

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

DENISE SANCHEZ,

CASE NO.: 2020-CA-010273-O

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

_____ /

Petition for Writ of Prohibition
Eric DuBois, Respondent Judge

Robert Wesley, Public Defender and
Savannah Brown, Assistant Public Defender,
for Petitioner.

Aramis D. Ayala, State Attorney and
Lisa Gong Guerrero, Assistant State Attorney,
for Respondent.

BEFORE APTE, TYNAN, WEISS, JJ.

PER CURIAM.

Petitioner, Denise Sanchez, petitions this Court to issue a writ of prohibition directed to County Court Judge Eric DuBois to quash his order denying Petitioner's amended motion to discharge in case number 2020-MM-003176-A-O and to direct him to discharge the same. This Court has jurisdiction pursuant to Article V, section 5(b) of the Florida Constitution. We deny the Petition for Writ of Prohibition.

On January 26, 2020, Petitioner was arrested for the offenses of child abuse and battery. On May 1, 2020, Respondent filed an Information charging Petitioner with a single count of misdemeanor battery.

On July 6, 2020, Petitioner filed her initial motion to discharge, alleging that her right to a speedy trial was violated when Respondent did not file formal charges by Information before the speedy trial time expired. She filed an amended motion to discharge on August 3, 2020, raising the same speedy trial violation and noting that Florida Supreme Court Order AOSC20-23 tolled the normal speedy trial period based on an inability to call jurors to trial due to the current pandemic, but did not affect to the ability of the State to file charges by Information within the normal speedy trial period. The trial court denied the motion on August 17, 2020.

Petitioner argues that the trial judge erred in denying her motion to discharge, and the court was required to dismiss the battery charge because the Information was filed after the ninety-day speedy trial period expired. Respondent filed no response to the Petition.

As a preliminary matter, the plain language of Florida Rule of Criminal Procedure 3.191(p)(1), that is, the speedy trial rule, states: “No remedy shall be granted to any defendant under this rule until the court has made the required inquiry under subdivision (j).” The Rule continues on: “If the trial of the accused does not commence within the periods of time established by this rule (which is 90 days for a misdemeanor pursuant to 3.191(a)), a pending motion for discharge shall be granted by the court *unless it is shown that*: (1) a time extension has been ordered under subdivision (i) and that extension has not expired . . .” Fla. R. Crim. P. 3.191(j) (emphasis added). Additionally, “[t]he periods of time established by this rule may be extended, provided the period of time sought to be extended has not expired at the time the extension was procured. An extension may be procured by: . . . (5) administrative order issued by the chief justice, under Florida Rule of Judicial Administration 2.205(a)(2)(B)(iv), suspending the speedy trial procedures as stated therein.” Fla. R. Crim. P. 3.191(i).

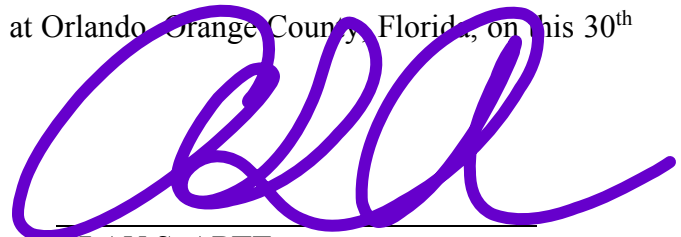
Here, Petitioner was arrested on January 26, 2020, and the Florida Supreme Court subsequently suspended speedy trial time frames on March 13, 2020. *See* In re: COVID-19 Emergency Measures in the Florida State Courts, Fla. Admin. Order No. AOSC20-17 (March 24, 2020); In Re: COVID-19 Emergency Procedures in the Florida State Courts, Fla. Admin. Order AOSC20-13 (March 13, 2020). An extension for speedy trial, therefore, was procured before the ninety days required by Rule by way of the administrative order, in accordance with Rule 2.205(a)(2)(B)(iv), and that extension was in effect when the trial court denied Petitioner's motion to discharge and has not yet expired.

Finally, nothing in Rule 3.191 requires the state to file an Information or Indictment within ninety days for a misdemeanor; instead, the Rule only requires a defendant to be brought to trial within ninety days on a misdemeanor unless that time is extended, in which case the defendant must be brought to trial within the period of time speedy trial was extended. Moreover, discharge is only appropriate once speedy trial has expired, which, as explained above, it has not in this case.

Therefore, Petitioner is not entitled to a discharge under the rule, as speedy trial has not yet expired. The trial court properly denied Petitioner's motion.

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** that the Petition for Writ of Prohibition is **DENIED**.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, on this 30th day of December, 2020.



ALAN S. APTE
Presiding Circuit Judge

TYNAN and WEISS, JJ., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished by the Florida E-Portal to: **Savannah Brown, Assistant Public Defender; Lisa Gong Guerrero, Assistant State Attorney; and The Honorable Eric DuBois** on this 30th day of December, 2020.



~~Judicial Assistant~~