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Legal Bulletin

Legal Bulletin 88-05: State v. Hancock, 529 So.2d 1200 (Fla. 5th DCA 1988)

Summary

The Fifth District Court of Appeal held that dismissal of a traffic citation which was not filed with the clerk of the court within five days after issuance was improper. However, failure to file a citation within the five day time period constitutes official misconduct and may subject the arresting officer to disciplinary action.

Facts

Hancock was issued a uniform traffic citation charging the offense of driving while license is suspended. The arresting officer did not file the citation with the clerk of court until 17 days after it was issued. Section 316.650(3), Florida Statutes (1987), requires a citation to be filed with the clerk within five days after issuance. Hancock's attorney filed a motion to dismiss the citation because the officer failed to timely comply with the five day filing requirement. The county court denied the motion to dismiss, but the circuit court reversed, holding that the filing requirement was jurisdictional. The state, by petition for writ of certiorari, asked the Fifth District Court of Appeal to review the decision by the circuit court.

Issue

Is the five day filing requirement in section 316.650(3), Florida Statutes, mandatory and jurisdictional, such that the failure of the arresting officer to comply with the time period results in dismissal of the citation?

Discussion

The appellate court held that section 316.650(3) does not provide that the filing of the citation within five days is necessary to the prosecution of the defendant. The five day

requirement, although set forth as a procedural requirement, was not essential to the defendant's constitutional requirement of due process. Thus, the appellate court held that the motion to dismiss was properly denied by the county court and that the circuit court departed from the essential requirements of law in reversing the county court's order.

However, as the appellate court noted in its opinion, the failure of an officer to comply with the express provisions of section 316.650 constitutes official misconduct. In criminal cases, a delay in filing may prejudice the state's prosecution of the case as a result of the speedy trial rule; the speedy trial period would commence as soon as the citation was issued, regardless of when it was filed. Troopers, therefore, should file their citations with the clerk within the five day time period to avoid discipline by the Department and any speedy trial problems that may result from such a delay.

Troopers with questions concerning this legal bulletin should contact their local state attorney's office or the Office of General Counsel at (904) 488-1606, Suncom 278-1606.

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