

**IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
APPELLATE DIVISION**

LES CORIGLIANO,
Petitioner,

vs.

Appeal No. ~~CRC~~ 14-00053 APANO
UCN 522014AP000053XXXXCR

STATE OF FLORIDA,
Respondent.

Petition for Issuance of a Writ of Prohibition
Addressing an Order Denying
Motion to Dismiss entered
by the Pinellas County Court,
County Judge John D. Carballo

Stephen Nelson, Esquire
Office of the Public Defender
Attorney for Petitioner

Bernie McCabe, Esquire
State Attorney
Attorney for Respondent

**ORDER DENYING PETITION FOR ISSUANCE
OF WRIT OF PROHIBITION**

PETERS, Judge.

THIS MATTER is before the Court on the Petitioner's, Les Corigliano, Petition for Issuance of a Writ of Prohibition. This Court denies the petition.

Background

Petitioner, Les Corigliano, was charged by Misdemeanor Information filed December 10, 2010 with three charges of Unlicensed Residential Contracting. The charged offenses were alleged to have occurred between the dates March 15, 2009 and

July 12, 2009. The *capias* issued on the Information was served on the Petitioner on January 30, 2014. Mr. Corigliano, through his counsel, filed a motion to dismiss arguing that the statute of limitations had expired. The State Attorney filed a written response to that motion arguing that the statute of limitations had not expired; a diligent search had been conducted. The motion to dismiss was denied after hearing by the trial court. The trial court found “that the Pinellas County Department of Justice and Consumer Services conducted a diligent search during the applicable and relevant time periods so as to justify the delay of service upon the [Petitioner].” The present Petition for Issuance of a Writ of Prohibition asks this court to direct that the pending charges against Mr. Corigliano be dismissed.

Jurisdiction

“Prohibition is an appropriate method by which a criminal defendant who asserts that [his] prosecution is barred by the statute of limitations may challenge the trial court's jurisdiction to go forward.” *Neal v. State*, 697 So.2d 903, 904 (Fla. 2nd DCA 1997); *Beyer v. State*, 76 So3d 1132,1134 (Fla. 4th DCA 2012).

Standard of Review

In the present case an evidentiary hearing was conducted; there were disputed issues of fact. Therefore the competent substantial evidence standard of review is appropriate. Our review of a trial court's ruling on the present motion to dismiss involves a mixed question of law and fact. We accord a presumption of correctness with regard to the trial court's determination of facts where the trial court's factual findings are supported by competent, substantial evidence. However, we review the trial court's application of the law to those facts *de novo*. *Ornelas v. United States*, 517 U.S. 690, 699,

116 S.Ct. 1657, 134 L.Ed.2d 911 (1996); *Connor v. State*, 803 So.2d 598 (Fla.2001); *State v. Pruitt*, 967So2d 1021 (Fla. 2nd DCA 2007); *Newkirk v. State*, 964 So2d 861, 863 (Fla. 2nd DCA 2007).

Statutes of Limitations

“The purpose of a statute of limitations is to limit exposure to criminal prosecution to a certain fixed period of time following the occurrence of those acts the legislature has decided to punish by criminal sanctions. Such a limitation is designed to protect individuals from having to defend themselves against charges when the basic facts may have become obscured by the passage of time and to minimize the danger of official punishment because of acts in the far-distant past. Such a time limit may also have the salutary effect of encouraging law enforcement officials promptly to investigate suspected criminal activity. For these reasons and others, we have stated before ‘the principle that criminal limitations statutes are ‘to be liberally interpreted in favor of repose.’” *Toussie v. U.S.*, 397 U.S. 112, 114-115, 90 S.Ct. 858, 860 (1970); *See State v. Hickman*, 189 So.2d 254, 261 (Fla. 2nd DCA 1966). Statutes of limitation are to be liberally construed in favor of the accused. *Reino v. State*, 352 So2d 853, 860 (Fla. 1977), *receded from on other grounds*, *Perez v. State*, 545 So.2d 1357 (Fla.1989); *State v. Perez*, 72 So.3d 306, 308 (Fla. 2nd DCA 2011).

Time limitations upon criminal prosecutions are solely creatures of statute. The statutory period of limitation begins to run on the day after the offense is committed and runs until the prosecution is commenced, unless some intervening act occurs to interrupt it. Generally, the running of a statute of limitations is tolled only for reasons specified in the statute. *Brown v. State*, 674 So2d 738 (Fla. 2nd DCA 1995). “Whether the statute of

limitations has run prior to commencement of prosecution requires the computation of two dates: the date the statute of limitations expired and the date prosecution commenced.” *State v. Paulk*, 946 So.2d 1230, 1231 (Fla. 4th DCA 2007).

A prosecution on a charge on which the defendant has not previously been arrested or served with a summons is commenced when either an indictment or information is filed, provided the *capias*, summons, or other process issued on such indictment or information is executed without unreasonable delay. In determining what is reasonable, inability to locate the defendant *after diligent search* or the defendant's absence from the state shall be considered.¹ § 775.15 (4)(b) Fla. Stat. (2008) (emphasis added). The word “executed” means completion of service on the defendant. *State v. Fields*, 505 So.2d 1336 (Fla. 1987). If a delay in service of the *capias* was reasonable, then the action might be commenced after the statute of limitations had run. *Brown v. State*, 674 So.2d 738 (Fla. 2nd DCA 1995); *State v. Picklesimer*, 606 So.2d 473 (Fla. 4th DCA 1992); *Sherley v. State*, 538 So.2d 148 (Fla. 5th DCA 1989). An unexcused delay in serving appropriate process until after the statute of limitations has run bars prosecution for the offenses charged. *Norris v. State*, 784 So.2d 1188, 1189 (Fla. 2nd DCA 2001); *Neal v. State*, 697 So.2d 903, 905 (Fla. 2nd DCA 1997); *State v. Miller*, 581 So.2d 641 (Fla. 2nd DCA 1991). Once the jurisdiction of a court is challenged by raising the statute of limitations, the burden is on the State to establish that the offense is not barred by the statute. *State v. Miller*, 581 So.2d 641 (Fla. 2nd DCA 1991).

¹ To satisfy its obligation to conduct a diligent search to locate the defendant, the State must check obvious sources of information and follow up on any leads. *Cunnell v. State*, 920 So.2d 810, 813 (Fla. 2nd DCA 2006). Obvious sources of information include the telephone book, the city directory, driver's license records, vehicle license records, property tax records, voter's registration records, the probation office, local utility companies, law enforcement agencies, state attorney's office, schools, armed forces, and prison system. Other sources are relatives of the defendant and witnesses in the case. *Id.* at 813.

The Statute of Limitation in the Present Case

The applicable Statute of Limitation is that which was in effect at the time of the incident giving rise to the criminal charge. *State v. Mack*, 637 So.2d 18, 19 (Fla. 4th DCA 1994). In the present case the prosecution must be commenced within two years of the commission of the crime. § 775.15(2)(c), Fla. Stat. (2008). Florida Statute 775.15 provides, in part:

(4)(a) Prosecution on a charge on which the defendant has previously been arrested or served with a summons is commenced by the filing of an indictment, information, or other charging document.

(b) A prosecution on a charge on which the defendant has not previously been arrested or served with a summons is commenced when either an indictment or information is filed, provided the capias, summons, or other process issued on such indictment or information is executed without unreasonable delay. In determining what is reasonable, inability to locate the defendant *after diligent search* or the defendant's absence from the state shall be considered. The failure to execute process on or extradite a defendant in another state who has been charged by information or indictment with a crime in this state shall not constitute an unreasonable delay.

§ 775.15, Fla. Stat. (2008) (emphasis added). A diligent search to ascertain the whereabouts of the charged person must be conducted during the applicable limitations period irrespective of that person's absence from the State of Florida. *State v. Perez*, 72 So3d 306, 308-309 (Fla. 2nd DCA 2011); *See Robinson v. State*, 773 So2d 1266, 1267 (Fla. 5th DCA 2000).

The Present Case

The trial court conducted an evidentiary hearing on the motion to dismiss. Based on testimony presented at that hearing the trial court made the following finding in its written order:

Once the capias for the Defendant was issued on January 10, 2011, testimony revealed that the Pinellas County Department of Justice and

Consumer Services conducted diligent searches on a quarterly basis by using the following databases: CJIS, Accurint, DAVE, voter registration records, Animal Services, Facebook, Anywho.com, Pinellas and Pasco Property Appraiser records, DOC records, JIS, NCIC/FCIC, and Fl. Division of Corporations. These investigators also conducted follow up when necessary.

The trial court's ruling that this constituted a *diligent search* to locate the defendant was correct. This court is aware of no legal authority that would prohibit the State Attorney from using the Pinellas County Department of Justice and Consumer Services to perform diligent searches to locate Mr. Corigiano. The record before this court reveals no error by the trial court in denying the present motion to dismiss.

Conclusion

This court has reviewed the record in this case and will not issue a Writ of Prohibition.

IT IS THEREFORE ORDERED that the Petition for Issuance of a Writ of Prohibition is denied.

ORDERED at Clearwater, Florida this 1st day of December 2014.

Original Order entered on December 1, 2014, by Circuit Judges
Michael F. Andrews, Raymond O. Gross, and R. Timothy Peters.

Copies furnished to:
Honorable John D. Carballo
Stephen Nelson, Esquire
Office of the State Attorney