IN THE SUPREME COURT OF FLORIDA

	Case No. 71,760
MARIO D'OLEO-VALDEZ,	:
Petitioner,	:
vs.	:
STATE OF FLORIDA,	:
Respondent.	:
	•

DISCRETIONARY REVIEW OF A DECISION OF THE THIRD DISTRICT COURT OF APPEAL

PETITIONER'S REPLY BRIEF ON THE MERITS

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REPLY ARGUMENT

The record does not support the State's contention that two Jackson Hospital experts examined Valdez but submitted only one report. Nor did Dr. Burglass' letter recommending a competency evaluation constitute a second evaluation. The trial court had before it only one expert - one short of the number Florida requires to ensure due process. Cf. Kloster v. Castorina, 13 F.L.W. 1374 (Fla. 3d DCA June 7, 1988) ("trial court's refusal to hear testimony from two expert witnesses concerning Kloster's physical ability to take care of herself constituted a denial of due process"); §744.331(5)(a) (1987) (upon verified petition alleging incompetency, court "shall appoint an examining committee consisting of one responsible citizen and two practicing physicians"); §916.11, Fla. Stat. (1987); §394.467, Fla. Stat. (1987).

That other jurisdictions and the federal courts permit one expert on mental competency does not mean Florida cannot

independently decide due process requires two. Indeed, the federal scheme has been subject to criticism. The problem with a single psychiatric review is in its inherent failure to neutralize the varying schools of thought, value systems and partialities among experts. Puzzi, Competency to Stand Trial in Federal Courts: Conceptual and Constitutional Problems, 45 U. OF CHICAGO L. REV. 21 (1977).

The State's comparison of Florida Rule of Criminal Procedure 3.210 with the discovery and speedy trial rules is unavailing. Unlike the latter rules, Rule 3.210 places an affirmative duty upon a judge to act, with or without defense counsel's impetus.

Here, the defense counsel continuously maintained Valdez was irrational. The trial court found reasonable grounds to believe Valdez was not mentally competent. Under such circumstances, this court should not excuse the trial court's breach of its duty to ensure that the defendant's due process rights are given full protection under Florida law.

CONCLUSION

This court should quash the decision of the Third District Court of Appeal, vacate the conviction and sentence and remand for a proper determination of competency.

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Susan S. Lerner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on: ROBERT A. BUTTERWORTH, Attorney General, Department of Legal Affairs, Ruth Bryan Owen Rhode Building, 401 Northwest Second Avenue, Suite 820, Miami, Florida 33128, this 20th day of June, 1988.

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