

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JULY TERM 2010

STATE OF FLORIDA,

Appellant,

v.

Case No. 5D10-101

GARY CHRISTOPHER HILL,

Appellee.

Opinion filed August 13, 2010

Appeal from the Circuit Court
for Volusia County,
Patrick Kennedy, Judge.

Bill McCollum, Attorney General,
Tallahassee, and Pamela J. Koller,
Assistant Attorney General, Daytona
Beach, for Appellant.

James S. Purdy, Public Defender,
and David S. Morgan, Assistant
Public Defender, Daytona Beach,
for Appellee.

PER CURIAM.

The State appeals from an order granting Hill's motion for discharge based upon an alleged violation of Hill's right to a speedy trial. See Fla. R. Crim. P. 3.191. We reverse.

In response to Hill's notice of expiration of trial date, the trial court scheduled trial for Monday, January 4, 2010. However, on December 31, 2009, the trial court

erroneously determined that the recapture period had expired and entered an order of discharge. The State argues, and Hill acknowledges, that the scheduled trial date actually fell on the last day of the recapture period. See *State v. McFarland*, 747 So. 2d 481 (Fla. 5th DCA 2000); *State v. Edwards*, 528 So. 2d 120 (Fla. 5th DCA 1988). Because the scheduled trial date fell within the recapture period, it was improper to enter the order of discharge.

REVERSED and REMANDED.

MONACO, C.J., EVANDER and COHEN, JJ., concur.