

# CRIMINAL PROCEDURE

## Criminal Procedure: Habeas Corpus

*Cramer v. Secretary of Department of Corrections*,  
461 F.3d 1380 (11th Cir. 2006)

The time-limitations period for filing a habeas corpus petition in federal court is tolled during the time in which a defendant could have appealed a denial of state collateral review even if the defendant never actually filed an appeal.

### FACTS AND PROCEDURAL HISTORY

Thomas Lynn Cramer was convicted in Florida state court on multiple counts of robbery. After Cramer's conviction was affirmed on direct appeal, he filed a motion to correct sentence pursuant to Rule 3.800, Florida Rules of Criminal Procedure, which was denied. Cramer did not seek appellate review of this denial but instead filed a motion for state post-conviction relief. Cramer's post-conviction relief motion was denied in part, and he appealed the denial. Cramer lost the appeal, and the Florida Supreme Court dismissed his subsequent petition for review. Cramer then filed a habeas corpus petition in federal court under 28 U.S.C. § 2254.

The district court granted the State's motion to dismiss Cramer's petition as untimely. As amended by the Antiterrorism and Effective Death Penalty Act of 1996, 28 U.S.C. § 2244(d) imposes a one-year limitations period for filing federal habeas corpus petitions. The Statute qualifies, however, that the limitations period is tolled for periods of time when an application for state collateral review is pending. The district court accepted the State's calculations and concluded that, at the time Cramer filed his petition, 373 days had elapsed from when the limitations period began to run. Cramer argued that the State should have tolled the time in which he could have appealed the denial of his motion to correct sentence. The United States Court of Appeals for the Eleventh Circuit held that Cramer's motion to correct sentence remained pending under 28 U.S.C. § 2244(d) until the time expired to file an appeal. The court reversed the district court.

## ANALYSIS

Cramer argued that the time during which he could have appealed the denial of his motion to correct sentence tolled the limitations period even though he did not actually file an appeal. Noting that this issue was one of first impression in the Eleventh Circuit, the court accepted Cramer's argument.

The court first recognized that Cramer's motion to correct sentence must have been pending in order to toll the limitations period. The court then proceeded to analyze whether a claim can still be considered pending even if no appeal has been filed. In making this determination, the court relied on the Supreme Court's interpretation of the word "pending" in both *Carey v. Saffold*, 536 U.S. 214 (2002), and *Evans v. Chavis*, 546 U.S. 189 (2006). The Supreme Court explained that a claim is pending during the time period between the decision of a lower state court and the timely filing of a notice of appeal. The court reasoned that the Supreme Court's interpretation did not indicate that an appeal must actually be filed for a claim to remain pending.

The court further reasoned that logic should lead to the conclusion that a claim is pending whether or not a notice of appeal is filed. The court pointed out that "pending" describes the continuing process of appeal up until the time that process is complete. The court determined that the process is complete only when the defendant has no further avenues to pursue. *Cramer*, 461 F.3d at 1383. Thus, the court concluded that a claim remains pending until the time to pursue an appeal has expired. The court also opined that a contrary conclusion would be inconsistent with other contexts in which the filing for appeal does not determine tolling provisions.

## SIGNIFICANCE

*Cramer* is significant to practitioners because it defines what is considered a "pending" claim sufficient to toll the limitations period for filing a federal habeas corpus petition. The case establishes that a claim is pending during the time in which a defendant could have sought appellate review even if no appeal is filed.

## RESEARCH REFERENCE

- 39 Am. Jur. 2d *Habeas Corpus and Postconviction Remedies* § 127 (Westlaw database updated May 2007).

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**Criminal Procedure: Public Records Exemption**

*Media General Operations, Inc. v. State*,  
933 So. 2d 1199 (Fla. 2d Dist. App. 2006)

A trial court does not have the authority to receive a motion for a public records exemption under seal and without notice to or input from the opposing party.

## FACTS AND PROCEDURAL HISTORY

David Lee Onstott was charged with first-degree murder in a highly publicized case. Onstott moved the trial court for a temporary injunction, asking that the State's discovery materials be reviewed in camera before being released to the public in order to preserve his right to a fair trial. Media General Operations, Inc. (Media General) intervened and objected to Onstott's motion, arguing that only discovery material that arguably threatened Onstott's right to a fair trial should be reviewed in camera and that most of the State's discovery material posed no such threat. The trial court granted Onstott's motion, allowing counsel thirty days to seek in camera review of discovery material that, if released to the public before trial, would imminently and substantially threaten a fair trial.

Onstott subsequently presented two motions seeking to temporarily withhold certain evidence from public disclosure under Florida's Public Records Law, Florida Statutes Chapter 119. Onstott requested an order directing the clerk to file the motions under seal. The trial court acceded to Onstott's request over Media General's objection. Media General filed a petition for certiorari review, claiming a violation of its right to access public records. Subsequently, the trial court amended its order in an attempt to explain its reasoning for sealing the motions. The Second District Court of Appeal rejected the trial court's reasoning and granted Media General's petition for review, determining that the trial

court's procedure departed from the essential requirements of the law. The court held that Media General had a right to notice of a hearing concerning Onstott's motions and that Media General must be given the opportunity to be heard on the motions. The court quashed the trial court's orders without prejudice to further proceedings.

### ANALYSIS

Media General argued that the trial court's procedure amounted to an *ex parte* communication because Media General was not permitted to see Onstott's motions and did not know the nature of the discovery evidence that Onstott wanted to keep from public disclosure. Media General also contended that the trial court provided no specific grounds for sealing Onstott's motions under Florida's Public Records Law.

The court did not specifically address Media General's contentions. Instead, the court reached its holding by answering a question posed by the State. Florida Rule of Criminal Procedure 3.220(m) allows the trial court to review discovery materials *in camera* when a party moves to have those materials exempted from public disclosure. The State questioned whether this rule also allows the trial court to receive such motions under seal without notice to or input from Media General. The court answered this question in the negative. In its analysis, the court relied on the Third District's opinion in *State v. Calloway*, 937 So. 2d 139 (Fla. 3d Dist. App. 2006). *Calloway* held that Rule 3.220(m) does not allow for *ex parte*, *in camera* review of allegedly privileged materials. *Id.* at 141–142. The *Calloway* court reasoned that while the State did not have a right to review the actual materials, the State must be given notice of any hearing concerning privilege and an opportunity to be heard at that hearing.

The court found *Calloway's* reasoning applicable to this case. The court noted that Media General might not be entitled to review the underlying materials in Onstott's motions. Even so, the court held that Media General had a right to receive notice of a hearing conducted on those motions and that Media General must be given an opportunity to be heard at that hearing. *Media General*, 933 So. 2d at 1201. The court suggested that the trial court strike Onstott's motions and direct him to file and serve revised motions, stating clearly the grounds on which the discovery mate-

rials should be sealed. The court also cautioned that if, after a hearing, the trial court ultimately decided to seal the discovery materials in question, it should clearly specify the factual basis for its decision.

#### SIGNIFICANCE

*Media General* is significant to practitioners because it clarifies the scope of Rule 3.220(m), Florida Rules of Criminal Procedure, regarding motions seeking to exempt discovery materials from public disclosure. The case makes clear that the trial court does not have the authority to receive such motions under seal and without notice to or input from the opposing party.

#### RESEARCH REFERENCE

- 14B Fla. Jur. 2d *Criminal Law* §§ 1434, 1458, 1476 (Westlaw database updated Aug. 2007).

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