IN THE SUPREME COURT OF FLORIDA

CASE NO. 66,554

EUGENE JOHNSON,

Petitioner,

vs.

THE HONORABLE RICHARD YALE FEDER,
Circuit Judge, Eleventh Judicial
Circuit, Dade County, Florida,

Respondent.

* *

ON PETITION FOR DISCRETIONARY REVIEW

* *

BRIEF OF RESPONDENT ON THE MERITS

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INTRODUCTION

Respondent was the prosecution at the trial court level and the appellee on appeal. Petitioner was the defendant at the trial level and the appellant in the Third District Court of Appeal. Parties will be referred to in this brief interchangeably as Petitioner/defendant and Respondent/State.

QUESTION PRESENTED

WHETHER THE DECISION OF THE THIRD DISTRICT COURT OF APPEAL CORRECTLY HELD THAT PETITIONER IS NOT ENTITLED TO AN ANNUAL COURT HEARING AND THE APPOINTMENT OF INDEPENDENT EXPERTS ON THE LEGAL ISSUE OF PETITIONER'S CONTINUED INVOLUNTARY HOSPITALIZATION WHERE THE CLEAR PROVISIONS OF RULE 3.218, FLA.R. CRIM.P., DO NOT PROVIDE FOR SUCH A HEARING AND APPOINTMENT OF EXPERTS?

SUMMARY OF ARGUMENT

It is the Respondent's position that the Third District Court of Appeal was eminently correct when it found that Fla.R.Crim.P. 3.218 provides for a court hearing for an insanity acquitee, only if the hospital administrator reports that the acquitee no longer meets the criteria for involuntary hospitalization. The purpose of the rule is to provide the committing court with the ultimate decision of whether to release the defendant and concommitantly, to protect the public from any potential danger. The insanity acquitee's rights are protected by requiring annual reports to the court and moreover, the vehicle of habeas corpus relief is always available. The decison of the Second District Court of Appeal in McShay v. State, 447 So.2d 444 (Fla. 2d DCA 1984) was incorrectly decided and should be rejected by this court.

ARGUMENT

THE DECISION OF THE THIRD DISTRICT COURT OF APPEAL CORRECTLY HELD THAT PETITIONER IS NOT ENTITLED TO AN ANNUAL COURT HEARING AND THE APPOINTMENT OF INDEPENDENT EXPERTS ON THE LEGAL ISSUE OF PETITIONER'S CONTINUED INVOLUNTARY HOSPITALIZATION WHERE THE CLEAR PROVISIONS OF RULE 3.218, FLA.R.CRIM.P., DO NOT PROVIDE FOR SUCH A HEARING AND APPOINTMENT OF EXPERTS.

The Petitioner asserts that pursuant to Fla.R.Crim.P. 3.218 all defendants found not guilty by reason of insanity and admitted to a mental health facility are entitled, as a matter of law to court hearings once a year and the appointment of experts. Petitioner argues that F.S. 916.15 mandates the same result. The Respondent would urge a different interpretation of the rule, and the corresponding statute.

Fla.R.Crim.P. 3.218 states that within six months of a defendant deemed not guilty by reason of insanity being hospitalized, the hospital administrator shall file a report with the court addressing the issues of further committment. If, thereafter the administrator determines the defendant no longer meets the criteria for involuntary hospitalization the administrator shall notify the court by "such a report." The Court must hold a hearing within thirty days of receipt of a report stating the defendant no longer meets the

criteria for hospitalization. If the court finds the defendant should remain hospitalized, then he shall remain hospitalized, for a period not to exceed one year. The last sentence of subsection (a) of this rule presents the most difficulty. It states:

> The same procedure shall be repeated prior to the expiration of each additional one year period the defendant is retained by the facility.
>
> FR.Cr.P. 3.218(a).

The respondent contends that the "procedure" therein referred to, involves a report to the court. A hearing would be mandated only when there is a report that a defendant no longer meets the criteria for involuntary hospitalization. A defendant would be entitled to the appointment of an expert, once a hearing is set, subsequent to a report that the defendant no longer meets the criteria for involuntary hospitalization.

The committee note which follows the rule lends support to this position. It makes clear that experts will be appointed when such hearings are "necessary." If the rule had meant to afford hearings to every committed defendant, every year, the note would not refer to hearings of necessity. The necessity, is undoubtedly, a finding by the hospital that the defendant no longer meets the criteria for

involuntaty hospitalization. It is therefore clear from the plain meaning of the rule that annual hearings are not mandated. State v. Brown, 412 So.2d 426 (Fla. 4th DCA 1982).

A finding that a defendant should be released is a legal question and not a medical question. Hill v. State, 388 So.2d 190 (Fla. 1st DCA 1978). Therefore, a defendant would want the appointment of experts to ratify the administrator's finding, in order to convince the court to release the defendant. It is important to remember, that although a recommendation to release may be made by the hospital, the court must be convinced of its accuracy. The State would likewise want the appointment of physicians to rebut a recommendation to release, where the State perceives it as unwarranted.

The Third District Court of Appeal agreed with the State's interpretation, when they denied Eugene Johnson's petition for mandamus. Johnson v. Feder, ___So.2d____(Fla. 3d DCA 1985)(Case No. 84-2272; opinion filed February 15, 1985)[10 F.L.W. 339]. (See Appendix in Petitioner's initial brief). The court recognized a two-fold rationale behind the rule. First, to vindicate the committing court's ability to control the circumstances surrounding the release from custody of the acquitee.

> "[T]he point of requiring judicial supervision of the release of patients hospitalized following acquittal of crime by reason of insanity is to protect the patient and the public by insuring that statutory standards for release are not subverted by allowing the ultimate determination to be made according to the individual, subjective standards of the hospital staff.
>
> United States v. McNeil, 434 F.2d 502, 515 (D.C. Cir. 1970)

Second, in order to protect the public from an inadvertent release of an insanity acquittee. Keeping those interests in mind, the Petitioner has not been denied any fundamental rights.

The equal protection clause, as interpreted by the United States Supreme Court, does not require that the State treat insanity acquitees and civil committees alike. Hill v. State, 358 So.2d 190 (Fla. 1st DCA 1978); Powell v. State of Florida, 579 So.2d 324 (5th Cir. 1978). Societies special interest in criminal acquitees is the rationale behind the conclusion and does constitute a legitimate state interest. Powell, supra:

> "The special interest which the public has acquired in the confinement and release of people in this exceptional class results from the fact that there has been a judicial determination that they have already endangered the public

> safety and their own as a result of their mental conditions as distinguished from people civilly committed because of only potential danger.
>
> Chase v. Kearns, 278 A.2d 1322 (Me. 1971).

In fact, in Florida it is well established that the burden of proving that an acquitee should no longer be hospitalized is on the acquitee. Hill, supra. The government's legitimate interest is protecting the public from a likelihood of injury that would result from the acquitee being at liberty Hill, supra.

In Ecker v. State, 543 F.2d 178 (D.C. Cir. 1976), the District of Columbia Circuit held that regarding criminal acquitees the due process clause requires use of the least restrictive alternative means available for the effective protection of the public. The State of Florida has accomplished exactly that. The insanity acquittee is protected from indeterminate hospitalization, where the administrator must file yearly reports with the court.

Petitioner's interpretation of the rule, carried to its extreme would mean that even a catatonic insanity acquitee is entitled to an annual hearing. This would clearly be an act of futility and not one which the legislature could have contemplated. This court should not ascribe an interpretation that would create an absurd, senseless or ridiculous

result. City of Boca Raton v. Gidman, 440 So.2d 1277 (Fla. 1983). An examination of petitioner's interpretation of the Rule in conjunction with the facts of the case sub judice reveals the illogic of that position. The petitioner has been incarcerated since 1981 and has never been reported as nearing the criteria for release.

Moreover, the petitioner has conceded that he does have an available remedy, through habeas corpus relief. (Brief of Petitioner, pg. 19). Petitioner's argument, regarding the difficulty of pursuing this avenue is flawed. This petitioner has succeeded in availing himself of effective and thorough representation.

Respondent would urge this court to reject the Second District Court of Appeals interpretation of F.R.Cr.P. 3.218 contained in McShay v. State, 447 So.2d 444 (Fla. 2d DCA 1984), and rather accept the analysis of the Third District contained in Johnson, supra.

CONCLUSION

Based upon the foregoing argument and authorities, Respondent respectfully requests that this Honorable Court affirm the decision of the Third District Court of Appeal in Johnson v. State, ___So.2d____(Fla. 3d DCA 1985)(Case No. 84-2272; opinion filed February 15, 1985)[10 F.L.W. 339] and thereby reject the decision of the Second District Court of Appeal in McShay v. State, 447 So.2d 444 (Fla. 2d DCA 1984).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing BRIEF OF RESPONDENT ON THE MERITS was furnished by mail to MARTI ROTHENBERG, Assistant Public Defender, 1351 N.W. 12th Street, Miami, Florida 33125, on this 29th day of March, 1985.

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