA

JOE LOUIS OLIVER,

CASE NO.: 2016-CA-3150-O

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

_____ /

Petition for Writ of Prohibition
Elizabeth J. Starr, Respondent Judge

Robert Wesley, Public Defender and
Summer E. Pope, Assistant Public Defender,
for Petitioner.

Jeffrey L. Ashton, State Attorney and
Daniel J. Quinn, Assistant State Attorney,
for Respondent.

BEFORE WHITEHEAD, WOOTEN, SCHREIBER, JJ.

PER CURIAM.

Petitioner Joe Louis Oliver, petitions this Court to issue a writ of prohibition to prohibit County Court Judge Elizabeth Starr from taking any further action in county court cases 2015-CT-8772-A-O and 2015-CT-11281-A-O. This Court has jurisdiction pursuant to Article V, section 5(b) of the Florida Constitution. We grant in part and deny in part the Petition for Writ of Prohibition.

On June 5, 2015, Petitioner was issued a uniform traffic citation with a notice to appear on July 7, 2015 for Leaving the Scene of an Accident. On September 16, 2015, Respondent filed an Information charging Petitioner with Leaving the Scene of an Accident Involving Property

Damage. Petitioner claims an unsigned citation was also filed on September 16, 2015 for Leaving the Scene, but only the filing year of 2015 is legible on the unsigned citation provided in Petitioner's Appendix. On December 10, 2015, Respondent filed an Information charging Petitioner with committing the offense of DUI on June 5, 2015. On December 14, 2015, Respondent filed a DUI citation that included a notice to appear on November 19, 2015. The DUI citation was not signed by Petitioner and there is no evidence that Petitioner was served with the DUI citation.

On February 25, 2016, Petitioner filed motions to discharge both citations alleging that his right to a speedy trial was violated. The trial court denied both motions finding that Petitioner's receipt of the citation for the Leaving the Scene charge was sufficient as a charging document, the charge of DUI arose out of a separate incident, and Petitioner was not in custody for DUI until December 10, 2015.

Petitioner argues that the trial judge erred in denying the motion to discharge and the court was required to dismiss the charge for Leaving the Scene of an Accident because the citation was filed after the ninety-day speedy trial period expired. Respondent argues that the citation and notice to appear for Leaving the Scene of an Accident was a valid charging document and Petitioner was required to comply with the procedures in Florida Rule of Criminal Procedure 3.191(p) by filing a notice of expiration before seeking discharge.

Prohibition is the appropriate procedure to review the denial of a motion to dismiss based on a violation of speedy trial. *Self v. State*, 55 So. 3d 677 (Fla. 5th DCA 2011). A defendant must be tried within 90 days of being taken into custody for a misdemeanor. Fla. R. Crim. P. 3.191(a). A defendant is "taken into custody" for purposes of Rule 3.191 when a traffic citation is served on the defendant in lieu of arrest. Fla. R. Traf. Ct. 6.160. If trial is not commenced within 90 days

of being taken into custody, the defendant must file a notice of expiration of speedy trial time before requesting discharge. Fla. R. Crim. P. 3.191(p). The speedy trial deadline is also the deadline for filing charges. *State v. Williams*, 791 So. 2d 1088, 1091 (Fla. 2001); *State v. Naveira*, 873 So. 2d 300, 310 (Fla. 2004). If a defendant is not charged within the speedy trial deadline, the defendant is entitled to immediate discharge and is not required to file a notice of expiration of speedy trial time. *Williams*, 791 So. 2d at 1091.

In *Ivory v. State*, 588 So. 2d 1007 (Fla. 5th DCA 1991), cited by Respondent, the Court found that a citation is a charging document, which Petitioner does not dispute. However, in *Ivory* the Court also held that “service on the accused of a copy of a properly prepared uniform traffic citation containing a notice to appear, *and* the timely filing of the original and one copy of the traffic citation, as required by section 316.650(3), Florida Statutes in the court having jurisdiction over the alleged offense, invokes the subject matter jurisdiction of the court and commences prosecution of the criminal traffic case[.]” *Ivory*, 588 So. 2d at 1009 (emphasis added). Therefore, service of the citation alone is not sufficient to charge a defendant with a criminal traffic offense as Respondent argues. The citation or Information must also be filed with the court. *See Hurley v. State*, 322 So. 2d 506, 507 (Fla. 1975) (finding that section 316.018, now section 316.650, requires the deposit of all traffic offense tickets with the appropriate court, after which judicial proceedings commence).

Failure to file the citation within the 5 days required by section 316.650(3) does not warrant immediate discharge. *State v. Hancock*, 529 So. 2d 1200, 1201 (Fla. 5th DCA 1988) (filing of the citation 17 days after it was issued instead of the required 5 days is official misconduct subject to disciplinary proceedings, and not a jurisdictional prerequisite to prosecution and any prejudice resulting from the delay in filing a traffic citation falls on the State, since speedy trial commences

when the citation is issued). However, failure to file the charging document prior to the expiration of speedy trial period does warrant immediate discharge. *Williams*, 791 So. 2d at 1091 (State was not entitled to the recapture period when it took no action and then filed charges after the speedy trial period expired). The State may not file charges after the speedy trial period expires. *Id.*

In this case, the citation and Information for Leaving the Scene of an Accident were filed after the speedy trial period expired. The citation, like an Information, must be filed prior to the expiration of speedy trial time period. Therefore, the Respondent was not entitled to the recapture period and the trial court should have granted Petitioner's motion to discharge.

Petitioner also argues that the DUI charge should also be dismissed because it arises from the same facts as the Leaving the Scene of an Accident offense. Petitioner claims that he was in custody on June 5, 2015 for the DUI offense; therefore, the Information filed December 10, 2015 was also filed after speedy trial expired for the DUI. Respondent claims that Petitioner was not cited for the DUI on June 5, 2015. Respondent argues that the trial court correctly found that the Leaving the Scene of an Accident and DUI charge do not involve the same criminal conduct and the 90-day speedy trial period did not begin to run for the DUI until December 10, 2015 when the Information was filed.

“[D]ifferent crimes . . . are not deemed a part of the same criminal episode for speedy trial purposes unless they are based on substantially the same acts.” *State v. Pelham*, 99 So. 3d 599, 601 (Fla. 5th DCA 2012) citing *State v. Hanna*, 858 So. 2d 1248, 1250 (Fla. 5th DCA 2003); *see also Clevenger v. State*, 967 So. 2d 1039, 1041 (Fla. 5th DCA 2007). Respondent cites to *Walker v. State*, 390 So. 2d 411 (Fla. 4th DCA 1980), an analogous case, to support its argument that the DUI and Leaving the Scene of an Accident offenses do not involve the same criminal conduct.

In *Walker*, the defendant was the driver in a hit and run accident resulting in a fatality. Walker was arrested for Leaving the Scene of an Accident the same day the accident occurred but was not charged with Vehicular Homicide until one month after the events. *Walker*, 390 So. 2d at 412. The Court found that the criminal conduct for Vehicular Homicide was separate and apart from the conduct for Leaving the Scene of an Accident. *Id.* at 413. The court stated that the accident itself was one criminal episode and when Walker fled the scene, he committed an entirely separate and unrelated crime that had no effect on the conduct causing the accident or the criminal charge for Vehicular Homicide. *Id.* The Leaving the Scene was a different conduct and an independent criminal episode. *Id.*

As in *Walker*, the Leaving the Scene of an Accident offense on June 5, 2015 in this case was an independent criminal episode that had no effect on the conduct resulting in the DUI offense. In addition, there is no evidence that Petitioner was in custody for the offense of DUI when he was issued the citation for Leaving the Scene on June 5, 2015. Therefore, Petitioner was not entitled to immediate discharge because the Information and citation for DUI were filed before the expiration of the speedy trial period. Furthermore, there is no evidence that the speedy trial period had expired for the DUI charge at the time Petitioner filed the Motion to Discharge. Accordingly, the trial court properly determined that the DUI was a separate criminal conduct from the Leaving the Scene of an Accident offense and correctly denied Petitioner's motion to discharge the DUI charge for violation of speedy trial.

In conclusion, Petitioner was entitled to immediate discharge of the Leaving the Scene of an Accident charge because both the Information and the citation were filed after the expiration of the 90-day speedy trial period. The trial court correctly denied Petitioner's motion to discharge the DUI citation. The DUI was a separate criminal conduct from the Leaving the Scene of an

Accident offense, and Petitioner was not entitled to immediate discharge because the Information and citation were filed before the speedy trial period expired.

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** that the Petition for Writ of Prohibition is **GRANTED in part and DENIED in part**. The Order on Discharge for Leaving the Scene of an Accident in case 2015-CT-8772-A-O is **QUASHED**. This matter is **REMANDED** for discharge on the Leaving the Scene of an Accident charge and for further proceedings on the DUI charge.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, on this 25th day of October, 2016.

/S/

REGINALD K. WHITEHEAD
Presiding Circuit Judge

WOOTEN and SCHREIBER, JJ., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished to: **Summer E. Pope, Assistant Public Defender**, 435 N. Orange Avenue, Ste. 400, Orlando, Florida 32801; **Daniel J. Quinn, Assistant State Attorney**, 415 N. Orange Avenue, Orlando, Florida 32801; **Honorable Elizabeth J. Starr**, 425 N. Orange Avenue, Orlando, Florida 32801 on this 25th day of October, 2016.

/S/

Judicial Assistant