

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

JANUARY TERM 2009

RONNIE J. CUMMINGS,

Petitioner,

v.

Case No. 5D09-123

STATE OF FLORIDA,

Respondent.

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Opinion filed April 9, 2009

Petition for Writ of Prohibition,  
J. David Walsh, Respondent Judge.

Ronnie J. Cummings, Graceville,  
pro se.

No Appearance for Respondent.

PER CURIAM.

Petitioner seeks a writ of prohibition to preclude the trial court from proceeding to trial in his case, contending that he is entitled to discharge pursuant to the speedy trial rule. Fla. R. Crim. P. 3.191.

This Court cannot review by prohibition the speedy trial issue until the trial court has denied a motion for discharge. The order denying discharge should be included in an appendix attached to the petition. Accordingly, we deny the petition for prohibition

without prejudice to file a motion for discharge in the circuit court. *Barstad v. State*, 925 So. 2d 1135, 1136 (Fla. 5th DCA 2006).

PETITION DENIED.

TORPY, LAWSON and EVANDER, JJ., concur.