

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CRIMINAL): AC
CASE NO.: 502017AP000005AXXXMB
L.T. NO.: 502014MM010242AXXXMB

RAFAEL CARMOEGA-PINERO,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

Opinion filed:

MAY 10 2017

Petition for Writ of Prohibition from County Court in and for Palm Beach County, Florida,
Judge Debra Moses Stevens.

For Appellant: Benjamin Eisenberg, Esq.
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For Appellee: Michael S. Del Sontro, Esq.
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PER CURIAM.

Petitioner, Rafael Carmoega-Pinero, seeks a writ of prohibition to prevent the State from proceeding with its prosecution where the applicable statute of limitations has expired.

Petitioner was charged with two counts of Violation of an Injunction for Protection against Domestic Violence. The dates of the alleged offenses were June 19, 2014, and June 20, 2014. Because the charged offenses were first-degree misdemeanors, the State had two years, until June

19, 2016, to commence the prosecution. *See* § 741.31(4)(a), Fla. Stat. (2014); § 775.15(2)(c), Fla. Stat. (2014); *Morelli v. State*, 198 So. 3d 997, 998 (Fla. 4th DCA 2016). While the Information was filed and the warrant was issued on July 15, 2014, Defendant was not arrested until August 31, 2016—outside of the two-year window. Therefore, the State carries the burden of demonstrating that either 1) the delay was reasonable because the State was diligent in its search for Defendant, or 2) the statute of limitations was tolled because Defendant was continuously absent from the State of Florida. § 775.15(5), Fla. Stat. (2014); *State v. Shamy*, 759 So. 2d 728 (Fla. 4th DCA 2000); *Bonel v. State*, 651 So. 2d 774 (Fla. 3d DCA 1995).

The evidence presented to the trial court does not support the finding that the State conducted a diligent search for Defendant and the State has failed to demonstrate that the delay in executing Defendant's arrest warrant was reasonable. *See Morelli v. State*, 198 So. 3d 997 (Fla. 4th DCA 2016); *State v. Mack*, 637 So. 2d 18 (Fla. 4th DCA 1994); *Norton v. State*, 173 So. 3d 1124 (Fla. 2d DCA 2015).

The State has also failed to meet the burden of demonstrating that Defendant was continuously absent from the state in order to toll the statute of limitations. *See State v. Sutton*, 784 So. 2d 1239, 1242 (Fla. 2d DCA 2001).

The Petition for Writ of Prohibition is GRANTED.

BURTON, JOHNSON, and CARACUZZO JJ., concur.

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RAFAEL CARMOEGA-PINERO,
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Opinion/Decision filed: **MAY 10 2017**

v.

Petition for Writ of Prohibition from County Court in
and for Palm Beach County, Florida;
Judge Debra Moses Stevens

STATE OF FLORIDA,
Respondent.

Petition filed: December 29, 2016

_____/_____
DATE OF PANEL: April 24, 2017

PANEL JUDGES: BURTON, JOHNSON, CARACUZZO

GRANTED/DENIED/OTHER: PETITION GRANTED

PER CURIAM OPINION/DECISION BY: PER CURIAM

DATE CONCURRING:	)	DISSENTING:	)	CONCURRING SPECIALLY:)
	)	With Opinion	)	With/Without Opinion)
<u>CBM 5/8/17</u>)	_____)	_____)
J. )	)	J. )	)	J.))
<u>Mur 5/8/17</u>)	_____)	_____)
J. )	)	J. )	)	J.))
<u>Cheryl Carcay</u>)	_____)	_____)
J. )	)	J. )	)	J.))
<u>5/8/17</u>)))