



Supreme Court of Florida

Office of the Clerk
500 South Duval Street
Tallahassee, Florida 32399-1927

JOHN A. TOMASINO
CLERK
MARK CLAYTON
CHIEF DEPUTY CLERK
JULIA BREEDING
STAFF ATTORNEY

PHONE NUMBER: (850) 488-0125
www.floridasupremecourt.org

September 8, 2022

The Florida Bar News Editor
The Florida Bar
651 East Jefferson Street
Tallahassee, Florida 32399-2300

*In Re: Amendments to Florida Rule of Criminal Procedure 3.191
and Florida Rule of Appellate Procedure 9.140, Case No.
SC22-1123*

Dear Editor:

I have provided you with a copy of the proposed Rules in the above case. Please publish said Rules in the October 1, 2022, Bar News. Please publish a statement that the Court has placed the proposed Rules on the Internet at location:

<http://onlinedocketssc.flcourts.org/>

Any comments should be filed with the Supreme Court on or before October 31, 2022. If filed by an attorney in good standing with The Florida Bar, the comment must be electronically filed via the Florida Courts E-Filing Portal (Portal) in accordance with *In re Electronic Filing in the Supreme Court of Florida via the Florida*

Courts E-Filing Portal, Fla. Admin. Order No. AOSC13-7 (Feb. 18, 2013). If filed by a nonlawyer or a lawyer not licensed to practice in Florida, the comment may be, but is not required to be, filed via the Portal. Any person unable to submit a comment electronically must mail or hand-deliver the originally signed comment to the Florida Supreme Court, Office of the Clerk, 500 South Duval Street, Tallahassee, Florida 32399-1927; no additional copies are required or will be accepted.

Thank you for your cooperation in this matter.

Most cordially,



John A. Tomasino

JAT/so

Enclosure

cc: Hon. Renata S. Francis, Supreme Court Justice Liaison
Diane West, Director of Central Staff, Florida Supreme Court
Chief Judges of the District Courts of Appeal
Clerks of the District Courts of Appeal
Chief Judges of the Judicial Circuits
Clerks of the Judicial Circuits
Gary S. Lesser, President, The Florida Bar
F. Scott Westheimer, President-elect, The Florida Bar
Joshua E. Doyle, Executive Director, The Florida Bar
Mikalla Andies Davis, Bar Liaison, The Florida Bar
Heather Savage Telfer, Bar Liaison, The Florida Bar
Andrew D. Manko, Chair, Appellate Court Rules Committee
Cynthia Cohen, Chair, Criminal Procedure Rules Committee

The Florida Supreme Court, on its own motion in Case No. SC22-1123, is considering amendments to Florida Rule of Criminal Procedure 3.191 (Speedy Trial) and Florida Rule of Appellate Procedure 9.140 (Appeal Proceedings in Criminal Cases). Among other proposals, these amendments would alter the current speedy trial rule such that the State will always have a recapture period upon the filing of a valid notice of expiration of speedy trial. The Court expresses its appreciation to members of the workgroup that facilitated these proposals: Larry Basford (State Attorney, 14th Judicial Circuit), Mikalla Davis (Attorney Liaison, The Florida Bar), Judge Angela Dempsey (past Chair, Criminal Procedure Rules Committee), Jude M. Faccidomo (past President, Florida Association of Criminal Defense Attorneys), Amira Fox (State Attorney, 20th Judicial Circuit), Carey Haughwout (Public Defender, 15th Judicial Circuit), Arthur I. Jacobs (General Counsel, Florida Prosecuting Attorneys Association), Warren Lindsey (past President, Central Florida Association of Criminal Defense Lawyers), Julie O’Kane (former judge), Bart Schneider (OSCA Attorney), and Robert Wesley (Public Defender, 9th Judicial Circuit). While the workgroup neither voted on the proposal nor approved a final version, their insights and diligent consideration of the issues involved in addressing constitutional concerns regarding the current rule in the best manner possible were invaluable.

The Court invites members of the judiciary, as well as the rules committees and other interested persons to comment on the proposed amendments, which are reproduced in full below and online at <https://www.floridasupremecourt.org/Case-Information/Rules-Cases-Proposed-Amendments>. All comments must be filed with the Court on or before October 31, 2022, as well as a separate request for oral argument if the person filing the comment wishes to participate in oral argument, which may be scheduled in this case. If filed by an attorney in good standing with The Florida Bar, the comment must be electronically filed via the Florida Courts E-Filing Portal (Portal). If filed by a nonlawyer or a lawyer not licensed to practice in Florida, the comment may be, but is not required to be, filed via the Portal. Any person unable to submit a comment electronically must mail or hand-deliver the originally signed comment to the Florida Supreme Court, Office of

the Clerk, 500 South Duval Street, Tallahassee, Florida 32399-1927.

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO FLORIDA RULE OF CRIMINAL PROCEDURE 3.191 AND FLORIDA RULE OF APPELLATE PROCEDURE 9.140, CASE NO. SC22-1123

RULE 3.191. SPEEDY TRIAL FOR THE ACCUSED

(a) Speedy Trial without Demand. Except as otherwise provided by this rule, and ~~subject to the limitations imposed under subdivisions (e) and (f),~~ every person charged with a crime ~~shall~~must be brought to trial within 90 days of arrest if the crime charged is a misdemeanor, or within 175 days of arrest if the crime charged is a felony. If a formal charge has not been filed or if trial is not commenced within these time periods, the defendant shall be entitled to the appropriate remedy as set forth in subdivision (p) the state is entitled to the recapture period in subdivision (p) once the defendant files a notice of expiration of speedy trial time in accordance with subdivision (h). ~~The time periods established by this subdivision shall commence when the person is taken into custody as defined under subdivision (d). A person charged with a crime is entitled to the benefits of this rule whether the person is in custody in a jail or correctional institution of this state or a political subdivision thereof or is at liberty on bail or recognizance or other pretrial release condition. This subdivision shall cease to~~does not apply whenever a person if the defendant files a valid demand for speedy trial under subdivision (b) or is responsible for delaying the trial within the 90-day or 175-day time periods.

(b) Speedy Trial upon Demand. Except as otherwise provided by this rule, and ~~subject to the limitations imposed under subdivisions (e) and (g),~~ every person charged with a crime by ~~indictment or information shall have the right to~~if a formal charging document has been filed and has not been nolle prossed or dismissed, a defendant may demand a speedy trial within 60 days, by filing with the court a separate pleading entitled "Demand for

Speedy Trial,” providing a copy by electronic mail or hand-delivery to the assigned judge, and serving a copy on the prosecuting authority.

(1) No later than 5 days from the filing of a demand for speedy trial, the court ~~shall~~must hold a calendar call, with notice to all parties, for the express purposes of announcing in open court receipt of the demand and of setting the case for trial.

(2) At the calendar call, the court ~~shall~~must set the case for trial to commence at a date no less than 5 days nor more than 45 days from the date of the calendar call.

(3) [No changes]

(4) ~~If the defendant has not been brought to trial is not commenced~~ within 50 days of the filing of the demand, the defendant ~~shall have the right to the appropriate remedy as set forth in subdivision (p)~~may file a notice of expiration of speedy trial time in accordance with subdivision (h) which entitles the state to the recapture period in subdivision (p).

(c) [No changes]

(d) Custody. ~~For purposes of this rule, a person is taken into custody:~~

~~(1) when the person is arrested as a result of the conduct or criminal episode that gave rise to the crime charged; or~~

~~(2) when the person is served with a notice to appear in lieu of physical arrest.~~**Arrest.** For purposes of this rule, arrest means:

(1) when a person is taken into custody as a result of the conduct or criminal episode that gave rise to the crime charged, and for the purpose of being held to answer in court from criminal charges arising from that conduct or criminal episode; or

(2) when, in lieu of being taken into custody, the person is served with a notice to appear or summons that requires the defendant to appear in court at a specified date and time.

(e) Prisoners outside Jurisdiction. A person who is in federal custody, or incarcerated in a jail or correctional institution outside the jurisdiction of this state or a subdivision thereof, or in custody in another county in Florida based on actively pending charges in that other county, and who is charged with a crime by indictment or information issued or filed under the laws of this state, is not entitled to the benefit of this rule until:

(1) that person returns or is returned to the jurisdiction of the court within which the Florida charge is pending; and

(2) and until written notice of the person's return is filed with the court and served on the prosecutor prosecuting authority.

For these persons, the time period under subdivision (a) commences on the date the last act required under this subdivision occurs. ~~For these persons and~~ the time period under subdivision (b) commences when the demand is filed ~~so long as~~ if the acts required under this subdivision occur before the filing of the demand. If the acts required under this subdivision do not precede the filing of the demand, the demand is invalid and ~~shall~~ must be stricken upon motion of the prosecuting attorney. ~~Nothing in this rule shall affect a prisoner's right to speedy trial under law.~~

(f) Consolidation of Felony and Misdemeanor. When a felony and a misdemeanor are consolidated for disposition in circuit court, the misdemeanor ~~shall be~~ is governed by the ~~same~~ time period applicable to the felony.

(g) Demand for Speedy Trial; Accused Is Bound. A demand for speedy trial binds the accused ~~and the state.~~ No demand for speedy trial ~~shall~~ may not be filed or served unless the accused has a bona fide desire to obtain a trial sooner than otherwise might be provided. A demand for speedy trial shall be

considered a pleading that the accused ~~is available for trial~~, has diligently investigated the case, and is available and fully prepared ~~or will be prepared~~ for trial within 5 days. A demand for speedy trial filed by an accused who has not diligently investigated the case or who is not timely prepared for trial ~~shall~~must be stricken as invalid on motion of the prosecuting attorney. A demand for speedy trial may not be withdrawn by the accused except on order of the court, with consent of the state or on good cause shown. Good cause for continuances or delay on behalf of the accused thereafter ~~shall~~do not include non-readiness for trial, except as to matters that may arise after the demand for speedy trial ~~is~~are filed and that reasonably could not have been anticipated by the accused or counsel for the accused. A person who has demanded speedy trial, who thereafter is not prepared for trial, is not entitled to continuance or delay except as provided in this rule.

(h) Notice of Expiration of Time for Speedy Trial; When Timely; Service. A notice of expiration of speedy trial time ~~shall~~be timely if filed ~~and served~~ after the expiration of the periods of time for trial provided in this rule. A notice of expiration of speedy trial time must be served on the prosecuting authority with a copy provided by electronic mail or hand-delivery, or by mail delivery for pro se defendants, to the assigned judge. ~~However, a~~A notice of expiration of speedy trial time filed before expiration of the period of time for trial or that was not served on the prosecuting authority is invalid and ~~shall~~must be stricken on motion of the prosecuting attorney.

(i) When Time May Be Extended. The 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:

(1)-(3) [No changes]

(4) written or recorded order of the court for a period of reasonable and necessary delay resulting from proceedings including but not limited to an examination and hearing to determine the mental competency or physical ability of the defendant to stand trial, for hearings on pretrial motions, for

appeals by the state, for DNA testing ordered on the defendant's behalf upon defendant's motion specifying the physical evidence to be tested pursuant to section 925.12(2), Florida Statutes, and for trial of other pending criminal charges against the accused; or

(5) administrative order issued by the chief justice, under Florida Rule of General Practice and Judicial Administration 2.205(a)(2)(B)(iv) or (v), ~~suspending the speedy trial procedures as stated therein.~~

(j) ~~Delay and Continuances; Effect on Motion.~~ ~~If trial of the accused does not commence within the periods of time established by this rule, 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;~~

~~(2) the failure to hold trial is attributable to the accused, a codefendant in the same trial, or their counsel;~~

~~(3) the accused was unavailable for trial under subdivision (k); or~~

~~(4) the demand referred to in subdivision (g) is invalid~~

~~If the court finds that discharge is not appropriate for reasons under subdivisions (j)(2), (j)(3), or (j)(4), the pending motion for discharge shall be denied, provided, however, that trial shall be scheduled and commence within 90 days of a written or recorded order of denial.~~**Amendments.** No provision of this rule prohibits an amendment to a pending charging document prior to a dismissal granted under this rule. An amendment may include the addition of one or more counts, even if those counts were added after the expiration of the time periods in subdivision (a) or during the time periods in subdivisions (b), (m), or (p).

(k) ~~A~~Unavailability for Trial. A person is unavailable for trial if the person or the person's counsel fails to attend a

proceeding at which either's presence is required by these rules, or the person or counsel is not ready for trial on the date trial is scheduled. ~~A person who has not been available for trial during the term provided for in this rule is not entitled to be discharged. No presumption of nonavailability attaches, but if the state objects to discharge and presents any evidence tending to show nonavailability, the accused must establish, by competent proof, availability during the term.~~

(l) Exceptional Circumstances. ~~As permitted by subdivision (i) of this rule, t~~The court may order an extension of any of the time periods provided under this rule when exceptional circumstances ~~are shown to exist~~. Exceptional circumstances may not include general congestion of the court's docket, lack of diligent preparation, failure to obtain available witnesses, or other avoidable or foreseeable delays. Exceptional circumstances are those that, as a matter of substantial justice to the accused or the state or both, require an order by the court. These circumstances include but are not limited to:

(1) [No changes]

(2) a showing by the state that the case is so unusual and/or so complex, ~~because of the number of defendants or the nature of the prosecution or otherwise~~, that it is unreasonable to expect adequate investigation or preparation within the periods of time established by this rule;

(3)-(6) [No changes]

(7) a showing by the state that it has a good faith belief additional evidence is forthcoming that would allow the state to file charges.

(m) Effect of Mistrial; Appeal; Order of New Trial. A person who is to be tried again or whose trial has been delayed by an appeal by the state or the defendant ~~shall~~must be brought to trial within 90 days from the date of declaration of a mistrial by the trial court, the date of an order by the trial court granting a new trial, the date of an order by the trial court granting a motion in arrest of

judgment, or the date of receipt by the trial court of a mandate, order, or notice of whatever form from a reviewing court that makes possible a new trial for the defendant, whichever is last in time. If a defendant is not brought to trial within the prescribed time periods, the defendant ~~shall be entitled to the appropriate remedy as set forth in subdivision (p)~~ may file a notice of expiration of speedy trial time in accordance with subdivision (h) which entitles the state to the recapture period in subdivision (p).

(n) Discharge from Crime; Dismissal With and Without Prejudice; Effect. ~~Discharge~~ A dismissal with prejudice from a crime under subdivision (p)(4) this rule shall operate to bars prosecution of the crime charged and of all other crimes on which trial has not commenced nor conviction obtained nor adjudication withheld and that were or might have been charged as a result of the same conduct or criminal episode as a lesser degree or lesser included offense. Absent a bar such as the statute of limitations or a constitutional speedy trial violation, a dismissal without prejudice under subdivision (p)(4) does not bar later prosecution for any crime that was charged or that might have been charged as a result of the same conduct or criminal episode in the case dismissed.

(o) Nolle Prosequi; Effect. ~~The intent and effect of this rule shall not be avoided by the state entering a nolle prosequi to a crime charged and by prosecuting a new crime grounded on the same conduct or criminal episode or otherwise by prosecuting new and different charges based on the same conduct or criminal episode, whether or not the pending charge is suspended, continued, or is the subject of entry of a nolle prosequi.~~ If the state filed a nolle prosequi before the start of the recapture period in subdivision (p), a defendant who seeks an order of dismissal under this rule must first file a notice of expiration of speedy trial time in accordance with subdivision (h) and seek the remedy provided in subdivision (p)(2). If the state filed a nolle prosequi after the start of the recapture period, a defendant who seeks an order of dismissal under this rule must file a motion to dismiss after expiration of the recapture period, unless the state agreed to an order of dismissal before the recapture period expired. The clerk shall accept and treat such pleadings as filed in an active case. This subdivision does not

authorize the defendant to any remedy other than the remedy in subdivision (p).

~~(p) Remedy for Failure to Try Defendant within the Specified Time; Recapture Window Period After Notice of Expiration Filed; Motion to Dismiss; Remedy for Failure to Commence Trial Within Recapture Window Period.~~

~~(1) No remedy shall be granted to any defendant under this rule until the court has made the required inquiry under subdivision (j).~~

~~(2) — At any time after the expiration of the prescribed time period, the defendant may file a separate pleading entitled “Notice of Expiration of Speedy Trial Time,” and serve a copy on the prosecuting authority.~~

~~(3) No later than 5 days from the date of the filing of a notice of expiration of speedy trial time, the court shall must hold a hearing on the notice and set the trial no later than 30 days from the date of the hearing unless the court finds that one of the reasons set forth in subdivision (j) exists, shall order that the defendant be brought to trial within 10 days strikes the notice or the prosecuting authority and the defendant stipulate otherwise and the court agrees to the stipulation. The court must consider the availability of the witnesses and the attorneys when determining the date for commencement of trial.~~

~~(2) A defendant not brought to trial within the 1030- day period in subdivision (p)(1) through no fault of the defendant, on motion of the defendant or the court, shall be forever discharged from the crime may file a motion to dismiss. The motion to dismiss must be served on the prosecuting authority the same day the motion is filed. The state must file a response to the defendant’s motion within 5 days. Absent a stipulation, the court must hold a hearing on the defendant’s motion within 10 days of the state’s response.~~

(3) A motion to dismiss filed pursuant to subdivision (p)(2) must be granted unless:

(A) the period of time for commencement of trial, including any extension of time granted pursuant to subsection (l), did not expire;

(B) the failure to hold trial was attributable to the accused, a codefendant in the same trial, or their counsel;

(C) the accused was unavailable for trial under subdivision (k). If the state presents evidence showing the defendant's nonavailability, the defendant must prove availability by a preponderance of the evidence; or

(D) the notice of expiration of speedy trial time was invalid.

(4) If the defendant had been arrested for or charged with murder or any manslaughter, an order of dismissal for failure to commence trial within the recapture period for any crime based on the same conduct or criminal episode must be without prejudice. All other orders of dismissal issued pursuant to subdivision (p) must be with prejudice.

Committee Notes

[No changes]

Court Commentary

2022 Amendment. The amendments were intended to assure the procedural speedy trial rule is not unconstitutionally interfering with substantive law by always giving the State an opportunity to bring an accused to trial during a recapture period. The amendments also provide for a dismissal of the case without prejudice if the defendant was not brought to trial within a 30-day recapture period in the limited circumstance where a defendant was arrested for or charged with murder or any manslaughter.

(a) The amendment required a defendant who seeks a dismissal to file a notice of expiration of speedy trial time if the state did not file a formal charging document 90 days (misdemeanor) or 175 days (felony) after arrest. Instead of automatic discharge, as discussed in *State v. Williams*, 791 So. 2d 1088 (Fla. 2001), defendants must file a notice of expiration which provides the state with a recapture period. Also, if the state failed to notify a defendant within 90 or 175 days of arrest that charges had been filed, such as what had occurred in *Born-Suniaga v. State*, 256 So. 3d 783 (Fla. 2018), the amendment required the defendant to file a notice of expiration, which provides the state with a recapture period. “Misdemeanor” as used in this rule is intended to include traffic and ordinance violations that are prosecuted criminally in county court.

(b) The amendment corrected a technical error by allowing defendants who are charged by a document other than an indictment or information to file a demand for speedy trial. Also, the amendment required a copy of a demand for speedy trial to be provided to the assigned judge by electronic mail or hand-delivery.

(d) The amendment changed the heading of the subdivision from “custody” to “arrest” and defined “arrest” consistent with *Davis v. State*, 286 So. 3d 170 (Fla. 2019).

(e) The amendment limited certain prisoners from asserting rule-based speedy trial rights when they were not readily available for trial because they were located outside of the jurisdiction where a judge could provide them a speedy trial.

(h) The amendment required a notice of expiration to be served on the state with a copy provided to the assigned judge by electronic mail or hand-delivery.

(j) The amendment deleted reasons for a motion for discharge to be denied and relocated those reasons to subdivision (p). Instead, subdivision (j) contained language allowing the state to amend a pending charging document at any time before a motion to dismiss was granted. The amendment assures that the

procedural rule does not serve as an unconstitutional substantive bar to filing of charges within the statute of limitations period. See *State v. Anderson*, 537 So. 2d 1373, 1375 (Fla. 1989) (holding that “the state may substantively amend an information during trial, even over the objection of the defendant, unless there is a showing of prejudice to the substantial rights of the defendant.”).

(k) The amendment relocated the language about a defendant proving availability to subdivision (p).

(l) A new exception was added to cover the circumstance where the state had a good faith belief that additional evidence was forthcoming that would allow the state to file charges.

(m) The amendment made it explicit that if trial did not commence within 90 days of the defendant obtaining a new trial, the defendant had to file a notice of expiration of speedy trial time, which would trigger the state’s recapture period.

(n) The amendment made it explicit that not bringing the defendant to trial within the recapture period would lead to a dismissal upon motion. However, the court’s dismissal could be with or without prejudice for the state to file or refile depending on whether the defendant had been arrested for or charged with a murder or any manslaughter.

(o) The amendment explained the steps to be taken by a defendant who seeks dismissal under this rule in cases where the state filed a nolle prosequi. Subdivision (o), in combination with the amendment to subdivision (p), made it clear that if the state filed a nolle prosequi before the recapture period began, a defendant who seeks an order of dismissal under the rule must take affirmative action by filing a notice of expiration of speedy trial time, thereby giving the state an opportunity to refile charges before the recapture period expired. If the nolle prosequi was filed during the recapture period, a defendant who seeks an order of dismissal under this rule must file a motion to dismiss after expiration of the recapture period, unless the state agreed to the dismissal before the

recapture period expired. The direction to the clerk to accept certain pleadings after the filing of a nolle prosequi is based on *Reed v. State*, 649 So. 2d 227 (Fla. 1995).

(p) The amendment changed the length of the recapture period from 10 days to 30 days. It also allowed a defendant to move for dismissal if not brought to trial during the recapture period. The amendment required the judge to dismiss the case without prejudice for the state to file or refile in the limited circumstance where the defendant had been arrested for or charged with a murder or any manslaughter. Otherwise, the dismissal of the case is required to be with prejudice.

RULE 9.140. APPEAL PROCEEDINGS IN CRIMINAL CASES

(a) [No changes]

(b) Appeals by Defendant.

(1) Appeals Permitted. A defendant may appeal:

(A)-(F) [No changes]

(G) as otherwise provided by general law an order granting a dismissal without prejudice pursuant to Fla. R. Crim. P. 3.191(p).

(H) as otherwise provided by general law.

(2)-(4) [No changes]

(c) Appeals by the State.

(1) Appeals Permitted. The state may appeal an order:

(A)-(E) [No changes]

(F) discharging a defendant dismissing a case under Florida Rule of Criminal Procedure 3.191;

(G)-(P) [No changes]

(2) [No changes]

(d)-(i) [No changes]

Committee Notes

[No changes]

Court Commentary

1996. [No changes]

2022. Rules 9.140(b)(1)(G) and 9.140(c)(1)(F) were amended to allow both the state and defendant to appeal a trial judge's decision on a motion to dismiss pursuant to Fla. R. Crim. P. 3.191.