

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

CASE NO. 2019-CA-1817-O
Panel H

STEVE TESKE,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

_____ /

ORDER GRANTING
PETITION FOR WRIT OF PROHIBITION

This matter came before the Court for consideration of the Petition for Writ of Prohibition, filed February 13, 2019, by counsel for Steve Teske. On April 9, 2019, this Court issued an Order directing the State to show cause why relief should not be granted, but as of the date of this Order, no such Response has been filed.

Petitioner was charged with driving under the influence with property damage based upon an incident that occurred on December 29, 2015, in 2016-CT-79-A-W. A Summons Returned Unserved was filed with the Clerk in February 2016 listing eight dates on which the Sheriff reportedly attempted service. This document included a notation: "Avoiding Service / music playing inside but nobody answer the door. I could feel somebody walking inside the house." Petitioner was ultimately served over two years later, on July 28, **2018**. It appears to be undisputed that his address remained the same and that no additional efforts were made to effect service between February 2016 and July 2018.

Petitioner seeks a writ of prohibition barring the lower court from continuing to exercise jurisdiction over him and to order the lower court to grant his Motion to Discharge. He argues the State carried the burden of proof of establishing that prosecution was not barred by the statute of limitations, and the lower court improperly considered the hearsay notation on the Summons Returned Unserved (a copy of which is attached to his Petition as Exhibit “A”). Thus, he now concludes, prosecution is barred by the statute of limitations for a first-degree misdemeanor, which must be commenced within two years after the offense is committed. § 775.15(2)(c) and (4)(b), Fla. Stat.

“Prohibition is an appropriate vehicle to challenge a trial court’s continued jurisdiction to preside over a criminal prosecution said to be beyond the statute of limitations for the offense charged.” *Manzini v. State*, 115 So. 3d 1015, 1016 (Fla. 4th DCA 2013).

As Petitioner argues, once the Court’s jurisdiction is challenged by the raising of the statute of limitations, it is the State’s burden to establish that prosecution is not barred. *Colvin v. State*, 541 So. 2d 724 (Fla. 2d DCA 1989). In *Colvin*, the State was aware of the defendant’s whereabouts but failed to serve him for more than six years. Colvin pled, reserving the right to appeal the denial of his motions for discharge, and the Second District reversed, finding the State had offered no credible reason for the delay and remanding with directions that he be discharged. *See also Morelli v. State*, 198 So. 3d 997 (Fla. 4th DCA 2016) (State presented only hearsay evidence and offered no records to show that a meaningful search was conducted, or that Morelli was hiding, or that any other basis existed for tolling the limitation period).

In the lower case, the State argued that Petitioner evaded service but offered no evidence in support other than the hearsay notation on the returned Summons. And, in the instant prohibition proceedings, the State has failed to show cause why prosecution is not barred by the statute of limitations. This Court concludes the State has not established that it was diligent in its effort to serve Petitioner and has therefore failed to meet its burden of proof with regard to the statute of limitations. As a result, prosecution in 2016-CT-79-A-W is barred and Petitioner's Motion to Discharge must be granted.

Based on the foregoing, it is ORDERED AND ADJUGED that the Petition for Writ of Prohibition is GRANTED.

DONE AND ORDERED in Chambers in Orlando, Orange County, Florida, this _____ day of July 2019.

ROBERT J. EGAN
Circuit Judge

JENIFER M. HARRIS and DANIEL E. TRAVER, J.J., concur

Certificate of Service

I certify that a copy of the foregoing Order has been provided this _____ day of July 2019 via U.S. Mail / hand delivery to Stephanie McEnery, Assistant Public Defender, 435 North Orange Avenue, Orlando, Florida 32801, smcenery@circuit9.org; the Office of the State Attorney, 415 North Orange Avenue, Orlando, Florida 32801, Division62@sao9.org / PCF@sao9.org; and the Honorable Andrew Cameron, 425 North Orange Avenue, Orlando, Florida 32801, ctjanbl@ocnjcc.org.

Judicial Assistant