

County Criminal Court: CRIMINAL PROCEDURE – Speedy Trial. Petitioner filed a Petition for Writ of Prohibition, claiming that the speedy trial period expired without demand because the traffic citation that he was issued was insufficient to formally charge Petitioner. The Court found that, based on statute and case law interpretation, a UTC is a valid charging document. Petition for Writ of Prohibition denied. *Fielder v. State*, No. 15-CA-1508-ES (Fla. 6th Cir. App. Ct. Aug. 26, 2016).

NOT FINAL UNTIL TIME EXPIRES FOR REHEARING AND, IF FILED, DETERMINED

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR PASCO COUNTY
APPELLATE DIVISION**

ALBERT FIELDER,
Petitioner,

UCN: 512016CA001508CAAXES
Appeal No.: 16-CA-1508-CAAXES
Lower No: 2015-A34YWXET-ES

v.

STATE OF FLORIDA,
Respondent.

_____ /

Petition for Writ of Prohibition,

Honorable William Sestak,

Ty Trayner, Esq.,
for Petitioner,

Office of the State Attorney,
for Respondent.

ORDER AND OPINION

Petitioner filed a Petition for Writ of Prohibition in this Court to prohibit the trial court from proceeding in this matter. Petitioner claims the speedy trial period expired without demand because the traffic citation that he was issued was insufficient to formally charge Petitioner. The Court finds that that the uniform traffic citation (“UTC”) was sufficient to formally charge Petitioner. The Petition for Writ of Prohibition is therefore denied.

STATEMENT OF THE CASE AND FACTS

Petitioner was arrested for DUI on September 25, 2015, and was provided a uniform DUI traffic citation. Counsel for Petitioner entered a notice of appearance September 30, 2015, and submitted a request for pre-trial. Petitioner alleges his speedy trial period expired without demand on December 24, 2015, ninety days after his arrest, and that the citation was not filed of record by the Clerk of Court until December 29, 2015, ninety-five days after Petitioner's arrest. Petitioner was continuously available to the court during this period, having lived at the same address and worked at the same location since his arrest, and the alleged late filing was not due to the Petitioner or his defense counsel.

An arraignment was scheduled for January 21, 2016. Petitioner filed a motion to discharge defendant for speedy trial violation on January 6, 2016. At the January 21, 2016, hearing, the court heard argument on the motion and held arraignment. Petitioner's objection was preserved and defense counsel agreed not to set the case for trial within a 15-day recapture window. The trial court denied Petitioner's motion on January 22, 2016. The trial court relied on Rule 6.160, Traffic Court Rules, which provides that a "defendant shall be 'taken into custody' for the purpose of Rule 3.191 when the defendant is arrested, or when a traffic citation, notice to appear, summons, information or indictment is served on the defendant in lieu of arrest." The court found that although the citation was not filed of record with the clerk until December 29, 2015, Petitioner was "taken into custody" at the time of his arrest on September 25, 2015. The court further relied on Rule 6.165(a), which provides that "prosecutions for criminal traffic offenses by law enforcement officers shall be by uniform traffic citation as provided in section 316.650, Florida Statutes, or other applicable statutes, or by affidavit, information, or indictment as provided in the Florida Rules of Criminal Procedure." The court found that Petitioner was formally charged with DUI at the time of his arrest, on September 25, 2015, by the DUI citation (the charging document in the case) that was served upon him at the time of his arrest. Because the court found the citation to be the charging document and that it had been served on Petitioner when he was arrested, the court rejected Petitioner's argument that the 15-day "recapture window" was inapplicable. See *Doctor v. State*, 68 So. 3d 335 (Fla. 1st DCA 2011);

State v. Warren, 168 So. 3d 337 (Fla. 5th DCA 2015). The court found the State was entitled to the recapture provision pursuant to Fla. R. Crim. P. 3.191.

STANDARD OF REVIEW

“Prohibition is an appropriate remedy to prohibit trial court proceedings where an accused has been denied his right to a speedy trial and his motion for discharge has been denied.” *Sherrod v. Franza*, 427 So. 2d 161, 163 (Fla. 1983). “A court does not have jurisdiction to try a defendant . . . if he is entitled to a discharge because of a violation of his immunity from prosecution or his right to a speedy trial.” *Id.*

LAW AND ANALYSIS

Petitioner contends a DUI traffic citation can only be a formal charging document if: it is issued and served on the accused; identifies the charges against the accused; informs the accused that the violation is a crime; gives a notice of appearance date as required by § 775.15(5); and is filed with the court as required by § 316.650(3). See *Ivory v. State*, 588 So. 2d 1007 (Fla. 5th DCA 1991). Petitioner further states that law enforcement officers may only charge misdemeanors by notices to appear pursuant to Fla. R. Crim. P. 3.125 and 3.140(a)(2), when the officer has transcribed the time and place for the accused to appear to answer for the charge. See *Mallard v. State*, 699 So. 2d 797 (Fla. 4th DCA 1997). Petitioner contends the citation cannot formally charge Petitioner if it does not include a date or time to appear or require a response. See *Ayres v. State*, 898 So. 2d 1154 (Fla. 5th DCA 2005); *State v. Grosser*, 24 So. 3d 718 (Fla. 4th DCA 2009). Petitioner argues the State is not entitled to the 15-day recapture window because the UTC is not a valid charging document.

The Court finds that, based on statute and case law interpretation, a UTC is a valid charging document. Florida Rule of Traffic Court 6.165(a) provides that “prosecutions for criminal traffic offenses by law enforcement officers shall be by uniform traffic citation...or by affidavit, information, or indictment as provided in the Florida Rules of Criminal Procedure.” Florida Rule of Traffic Court 6.040(b) “defines a charging document as ‘any information, uniform traffic citation, complaint affidavit, or any other manner of charging a criminal traffic offense under law.’” *Deel v. State*, 750 So. 2d 112, 113 (Fla. 5th DCA 1999). There is no requirement in Rule 6.040 that a UTC

contain a notice to appear in order for it to be considered a valid charging document. *Id*; See *State v. Witcher*, 737 So.2d 584, 586 (Fla. 1st DCA 1999). If there is a valid charging document, such as the UTC that was issued in this case, the State is entitled to the recapture window. Fla. R. Crim. P. 3.191; *Cf. Doctor v. State*, 68 So.3d 335 (Fla. 1st DCA 2011).

CONCLUSION

Appellant has failed to demonstrate that the trial court committed error in this matter. The Petition for Writ of Prohibition is therefore denied.

It is ORDERED AND ADJUDGED that the Petition for Writ of Prohibition is hereby DENIED.

DONE AND ORDERED in Chambers at New Port Richey, Pasco County, Florida this 26th day of August, 2016.

Original order entered on August 26, 2016, by Circuit Judges Daniel Diskey, Linda Babb, and Shawn Crane.