

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

DARRYL MAURICE YOUNG, CASE NO.: 48-2006-CA-006556-O
WRIT NO: 06-65

Petitioner,
vs.

STATE OF FLORIDA,
Respondent.

_____ /
Petition for Writ of Prohibition

Darryl Maurice Young, pro se
for Petitioner.

No Response
For Respondent.

Before SPRINKEL, IV, T. SMITH, and THORPE, J.J.

PER CURIAM.

ORDER GRANTING PETITION FOR WRIT OF PROHIBITION

Darryl Maurice Young (Petitioner) petitions for issuance of a writ of prohibition directing the lower court to dismiss two civil traffic infractions on the basis that the prosecution of these infractions is barred by the expiration of the speedy trial time period and the statute of limitations.

On May 3, 1997, Petitioner was the driver of a vehicle involved in a traffic accident involving a fatality. At that time, he was issued a citation for improper passing (Citation 480142T/Case No. TO97-86482) and a citation for disregarding a traffic signal (Citation 480143T/ Case No. TO97-86483). The citations provided that Petitioner would be notified of his court date. A summons to appear was issued for Petitioner to appear on August 25, 1997. However, the summons was returned unserved. On August 11, 1997, Petitioner was charged by information in Case No. CR97-10763 with one count of DUI Manslaughter, two counts of DUI with Serious Bodily Injury and one count of Leaving the Scene of an Accident with Death for the events arising out of the May 3, 1997 accident. He was arrested on August 22, 1997. He pled nolo contendere to the criminal charges and was sentenced on July 13, 1999 to concurrent terms of 20.425 years in the

Department of Corrections with 802 days credit for time served to be followed by one year of probation.

On January 20, 2006, Petitioner filed in County Court case numbers TO97-86482 and TO97-86483 a “Notice and Petition to Dismiss the Above Cause of Actions” arguing that dismissal was appropriate because he had made a good faith effort to plea to the citations; the speedy trial time period had expired; and the statute of limitations had run. Additionally, Petitioner filed a “Notice of Hearing.” The lower court denied both motions on January 26, 2006 stating that Petitioner must personally appear for arraignment after he is released from prison because the instant cases involved a fatality. The lower court did not specifically address Petitioner’s speedy trial and statute of limitations claims.

Prohibition is preventative and not corrective. *English v. McCrary*, 348 So. 2d 293 (Fla. 1977). It is the appropriate remedy to prohibit trial court proceedings where an accused has been denied his right to a speedy trial and his motion for discharge or dismissal has been denied. *Sherrod v. Franza*, 427 So.2d 161 (Fla. 1983). Additionally, it is the appropriate method by which an accused who asserts that his prosecution is barred by the statute of limitations may challenge the trial court’s jurisdiction to go forward. *Neal v. State*, 697 So. 2d 903 (Fla. 2d DCA 1997).

Speedy trial for traffic infractions is governed by Florida Rule of Traffic Court 6.325. Generally, a defendant charged with a noncriminal traffic infraction shall be brought to trial within 180 days of the date the defendant is served with the uniform traffic citation or the infraction is subject to dismissal. Fla. R. Traf. Ct. 6.325(a). However, subsection c of rule 6.325 provides:

This rule shall not apply to any infraction that is a part of a single episode or occurrence, which is attached to, consolidated with, or associated with a criminal traffic offense.

Since the Petitioner’s noncriminal traffic infractions are “associated with a criminal traffic offense,” they are not governed by Florida Rule of Traffic Court 6.325. Instead speedy trial for Petitioner’s citations is governed by Florida Rule of Criminal Procedure 3.191. Additionally, a Florida Uniform Traffic Citation, that indicates that the accused is “to be notified” when and where to appear does not commence the running of the speedy trial period. *State v. Coughlin*, 871 So.2d 935 (Fla. 5th DCA 2004). Thus, the speedy trial time period for these traffic infractions has not expired.

Applicable statutes of limitation are the ones in effect at the time of the acts giving rise to the charges. *See State v. Shamy*, 759 So.2d 728 (Fla. 4th DCA 2000); *Brown v. State*, 674 So.2d 738, 739, n. 1 (Fla. 2d DCA 1995). Section 775.15, Florida Statutes (1997), states, in part:

775.15 Time Limitations

(2) Except as otherwise provided in this section, prosecutions for other offenses are subject to the following periods of limitations:

(d) A prosecution for a misdemeanor of the second degree or a noncriminal violation must be commenced within 1 year after it is committed.

(5) A prosecution is commenced when either an indictment or information is filed, provided the capias, summons, or other process issued on such indictment or information is executed without unreasonable delay. In determining what is reasonable, inability to locate the defendant after diligent search or the defendant's absence from the state shall be considered.

(6) The period of limitations does not run during any time when the defendant is continuously absent from the state or has no reasonable ascertainable place of abode or work within the state, but in no case shall this provision extend the period of limitation otherwise applicable by more than 3 years.

Pursuant to Florida Rule of Traffic Court 6.320, a uniform traffic citation is a valid charging document. *Compare Hurley v. State*, 322 So. 2d 506 (Fla. 1975); *Ivory v. State*, 588 So. 2d 1007 (Fla. 5th DCA 1991). "When issued and served, a uniform traffic citation is the equivalent of an executed information." *Ivory*, 588 So. 2d at 1009. Thus, service of a copy of a properly prepared uniform traffic citation containing a notice to appear and the timely filing of the traffic citation commences prosecution for purposes of the statute of limitations. *Id.* However in this case, the citations did not provide a specific date and time that the Petitioner was to appear. It merely provided that he would be notified in the future of his court date. Although a summons to appear was issued, it was returned unserved. Since the summons has not been executed without unreasonable delay or in any event within 3 years of the applicable limitations period, prosecution of the citations is barred.

Accordingly, it is hereby ORDERED AND ADJUDGED that the Petition for Writ of Prohibition is GRANTED and the trial court is directed to dismiss the two civil traffic infractions.

DONE AND ORDERED, in Chambers, at Orlando, Orange County, Florida, this __11th__ day of ____January_____, 2007.

_____/S/_____
GEORGE A. SPRINKEL, IV
Circuit Court Judge

_____/S/_____
THOMAS B. SMITH
Circuit Court Judge

_____/S/_____
JANET C. THORPE
Circuit Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail or hand delivery to____see below_____, this __11th__ day of __January_____, 2007.

Darryl Maurice Young
DC# X0426

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The Honorable Leon B. Cheek, III
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Orlando, FL 32801

_____/S/_____
Judicial Assistant