

IN THE SUPREME COURT OF THE STATE OF FLORIDA
CASE NO. SC18-820
DCA Case No: 4D17-3324
L.T. Case No: 502016CF007497AXXXMB

DONALD BUHLER,)
PETITIONER)
)
vs.)
)
STATE OF FLORIDA,)
RESPONDENT)
_____)

**PETITIONER’S EMERGENCY MOTION
TO STAY TRIAL COURT PROCEEDINGS**

Petitioner, DONALD BUHLER, through his undersigned attorney, respectfully moves this Court for an Order Staying Trial Proceedings and would state the following in support of this motion:

1. This case is currently scheduled for trial before the Honorable Samantha Schosberg-Feuer of the Fifteenth Judicial Circuit on June 25, 2018.
2. On October 31, 2017, Petitioner moved to dismiss this prosecution based on the expiration of speedy trial pursuant to Fla. R. Crim. P. 3.191. After denying the motion, the trial court stayed the proceedings pending Petitioner’s Writ of Prohibition to the Fourth District Court of Appeal.
3. On May 16, 2018, the Fourth District Court of Appeal denied the Petition for Writ of Prohibition.

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4. On May 21, 2018, Petitioner, pursuant to Fla. R. App. P. 9.120(b), filed his Notice to Invoke Discretionary Jurisdiction in the Fourth District Court of Appeal, and soon after, paid the filing fee of \$300.
5. On May 27, 2018, Petitioner, pursuant to Fla. R. App. P. 9.120(d) filed his Brief on Jurisdiction in this Court. At that time, the trial court had not scheduled a trial date.
6. On June 19, 2018, Respondent filed its Jurisdictional Brief.
7. Rule 9.120 does not set a definitive time within which this Court must decide whether to accept jurisdiction, nor does it provide for an automatic stay of lower court proceedings.
8. The Committee Notes for Rule 9.120 discuss factors for a *district* court to consider in deciding whether to stay a mandate where a party seeks review in this Court, and those factors are instructive here:

The advisory committee was of the view that the district courts should permit such stays only when essential. Factors to be considered are the likelihood that jurisdiction will be accepted by the supreme court, the likelihood of ultimate success on the merits, the likelihood of harm if no stay is granted, and the remediable quality of any such harm.

See also Oliveira v. State, 765 So. 2d 90 (Fla. 4th DCA 2000).

9. Examination of these factors suggests a stay is essential in this case:
 - a. ***Likelihood that jurisdiction will be accepted by this Court.*** This Court has jurisdiction under article V, section 3(B)(3) of the Florida

Constitution because the Fourth District’s decision here directly conflicts with the decision of the Second District in *Hochstrasser v. Demers*, 491 So. 2d 1245 (Fla. 2d DCA 1986) and Third District in both *State v. Barrero*, 460 So. 2d 945, 946 (Fla. 3d DCA 1984) and *State v. Dante*, 467 So. 2d 744 (Fla. 3d DCA 1985). While the Fourth District did not mention *Hochstrasser* or *Dante* in its opinion, it did acknowledge the conflict with *Barreiro*:

In *Barreiro*, our sister court held that because rule 3.191 “refers specifically to an ‘appeal,’ it is not applicable where the review is sought by way of a writ of certiorari.” *Id.* at 947. Our sister court reached this holding even though it acknowledged our supreme court’s holding in *Nelson* that the phrase appeals as used in rule 3.191 included all appellate applications. *Id.* Our sister court apparently chose to disregard *Nelson*, stating “there is no authority or logical requirement for bringing extraordinary reviews within the definition of [rule 3.191] appeals.” *Id.* While we appreciate the *Barreiro* court’s reasoning, we must disagree with its choice to disregard *Nelson*. In any event, our sister court may have had a change of mind on this issue. In the more recently issued *Johnson v. State*, 984 So. 2d 609 (Fla. 3d DCA 2008), the Third District issued a PCA citing the Second District’s *Clarke* decision, which we cite above.

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b. ***Likelihood of ultimate success on the merits.*** The basic question for this Court to answer, should it decide to accept jurisdiction, is whether the phrase “appeal by the State” in rule 3.191(m) includes petitions for extraordinary writs. While the Fourth District has now

decided that the phrase in subsection (m) does not include such petitions, the Second and Third Districts have concluded otherwise. The Second and Third Districts' holdings and reasoning strongly suggest Petitioner's position has merit.

- c. *Likelihood of harm if no stay is granted.* If this Court denies Petitioner's request to stay the trial court proceeding, the trial likely will commence prior to this Court's resolution of this matter. Petitioner's motion for discharge, his petition for a writ of prohibition, and his invocation of this Court's jurisdiction to review this issue were all filed to prevent the harm of being tried in violation of his speedy trial right. The harm which comes from a trial that should never happen includes: the humiliation, stress and added expense to a defendant forced to endure a trial; the waste of judicial resources; and the needless time expended by state and defense witnesses, including law enforcement, experts, and children, in attending the trial. By contrast, granting this request for a stay will not result in any harm to the State. *See State v. Miyasato*, 805 So. 2d 818, 826 (Fla. 2d DCA 2001) ("although we believe the State's chances of victory are small, the harm to Mr. Miyasato caused by a stay is minimal and the risks to the State if no stay is granted are

significant. We would be hard pressed to rule that a stay is ‘essential’ in this case... Given the absence of any real harm to Mr. Miyasato, we grant the stay.”).

d. ***Remediable quality of any such harm.*** Once the trial has occurred, the harm cannot be cured as it is not possible to “un-try” the case.

10. The undersigned counsel contacted Respondent and Respondent takes no position on this motion.

WHEREFORE, Petitioner respectfully requests this Court enter an order staying the trial proceedings until this Court has decided whether or not to accept jurisdiction.

Respectfully submitted,

scott berry

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CERTIFICATE OF SERVICE AND ELECTRONIC FILING

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered by e-service to Celia Terenzio and Richard Valuntas, Assistant Attorneys General, 1515 North Flagler Drive, Suite 900, West Palm Beach, Florida 33401 at CrimAppWPB@myfloridalegal.com and richard.valuntas@myfloridalegal.com; to Brianna Coakley, Assistant State Attorney, 401 North Dixie Highway, West Palm Beach, Florida 33401 at bcoakley@sa15.org; by e-mail to Honorable Samantha Schosberg Feuer at CAD-divisionx@pbcgov.org and electronically filed with this Court on this 19th day of June, 2018.

scott berry

Scott Berry, B.C.S.

CERTIFICATE OF FONT SIZE

I HEREBY CERTIFY the instant petition has been prepared with 14-point Times New Roman type, in compliance with a R. App. P. 9.210(a)(2).

scott berry

Scott Berry, B.C.S.