

**IN THE CIRCUIT COURT FOR THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

KEBLER TEJADA,

Petitioner,

v.

THE STATE OF FLORIDA,

Respondent,

CASE NO.:

LT. CASE NO.: **B-12-008265**

PETITION FOR WRIT OF PROHIBITION

Respectfully Submitted by: Kionne L. McGhee Law Group, PLLC.
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TABLE OF CONTENTS

Table of Authorities.....	iii
Statement of the Case and Facts.....	1
Statement of Jurisdiction... ..	2
Statement of the Issue.....	2
Nature of Relief Sought.....	2
Summary of the Argument.....	3
Argument.....	4

MR. TEJADA IS ENTITLED TO DISCHARGE BECAUSE THE LOWER COURT LACKS JURISDICTION TO HEAR THE MISDEMEANOR ALLEGATIONS AGAINST HIM BECAUSE THE STATE'S FILING OF LATE INFORMATION EFFECTIVELY NULLIFIED THE PREVIOUS CHARGING DOCUMENTS AND THE COURT IS WITHOUT A VALID CHARGING DOCUMENT THROUGH WHICH TO EXERCISE JURISDICTION.

A. THE FILING OF AN AMENDED INFORMATION EFFECTS A NOLLE PROSEQUI ON A PREVIOUSLY FILED CHARGING DOCUMENT.

B. CHARGES IN AN INFORMATION FILED AFTER THE DEFENDANT'S SPEEDY TRIAL RIGHTS HAVE RUN ARE SUBJECT TO DISMISSAL ON MOTION BY THE DEFENDANT.

C. THE COUNTY COURT LACKS SUBJECT MATTER JURISDICTION TO PROSECUTE AN OFFENSE WITHOUT A VALID CHARGING DOCUMENT.

Conclusion.....	9
Certificate of Compliance.....	10
Certificate of Service.....	11

TABLE OF AUTHORITIES

	Page(s)
STATE CASES	
<i>Lowe v. Price</i> , 437 So. 2d 142 (Fla. 1983).....	2
<i>Reed v. State</i> , 649 So. 2d 227 (Fla. 1995).....	6, 7, 8
<i>State v. Anderson</i> , 537 So. 2d 1373 (Fla. 1989).....	4, 5, 6, 8, 9
<i>State v. Leslie</i> , 699 So. 2d 832 (Fla. 3d DCA 1987).....	5
OTHER AUTHORITIES	
Fla. Const. Art. I, § 15	4, 8
Fla. R. Crim. P. 3.140	4
Fla. R. Crim. P. 3.191	5

STATEMENT OF THE CASE AND FACTS

Statement of Facts

Petitioner Mr. Tejada was provided a notice to appear on February 8th, 2012 on misdemeanor charges of animal cruelty. [Exhibit A]. The case was filed by the State on February 15th, 2012 in County Court. [Exhibit A]. On April 11th, 2012 the State requested a continuance from the Court. On April 19th, 2012 the Court granted the State's continuance and trial was scheduled for May 21st, 2012. On May 11th, ten days before trial, the State filed an information superseding all previous counts and alleging just one count of animal cruelty. [Exhibit B]. Ninety three days had passed since Mr. Tejada's notice to appear had issued at the time that the State filed its information.

Proceedings Below

Mr. Tejada moved the lower court to be discharged on the grounds that the court lacked jurisdiction because the State's filing of its information on May 11th effectively nolle prossed the previous charging document. Since the information was filed beyond the speedy trial period, Mr. Tejada was entitled to a dismissal of the charge in it, and the court being left with no valid charging document was divested of its jurisdiction to hear the matter. The County Court denied Mr. Tejada's motion. Mr. Tejada petitions this

court to prohibit the County Court, presided over by the Honorable Judge Ortiz, from proceeding with this matter because the County court lacks jurisdiction to hear allegations that are now not supported by a valid charging document.

STATEMENT OF JURISDICTION

Jurisdiction is proper, pursuant to Fla. R. App. P. 9.100. The Defendant does not have an alternate means to obtain a remedy other than to petition this court for a writ of prohibition. Fla. R. App. P. 9.140. Furthermore, a petition for a writ of prohibition is the appropriate remedy to correct a speedy trial violation. *Lowe v. Price*, 437 So. 2d 142 (Fla. 1983).

STATEMENT OF THE ISSUE

Whether a criminal defendant is entitled to discharge when 1) the State's superseding information vitiated the original charging document 2) the superseding information was outside the speedy trial window and 3) the untimely information was subject to dismissal, leaving the court without a valid charging document through which to exercise jurisdiction.

NATURE OF RELIEF SOUGHT

The nature of relief sought by this petition is a writ of prohibition restraining the Honorable Judge Ortiz and the County Court from continuing

to exercise jurisdiction over case number B-12-008265 and to order the lower court to dismiss Mr. Tejada for lack of personal jurisdiction over this matter.

SUMMARY OF THE ARGUMENT

This court should grant the petitioner's petition for a writ of prohibition, because the State's untimely information had the effect of nolle prossing the previously filed charging document and upon dismissal of the information the County court is divested of its jurisdiction to hear the matter.

Florida law is clear that a criminal defendant properly charged with a misdemeanor must be brought to trial within 90 days of being arrested. In determining whether the defendant is properly charged, Florida courts determine whether there is a valid charging document through which to attach the jurisdiction of the court. A superseding information has the effect of nolle prossing a previously filed charging document. And such an information is subject to challenge if it is filed outside of the speedy trial period because the State is divested of authority to bring charges arising out of the same sequence of events for which a defendant has been arrested after the speedy trial period has ran. This court must find that by filing an information the State effectively nolle prossed the original charging

document, and because the information was filed after the speedy trial period had ran, the Defendant's dismissal of that information results in the court having no valid charging document through which to exercise jurisdiction over this matter.

ARGUMENT

MR. TEJADA IS ENTITLED TO DISCHARGE BECAUSE THE LOWER COURT LACKS JURISDICTION TO HEAR THE MISDEMEANOR ALLEGATION AGAINST HIM BECAUSE THE STATE'S FILLING OF LATE INFORMATION EFFECTIVELY NULLIFIED THE PREVIOUS CHARGING DOCUMENT AND THE COURT IS WITHOUT A VALID CHARGING DOCUMENT THROUGH WHICH TO EXERCISE JURISDICTION.

In Florida, all misdemeanor prosecutions must be carried out by either indictment, information, or by notice to appear issued and served pursuant to Fla. R. Crim. P. 3.125. Fla. R. Crim. P. 3.140. Jurisdiction to try an accused does not exist under article I, section 15 of the Florida Constitution unless there is an information, indictment or presentment filed by the State. *State v. Anderson*, 537 So. 2d 1373, 1374 (Fla. 1989). Furthermore, where the State files an amended information, the original information is vitiated and can no longer be the basis for the court's jurisdiction. *Id.* at 1375-6.

A criminal defendant facing misdemeanor charges has a right to be brought to trial within 90 days from arrest in accordance with Fla. R. Crim.

P. 3.191. And where the State brings charges outside of this speedy period, the defendant's discharge is mandated, and there is no recapture window. *State v. Leslie*, 699 So. 2d 832 (Fla. 3d DCA 1987) (Judge Shevin concurring).

**A. THE FILING OF THE STATE'S INFORMATION EFFECTS
A NOLLE PROSEQUI ON THE PREVIOUSLY FILED
CHARGING DOCUMENT.**

This Court should find that the filing of the State's information on May 11th, 2012, vitiated the “a-form” filed on February 2nd, 2012. It is well established law that an amended information vitiates the original charging document. *Anderson*, 537 So. 2d at 1375-6.

In *Anderson*, where the State amended the information and an agreement was later reached between the State and Defense counsel where the defendant was to be tried on the original information, the Court held that the original information was vitiated by the filing of the amended information. *Anderson*, 537 So. 2d at 1374. Nevertheless, the Court concluded that the lower court had not been divested of jurisdiction because the agreement constituted a valid amendment of the second information and therefore a viable charging document remained. *Id.* at 1377.

Like in *Anderson*, where the State's filing of an amended information vitiated the original information, the filing of an information in this case, vitiated the original charging document. Therefore this court must find that the information filed on May 11th, 2012 vitiated and superseded the charging document filed on February 15th, 2012.

B. THE CHARGES IN THE INFORMATION FILED AFTER THE DEFENDANT'S SPEEDY TRIAL WINDOW HAD RAN ARE SUBJECT TO DISMISSAL ON MOTION BY THE DEFENDANT.

This court should find that the charges in the information filed on May 11th, 2012, which are beyond the 90 day speedy trial window, are subject to dismissal on Defendant's motion. The Florida Supreme Court has held that the State cannot simply wait and let the speedy trial run before filing charges against a defendant. *Reed v. State*, 649 So. 2d 227, 229 (Fla. 1995). And where the State has a good reason why it is not ready to file charges against a defendant, the State's only remedy would be to file within the speedy window and seek an extension under the provisions of the speedy trial rules. *Id.*

In *Reed*, where the Defendant was charged within the speedy

window with two counts which the State later nolle prossed, and subsequently was charged with additional counts outside of the speedy window, the Court held that the State was not entitled to prosecute the additional counts because they were filed outside the speedy trial period. *Id.* In so holding, the court noted that the defendant's untimely charges had not previously been nolle prossed by the State. *Id.* The Court established precedent that there is no requirement that charges be previously nolle prossed before the State's refiling in order for the Defendant to be entitled to dismissal when they are filed outside the speedy trial window. *Id.*

This court should find that the charges in the May 11th, 2012 information are subject to dismissal upon a Defendant's motion to discharge because they were filed outside the speedy trial window. Here, as in *Reed*, this court must find that the charges are dismissable because the State filed the information charging one count after the speedy trial period had run. Similarly, as per the analysis in *Reed*, whether the particular charges had previously been nolle prossed is not relevant to this inquiry. Therefore, this court must find that the Defendant is entitled to dismiss the charges alleged in the May 11th,

2012 information.

C. THE COUNTY COURT LACKS SUBJECT MATTER JURISDICTION TO PROSECUTE AN OFFENSE WITHOUT A VALID CHARGING DOCUMENT.

This court should find that the county court lacks subject matter jurisdiction to hear the matter of the misdemeanor offenses because there is no valid charging document before the court. Jurisdiction to prosecute a criminal defendant “does not exist under article I, section 15 of the Florida Constitution unless there is an extant information.” *Anderson*, 537 So. 2d at 1374.

In *Anderson*, the Court confronted the question of whether an amendment to the information divested the court from jurisdiction so as to entitle the defendant to be dismissed for lack of subject matter jurisdiction. In that particular case, the court held that although an amendment to the information vitiated the original information, the court was not divested of jurisdiction because the parties agreed to move forward on the original information, which the court interpreted as the State performing an amendment to the amended information, and therefore there was still a viable charging document to give the court jurisdiction. *Anderson*, 537 So. 2d 1376.

Like in *Anderson*, in this case the amended information has vitiated the original charging document. Unlike *Anderson*, however, the amended information is subject to dismissal on the grounds that it was filed after the speedy trial period has run. Subsequently, the court has no viable charging document through which to exercise subject matter jurisdiction over this matter. Therefore, this court must find that the county court lacks subject matter jurisdiction over this matter and issue a writ prohibiting the court from further proceeding in this case.

CONCLUSION

Based on the fact that the amended information vitiated the original charging document, the original charging document is no longer a viable prosecutorial instrument so as to vest the county court with subject matter jurisdiction. Similarly, because the information filed in May 11th, 2012 was outside the speedy trial window, the Mr. Tejada is entitled to have the charges alleged therein dismissed. Consequently, because the county court would be left without a viable document by which to exercise subject matter jurisdiction over this case, the county court should discharge Mr. Tejada. This court should grant Mr. Tejada's writ of prohibition, and prohibit the

county court and the Honorable Judge Ortiz from further adjudicating this matter.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this Petition for Writ of Prohibition is printed in Times New Roman 14-point font, double-spaced, with margins no less than 1 inch and is composed of 2313 words.

On this 24th day of May, 2012

Kionne L. McGhee Law Group, PLLC.
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petition for a Writ of Prohibition was sent by U.S. Mail, postage prepaid; to the office of the State's Attorney for the 11th Judicial Circuit, 1350 N.W. 12 Avenue Miami, FL 33136.

On this 24th day of May, 2012.

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APPENDIX

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EXHIBIT A: Arrest Affidavit

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EXHIBIT B: Information