FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D20-2752

DAVID PULLIAM,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Petition for Writ of Prohibition—Original Jurisdiction.

December 14, 2020

WINOKUR, J.

By petition for writ of prohibition, David Pulliam challenges the denial of his motion for discharge. For the reasons discussed below, we deny the petition.

Pulliam alleged that he was arrested in November 2019 for offenses arising on June 12, 2019.[1] On December 23, 2019, the State charged Pulliam with two counts of driving under the

[1] Pulliam alleged in his motion for discharge that the arrest date was November 29, 2019, but alleged in this petition that the arrest occurred November 26. The appendix does not settle this discrepancy. Either way, it is undisputed that the amended information was filed more than 175 days after arrest.

influence with serious bodily injury and one count of driving while license suspended or revoked. One of the victims died from injuries suffered in the crash on June 5, 2020. On June 12, 2020, after 175 days had passed since the arrest occurred, the State amended the information and changed one of the counts of driving under the influence with serious bodily injury to a charge of driving under the influence (DUI) manslaughter.

Pulliam thereafter moved for a discharge. He argued that he did not waive the time limits under Florida Rule of Criminal Procedure 3.191 (the speedy-trial rule) and that the amended information charging a new offense should be dismissed because it was filed after the applicable time period had expired. He asserted that the Florida Supreme Court administrative orders suspending the speedy-trial rule did not suspend the deadlines for timely filing an information. Pulliam asserted that, but for the outbreak of COVID-19 and the inability to exercise his right to a jury trial due to public health concerns, his case would have been tried and disposed of prior to the victim's death. Pulliam argued that it was prejudicial and fundamentally unfair for him to face a greater loss of his liberty by allowing the State to enhance his charges after the expiration of the speedy-trial time period.

Following a hearing, the trial court denied the motion for discharge. The court stated that the Chief Justice of the Florida Supreme Court had suspended the speedy-trial time periods. The applicable administrative order did not indicate that only certain portions of the speedy-trial rule should be suspended or that the rule should remain in effect for any particular consideration. Therefore, as a matter of law and procedure, the court ruled that Rule 3.191 was generally suspended.

Pulliam now seeks a writ to prohibit the trial court from proceeding on the charge of DUI manslaughter. Prohibition is an appropriate remedy to prohibit trial court proceedings where the State has violated the speedy-trial rule. *Sherrod v. Franza*, 427 So. 2d 161, 163 (Fla. 1983). A trial court lacks jurisdiction to try a defendant when he is entitled to discharge under the speedy-trial rule. *Id.*

The State argues that the amendment to the information was permissible even if it may have exceeded the time limits of the

speedy-trial rule because the administrative orders suspended all of the speedy-trial rule time periods. Pulliam responds that "jury trial would have already transpired had it not been for the pandemic and the [administrative orders] and, as such, this additional charge would not have been filed."[2] We do not address whether the Florida Supreme Court's administrative orders permitted the State to file an amendment to the information that otherwise would have been unauthorized, because we find that the amendment would have been permitted irrespective of the administrative orders.

Rule 3.191(a) provides that every person charged with a felony must be brought to trial within 175 days of arrest. This time period applies to all crimes arising out of the same criminal conduct or episode. *See, e.g.*, *State v. Pereira*, 160 So. 3d 944, 948 (Fla. 5th DCA 2015). In *Pereira*, the court ruled that amended charges filed after the speedy-trial time period has expired, where the defendant has not previously waived the time period, may be dismissed if they arose in the same criminal episode as the original charges. *Id.*

However, this rule does not apply where the new offense was not available as a charge when a defendant is originally charged. *See State ex rel. Branch v. Wade*, 357 So. 2d 473, 475 (Fla. 1st DCA 1978). In *Branch*, this Court dismissed a petition for writ of prohibition to prevent the trial court from proceeding on a new charge of first-degree murder. *Id.* at 474. The defendant argued

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[2] It is not obvious that "trial would have already transpired" prior to the victim's death but for the administrative orders. Even without the administrative orders, the State could have delayed trial until Pulliam asserted his right to trial under the speedy-trial rule. Since he would not have had a right to file a notice of expiration of speedy-trial time—which would have entitled him to trial within 15 days—until late May, it seems likely that trial would not have occurred until at least June, after the victim's death on June 5. *See* Fla. R. Crim. P. 3.191(p)(2). Either way, it seems unlikely that one has a right under the speedy-trial rule to be free from criminal liability resulting from the death of a person killed in a crash allegedly caused by his intoxication, merely because the death did not occur quickly enough.

that the new offense violated the speedy-trial rule. *Id.* This Court noted that the charge of murder, although arising from the same criminal conduct as the original charge of attempted murder, could not have been charged at the time the original information was filed because the victim had not yet died. *Id.* at 475. The speedy-trial time could not begin to run until the defendant had been charged with a crime. *Id.*

Similarly, in *State v. Kirkland,* 401 So. 2d 1335 (Fla. 1981), the Florida Supreme Court held that double jeopardy did not prohibit the State from charging first-degree murder even though the defendant had pled nolo contendere to a petition for juvenile delinquency where the victim died 11 days after the defendant pled. *Id.* at 1336. When "a new fact supervenes, for which the defendant is responsible, which changes the character of the offense," a new and distinct crime results. *Id.* at 1337.[3]

Thus, the State may charge Pulliam with DUI manslaughter even if it was outside of the speedy-trial time period for the original offense. The fact of the victim's death arose after the expiration of the original time period resulted in a completely new offense—DUI manslaughter—with which the State could charge Pulliam. The new offense of DUI manslaughter started a new speedy-trial time period. The speedy-trial time period for the original offense of DUI with great bodily harm did not carry over to the new offense of DUI manslaughter. At the time of the original offense, the victim still lived and the charge of DUI manslaughter, although arising from the same events, was not available as a charge against Pulliam; DUI manslaughter required an element that had not occurred yet. *See Branch,* 357 So. 2d at 475.

Pulliam cites *State v. Clifton*, 905 So. 2d 172 (Fla. 5th DCA 2005), in support of his argument that the State was prohibited from filing the new charge of DUI manslaughter in an amended

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[3] Pulliam's implication that the State would have been barred from prosecuting him for DUI manslaughter if he had already been convicted of DUI serious bodily injury is belied by *Kirkland*, where the Court permitted a murder charge even though the defendant had already been adjudicated delinquent on a lesser charge involving the same incident.

information because the speedy-trial time had expired. In that case, Clifton set fire to his own house; the fire spread to four other structures and a vehicle. *Id.* at 174. The State timely filed an information charging him with four counts of arson for the vehicle and three of the structures. *Id.* After the speedy-trial time expired, the State amended the information to include a new count of arson related to the remaining structure. *Id.* Clifton moved to dismiss the amended information, arguing that the State was precluded from filing the amended information because the speedy-trial period had expired. *Id.* The State conceded to the dismissal of the new charge but not the original charges. *Id.* at 174–75. But the trial court dismissed all of the counts. *Id.* at 175. The District Court affirmed the dismissal of the new count because that count involved an offense that was part of the same criminal act as the original charges and Clifton never waived his speedy trial rights. *Id.* at 179. It reversed the dismissal of the original charges. *Id.*

Clifton is distinguishable. In *Clifton*, the new charge of arson for the remaining structure was available as a charge at the time the State filed the original charges. No element of the offense arose later. Here, the new charge of DUI manslaughter could not have been charged in the original information. The offense did not arise until the victim died. As the remaining element for the offense came into existence at a later date, it constituted a new episode and triggered a new speedy-trial time period. As such, Pulliam has not been prejudiced by the filing of the new charge.

Accordingly, we deny the petition for writ of prohibition.

DENIED.

ROBERTS and BILBREY, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Charlie Cofer, Public Defender, and Elizabeth Hogan Webb, Assistant Public Defender, Jacksonville, for Petitioner.

Ashley Moody, Attorney General, and Adam B. Wilson, Assistant Attorney General, Tallahassee, for Respondent.