IN THE SUPREME COURT OF FLORIDA

CASE NO. SC00-1591

STATE OF FLORIDA,
DEPARTMENT OF CORRECTIONS,

Appellant,

vs.

TONY RANDALL WATTS,

Appellee.

ON APPEAL FROM THE CIRCUIT COURT
OF THE FOURTH JUDICIAL CIRCUIT,
IN AND FOR DUVAL COUNTY, STATE OF FLORIDA

ANSWER BRIEF OF APPELLEE

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PRELIMINARY STATEMENT

Appellee, TONY RANDALL WATTS, will be referred to as Mr. Watts. Appellant will be referred to as the Department. The two volume record consists of 270 consecutive pages and will be referred to by the symbol "R," followed by the appropriate page number(s). Appellee notes that R 57-119 contains a public records hearing and, as such, has no relevance to the issue before the Court.

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STATEMENT OF THE CASE AND FACTS

Appellee accepts the Appellant's Statement of the Case and Facts, but asserts it is incomplete and, therefore, offers the following to assist the Court.

Mr. Watts' competency has been an issue from the time of his capital trial and persists to this day:

> THE COURT: I don't think anybody here questions Mr. Watts' situation. Mr. Watts was a close call back when we held this trial and there was a hotly contested issue of competency from day one in this trial and in fact this is the type of factual situation where mental status jumps out at you from the booking report in this case..."

(R. 146-147).

In 1999, undersigned counsel filed a motion to determine Mr. Watts' competence to assist in the capital postconviction process pursuant to Carter v. State, 706 So. 2d 873 (Fla. 1997). The trial court complied with the dictates of Carter, experts were appointed, the experts concluded Mr. Watts was incompetent due to active psychosis and retardation, and the purely legal issues have gone forward. On May 4, 1999, the trial court entered its Order Committing Incompetent Defendant. (R. 10-12). Therein, the court specifically relied upon rules 3.210, 3.211, and 3.212 of the Florida Rules of Criminal Procedure. The court found Mr. Watts mentally incompetent to proceed and unable to assist legal counsel. The court specifically found Mr. Watts met the criteria for involuntary

hospitalization pursuant to sections 916.12 and 394.467 (1), Florida Statutes. He ordered Mr. Watts committed to Corrections Mental Health Institution (CMHI), at the time located in Chattahoochee, Florida, pursuant to section 394.467 (2), Florida Statutes. The Administrator of CMHI was directed to advise the court when Mr. Watts was restored to competency or no longer qualified for involuntary commitment. The trial court retained jurisdiction and prohibited discharge without further order of court. Id.

Approximately two months later, on July 19, 1999, the Department filed a motion to return Mr. Watts to Union Correctional Institution (UCI), arguing that "...criminal courts lack the authority to regulate the placement or treatment of an inmate properly committed to the custody of the Department of Corrections." (R. 13-15). Therein, the Department alleged it "is unable to make a determination on whether inmate Watts is competent to proceed" and that to offer any opinion on competency would interfere with the Department's "primary responsibility of inmate care." Id.

On October 1, 1999, the trial court conducted hearings in this case and entertained the Department's motion. (R. 120-167). The Department argued it has absolute discretion in deciding where to house properly committed inmates and reiterated its position that it was "not making any determination of competency." (R. 120-122). Counsel for Mr. Watts argued against the return to death row because

no treatment designed to restore competency would be available to Mr. Watts. Further, the CMHI records indicated he had not taken medication or been treated since his commitment to CMHI. The reason for sending him to CMHI, in part, was to insure compliance with the prescribed medication regimen after the competency evaluations indicated he would not comply on death row because his illness precludes him from acknowledging his need for it. Counsel for Mr. Watts asserted that his exact location was unimportant; treatment and medication compliance were the important factors. (R. 122-124).

The Assistant Attorney General was concerned that Mr. Watts flushed medication down the toilet while on death row and that the "state expected that when he was turned over to a forensic unit of the Department of Corrections that he would be treated and that he would be medicated and that it would be possible to determine whether or not his competency could be restored." (R. 125). The Assistant Attorney General joined in undersigned's request that Mr. Watts be properly treated at CMHI and restored to competence, if possible.

The Department's attorney acknowledged that CMHI was the only facility designed for the treatment of mentally ill inmates. (R. 130). When asked why Mr. Watts did not appear to be receiving treatment, the Department's attorney responded that CMHI's treatment goals were to render inmates "compliant" and this allowed for the situation where an incompetent inmate could still be housed in a

"general prison setting." (R. 135). Once again, counsel for Mr. Watts and the Assistant Attorney General agreed that death row was "not the setting the doctors are contemplating that he can function in." (R. 136).

The trial court concluded the motion's allegations were "a far cry from saying he is now competent" and it could not "change [the] order without hearing testimony in an adversarial proceeding from expert witnesses about his competency." Having heard no such testimony, the court had "no alternative but to deny the department's motion to return defendant from corrections mental health institution..." (R. 137-138). Even after ruling, the Department argued the trial court had no authority to tell it where to house Mr. Watts and did not respond to counsel for Mr. Watts' assertion that "Apparently Carter is meaningless." (R. 140-141). The court and the Assistant Attorney General were perplexed by the Department's position and the trial court indicated it may be necessary to hold the Secretary of the Department in contempt of court if the problem persisted. (R. 142-143, 147).

The Department relentlessly pursued its desire to deny Mr. Watts proper treatment for incompetence. On January 3, 2000, the Department filed a Motion for Amended Order Authorizing Continued Involuntary Placement (R. 33-35) and again asserted the court's lack of authority over it, asserted only the warden has authority to move

inmates, and essentially argued that Mr. Watts created a hardship on CMHI because of his custody level. There was no assertion that Mr. Watts was competent. The Department maintained he was not a danger to himself or others and should be moved from CMHI.

Mr. Watts' counsel responded to the motion and the State Attorney's Suggestion of Competency (R. 36-41) and asserted Mr. Watts was receiving no meaningful treatment, once again noted that Dr. Barnard's competency evaluation acknowledged that in-patient treatment would be required to maintain Mr. Watts on a medication regimen, and that CMHI records demonstrated Mr. Watts was delusional, non-compliant with medication regimen, and suffered from hallucinations.

On January 7, 2000, the court conducted another hearing regarding the Department's request to transfer Mr. Watts back to death row. Counsel for Mr. Watts maintained that CMHI was the best the Department could offer Mr. Watts and their argument amounted to no more than "...we need bed space, we don't restore them to competency anyway, and we want to send him back to UCI where we know he decompensates and does not take medication" and that "the Court's purpose in entering the original order is being thwarted by the Department of Corrections." (R 192-193).

The Department's attorney characterized the problem as follows: "after trial we are just in a very gray area about our responsibility to the court." (R. 195).

Counsel for Mr. Watts asserted the Carter opinion gave the trial court both the authority and responsibility to preserve Mr. Watts' due process right to litigate postconviction claims while competent. It was asserted that if the court "read the Carter opinion with the Criminal Rules of Procedure regarding competency, along with the statutes regarding the Department of Corrections" then it was "up to Your Honor to interpret all of that as to how we accomplish the results the Florida Supreme Court dictated in Carter..." (R. 195).

A Senior Psychiatrist from CMHI testified that CMHI is the **only** mental hospital for inmates of the Department and that the facility was designed for the most severe cases, particularly where involuntary medication is required. (R. 201). Despite his history of refusing to take medication, Mr. Watts did not qualify for involuntary hospitalization except for his "legal status" and discharge was appropriate. (R. 202-203). Dr. Welch admitted he had only met Mr. Watts a few days prior to testifying (R. 206) and acknowledged Mr. Watts had recently refused medication, reported hearing voices, believed one of the guards was Jesus, was having recurrent sexual fantasies, and reported "a great number of

hallucinatory events and talks about delusional ideas." Nevertheless, Mr. Watts' denial of such phenomenon in the recent interview convinced Dr. Welch that he could be moved back to death row. (R. 207-209).

Dr. Welch agreed that Mr. Watts frequently refused medication while on death row and he consistently denied suffering from any mental illness while there. (R. 209). He agreed there is no "better level of care" than CMHI available to Mr. Watts within the Department. While at that time Mr. Watts appeared willing to take medication at CMHI, he could not predict if this would continue in a different setting or facility. (R. 210-211).

The Department's argument consisted of asserting that Mr. Watts wasn't a danger to himself or others and his presence at CMHI was inconvenient. (R. 38, 212). Mr. Watts' counsel argued that he had been treated at CMHI before the competency proceeding and remaining there would assure some continuity of care. It was argued that CMHI had the best resources within the Department to treat Mr. Watts and the Department had the option of contracting with the Department of Children and Family Services in order to properly treat Mr. Watts for his incompetence. The only evidence presented was that Mr. Watts remained incompetent, the Department did not want to treat him, but a return to UCI would result in decompensation. Additionally, it was

argued that Mr. Watts is mentally ill under Section 945.42 (8) and should be treated by the Department at CMHI. (R. 221-223).

The Department acknowledged Mr. Watts is mentally ill, but nevertheless asserted he did not need treatment at CMHI. (R. 225). Dr. Welch was questioned again and stated that his treatment plan is a clinical one and **not** designed to restore Mr. Watts to competency, but by "happenstance [his] effective treatment would restore [Mr. Watts] to competency." (R. 231). Clinical treatment results in a "good possibility" of restoration of competency. (R. 232). Mr. Watts carries the diagnosis of Schizophrenic, paranoid type. (R. 234).

The ruling of the trial court is best summarized from his oral pronouncement at the conclusion of the hearing:

> Frankly, I don't know off the top of my head whether I have any authority to tell the executive branch of government where an inmate whom I have committed to their custody should sleep.
>
> **But I certainly have the authority, if I found that someone is incompetent, to order that he be treated.**
>
> **I'm hearing he is receiving the best treatment that he can receive under the circumstances where he is.**

(R. 238-239)(emphasis supplied).

> And I'm reluctant to do something that I think is just going to make us all be back here in six weeks.

> So, I'm going to avoid the temptation to take care of it that way.
>
> I'm also -- I would like to be able to enter an order that just says he is to be committed to the Department of Corrections. They can put him anywhere they want so long as he receives the appropriate mental health treatment.
>
> **My only reluctance to do that right now is the fact that while the department is saying that he does not require involuntary medication, there doesn't seem to be any issue that he has refused to take his medication as recently as December 6th, and this is January 7th - and I'm reluctant to set this thing up like a yo yo where we put him back in UCI and he stops taking his medication and we put him back in Zephyrhills and he takes it, and then we put him back and so forth. We have all seen that scenario in other cases, but not the same exactly.**

R. 241-242)(emphasis supplied).

The court thereafter denied the Department's motion. (R. 243, 52). It is from this order the Department appeals. The trial court advised such might be necessary: "let the Supreme Court tell us how to apply their decision in Carter to these facts." (R. 243).

SUMMARY OF ARGUMENT

The Department is determined to perpetuate Mr. Watts' incompetence to proceed and obstruct his right to due process of law. The Department seeks to pre-empt Mr. Watts' right to file a complete Fla.R.Crim.P. 3.850 motion for postconviction relief, which is his only procedural means to pursue habeas corpus relief. The Department's actions deny Mr. Watts equal protection of law insofar

as postconviction defendants are denied treatment designed to restore competence to proceed, but pre-trial defendants are routinely guaranteed such treatment. Capital postconviction litigants, and presumably non-capital postconviction litigants, have a right to be competent to proceed on core claims involving fact and requiring the defendant's input. The Department cannot justify distinguishing between these classes of defendants. Mr. Watts in being confined under conditions which violate the Eighth Amendment to the United States Constitution and Article I, section 17 of the Florida Constitution: the Department is purposely perpetuating his incompetence to proceed and the duration and nature of his confinement are thereby being extended and exacerbated. It is cruel or unusual to deny an inmate appropriate psychiatric treatment and to thereby make each day of Mr. Watts' incarceration a psychotic haze of religious delusions and hallucinations. Whether appropriate treatment is provided by Department employees at CMHI or by contracted experts from the Department of Children and Family Services, the State of Florida has the means to appropriately treat Mr. Watts, but refuses to do so.

Appellant makes no mention whatsoever of this Court's opinion in Carter v. State, 706 So. 2d 873 (Fla. 1997), and ignores the accurate framing of the core question involved in this appeal by the lower court: how does a circuit judge apply the Carter decision in an

actual proceeding? Appellee submits that reading Carter together with Florida Rules of Criminal Procedure 3.210-3.212 provide adequate guidance to the Department and lower courts in the rare situation where a capital postconviction litigant is declared incompetent. The lower court has properly exercised its discretion in applying the law and following this Court's instructions in Carter. There has been no abuse of power or discretion in this matter. The current draft rule developed by the Criminal Procedure Rules Committee [proposed rule 3.851 (f)] supports the trial court's rulings and, in fact, clarifies that the lower court had **more authority** than exercised in this case.

The only abuse of power has been by the Department: despite Carter and despite the rules trial courts are to apply until permanent rules are promulgated, the Department refuses to honor the trial court's order and refuses to properly treat Mr. Watts. While it is questionable whether this Court has jurisdiction to entertain the Department's appeal (the Department's remedy would appear to have been an extraordinary writ of mandamus or prohibition) and, further, Mr. Watts is not truly the proper party to this appeal, counsel for Mr. Watts briefs this matter as ordered because it is a question of great importance in capital postconviction litigation. In truth, however, this matter involves a disagreement between the Department (an executive agency) on one side and the Attorney General's Office (also in the executive branch of government) and the lower court on

the other side regarding the court's authority to order the Department to make appropriate treatment options available to Mr. Watts in a reasonable effort to both treat his mental illness and restore his competence to proceed, if possible. Typically, the Attorney General's Office would represent a lower court in an incidental matter involving a capital postconviction case. These are the true parties in interest.

Mr. Watts remains incompetent and he is not receiving treatment designed to restore him to competence. The Department wants to kick him out of Corrections Mental Health Institution, now located in Zephyrhills, Florida - unquestionably the "best" mental health treatment the Department has to offer any person incarcerated and in its custody - and to return him to death row at Union Correctional Institution. At UCI, it is uncontroverted that Mr. Watts' Schizophrenia, paranoid type, and his Mental Retardation will preclude him from voluntarily taking prescribed anti-psychotic medication or taking advantage of the limited mental health services made available to death row inmates. His psychosis will be perpetuated, cycling high and low depending upon circumstance and his demented perceptions of reality. The Department will not intentionally or by design restore Mr. Watts to competence regardless of where he is housed, but the best hope for restoration is "by

happenstance [Dr. Welch's] effective treatment would restore [Mr. Watts] to competency" at CMHI. (R 231).

If the Department refuses to treat Mr. Watts in a manner designed to restore him to competence, then the lower court has authority under Carter - in fact, an obligation - to remove Mr. Watts from the custody of the Department and order competent mental health professionals to attempt to restore Mr. Watts to competence. Alternatively, Mr. Watts' judgments and sentences must be vacated on the basis that his constitutional rights and conditions of his confinement violate the Constitutions of the United States and the State of Florida.

ARGUMENT I

WHETHER THE DEPARTMENT OF CORRECTIONS MAY IGNORE THIS COURT'S OPINION IN CARTER V. STATE AND THE ORDERS OF THE LOWER COURT AND REFUSE TO TREAT MR. WATTS OR ATTEMPT TO RESTORE HIM TO COMPETENCE TO PROCEED.

(as restated by Appellee)

In Carter v. State, 706 So. 2d 873 (Fla. 1997), this Court developed procedures for trial courts to follow when a good faith motion asserting that a capital postconviction litigant is incompetent to proceed is filed. As part of that opinion, this Court asked the Criminal Procedure Rules Committee to propose rules in accord with the opinion. Carter, at 876 n. 3. In the interim, trial courts were directed to look to "the rules for raising and

determining competency at trial." Id. at 876. Those rules are Fla.R.Crim.P. 3.210, 3.211, and 3.212. Rule 3.212 (c) provides, in part, as follows:

> **(c) Commitment on Finding of Incompetence.** If the court finds the defendant is incompetent to proceed, or that the defendant is competent to proceed but that the defendant's competence depends on the continuation of appropriate treatment for a mental illness or mental retardation, the court shall consider issues relating to treatment necessary to restore or maintain the defendant's competence to proceed.
>
> (2) If the defendant is incarcerated, the court may order treatment to be administered at the custodial facility **or may order the defendant transferred to another facility for treatment or may commit the defendant as provided in subdivision (3).**

(emphasis supplied).

This Court may also take judicial notice of the current draft rule of the Criminal Procedure Rules Committee which provides that if the court makes a finding of incompetence pursuant to Rule 3.212 (c) above, it should follow the remaining procedures of said rule "except that, to the extent practicable, any treatment shall take place at a custodial facility under the direct supervision of the Department of Corrections." Draft Rule 3.851 (f)(4)(D), copy attached as Appendix A. This Court has exclusive authority to "adopt rules for the practice and procedure in all courts." Art. V, sec. 2(a), Fla.Const. The authority to initiate rules rests exclusively

with this Court. Johnson v. State, 336 So. 2d 93 (Fla. 1976). At this time the Carter opinion installs Fla.R.Crim.P. 3.210-3.212 as the temporary rules regarding postconviction incompetence in capital cases.

The lower court followed this Court's mandate. It determined Mr. Watts was incompetent and qualified for involuntary commitment. (R. 10-11). The lower court considered the competency reports prepared by the experts in considering "issues relating to treatment necessary to restore or maintain the defendant's competence to proceed." In so doing, it was obvious that Mr. Watts **must** be committed to a hospital or other in-patient setting to impose the needed medication regimen. It was obvious that this could **not** be accomplished at his custodial facility, i.e, death row at UCI, and the court considered CMHI as the appropriate and available treatment alternative. These findings are supported by the record and are consistent with the authority conferred upon lower courts by the Carter opinion.

Dr. Barnard informed the court that Mr. Watts will not voluntarily take medication on death row due to his mental illness. In-patient treatment is required. (R. 36-41, 122-124, 136, 241-242). It is unrefuted that CMHI is the "best" the Department has to offer mentally ill inmates. (R. 130, 201, 204, 209-210). No "better level of care" exists within the Department. (R. 209-210). Even the

Department's expert could not testify that returning Mr. Watts to his custodial facility, UCI, would result in his voluntary compliance with the recommended medication regimen. (R. 210-211). Additionally, Mr. Watts had previously been treated at CMHI and continuity in treatment was considered beneficial. (R. 221). Dr. Welch admitted his clinical treatment plan would likely restore Mr. Watts to competence, despite the Department's insistence that it **does not, under any circumstances, restore inmates to competency.**[1] (R. 231-232, 13-15, 33-35, 121-122, 135, 148).

The Department asserts the lower court has violated the doctrine of separation of powers by committing Mr. Watts to CMHI and declining the Department's invitation to return him to UCI while he is still incompetent. It is curious that the Department makes this argument in a vacuum: this Court's Carter opinion is not even acknowledged to exist, nor are the Rules of Criminal Procedure relating to pre-trial competence given more than superficial consideration.

What is the Department's position? Apparently, one of callous indifference to the mental health of Mr. Watts and a lack of concern that Florida prisons may be full of legally incompetent inmates who

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[1] **Apparently, at least in Mr. Watts' case, this is quite true. Mr. Watts has been re-evaluated by two experts in the last several months and he remains incompetent to proceed despite CMHI's "treatment."**

have been medicated or otherwise conditioned into "compliance." Clearly, it will not restore Mr. Watts to competence except as an accidental by-product of clinical treatment. Obviously, it wants Mr. Watts out of CMHI. The Department has not, however, conceded that a lower court order transferring Mr. Watts - a death row inmate at the highest custody level - to a non-Department facility would be acceptable. The Department appears to take the defiant position that it owns Mr. Watts and will do with him what it pleases, no one can question its decisions, and Mr. Watts will remain incompetent indefinitely. Appellant's cited caselaw is inapplicable to the present controversy.

Mr. Watts has a constitutional right to be competent while litigating his capital postconviction claims involving factual matters and requiring his input. Drope v. Missouri, 420 U.S. 162, 171 (1975); Carter v. State, supra. "Unless a death-row inmate is able to assist counsel by relaying such information, the right to collateral counsel, as well as the postconviction proceedings themselves, would be practically meaningless." Carter, at 875. The Department is denying Mr. Watts his constitutional right to due process of law. Art. I, sec. 9, Fla. Const.; 5th Am., U.S.Const. The Department is subjecting Mr. Watts to cruel or unusual punishment by increasing his punishment beyond incarceration and execution of

sentence.[2] Rule 3.850 is the procedural vehicle for the collateral remedy otherwise available by writ of habeas corpus. State v. Bolyea, 520 So. 2d 562 (Fla. 1988). By perpetuating Mr. Watts' incompetence and denying him appropriate psychiatric treatment, the Department denies Mr. Watts his right to seek habeas corpus relief. Art. I, sec. 13, Fla.Const. The Department denies Mr. Watts access to courts. Art. I, sec. 21, Fla.Const. The Department violates Mr. Watts' right to equal protection of law. Art. I, sec. 2, Fla.Const.

If the Department is correct, and its status as an executive agency allows it to ignore this Court and ignore the lower court because there is no specific statute directing the Department to restore competence to a death row inmate - or, for that matter, any inmate in its custody), then Mr. Watts should be ordered committed to the Department of Children and Family Services for proper treatment pursuant to Sections 394.467, 916.12 and 916.13, Florida Statutes.

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[2] "I take notice of the Florida Department of Corrections' material which states that prisoners who have been sentenced to death are maintained in a six-by-nine-foot cell with a ceiling nine and one-half feet high. [cite deleted] These prisoners are taken to the exercise yard for two-hour intervals twice a week. Otherwise, the prisoners are in their cells." Swafford v. State, 679 So. 2d 736, 743 n. 8 (Fla. 1996)(Wells,J., dissenting in part and concurring in part). Recently, the Department has installed metal grates with small openings across all death row cells, restricting the minimal light which once crept into the tiny cells. It is to this environment - into these conditions of confinement - that the Department seeks to return Mr. Watts, while he is unquestionably mentally ill, incompetent, and mentally retarded. This violates the 8th Amendment to the United States Constitution and Article I, section 17 of the Florida Constitution.

Mr. Watts qualifies for involuntary hospitalization under either statute's definitions.

However, the Legislature has expressed its intent that mentally ill inmates in the custody of the Department receive "evaluation and appropriate treatment for their mental illness through a continuum of services." Section 945.41, Statement of Legislative Intent, Florida Statutes. Further, the Department is commanded to provide "appropriate treatment" for all inmates suffering from mental illness and in need of intensive psychiatric inpatient treatment or care, including those requiring hospitalization. To this end, the Department "**shall** contract with the Department of Children and Family Services for the provision of mental health services in any departmental mental health treatment facility." Further, the Department "**shall** provide mental health services to inmates committed to it and **may** contract with any persons or agencies qualified to provide such services." Section 945.41 (1), Florida Statutes. While the Department **chooses** to take a restrictive view and interpret these statutes as requiring that the mental illness pose an immediate, real, and present threat of substantial harm to the inmate's well-being or to the safety of others before treatment is provided, this does not appear to be the Legislative intent. This restrictive view also thumbs its nose at this Court and the lower court.

There is no question that the lower court, after notice and hearing to the State of Florida, determined that Mr. Watts suffers from a mental illness requiring treatment at CMHI, which is the "best" level of care available within the Department and resembles a hospital setting. His illness and retardation are so serious that he cannot stay in reality long enough to consult with his attorney. One would think these conditions are serious enough to qualify as "mental illnesses that require [appropriate] hospitalization and intensive psychiatric inpatient treatment or care." Section 945.41 (1). One would think that if the Department must contract with the Department of Children and Family Services (the very agency that restores pre-trial defendants to competence, when possible) for mental health services in any departmental mental health treatment facility, then the Department should contract with outside experts if the care required for Mr. Watts to be restored to competency (or at least for a competent attempt at restoration) is beyond CMHI's current skill level.

The State of Florida has chanted "finality" for as long as the death penalty has been approved in this state. It is curious that two arms of the executive branch of government would find themselves at odds, with the Attorney General begging the Department to treat Mr. Watts for the sake of "finality," while the Department maintains it does not and will not treat **any** inmate for legal incompetence.

Once again, it falls to this Court to find a constitutional and legal way to order the present chaos.

CONCLUSION

The lower court has complied with this Court's dictates in Carter and followed the Florida Rules of Criminal Procedure being utilized until specific rules regulating incompetence in capital postconviction can be finalized. The fact that this is something new, and the Department wants to cling to the past, does not render the lower court's order an abuse of power or discretion. This Court has rule-making power, has exercised it in this context, and the lower court has acted appropriately. No separation of powers issue is presented. The Department should be ordered to comply with the lower court's order or this cause should be remanded for entry of an order transferring Mr. Watts to an appropriate mental health facility outside the Department for the express purpose of treating his mental illness and, by design, attempting to restore his competence.

I HEREBY CERTIFY that a true copy of the foregoing Answer Brief has been furnished by United States Mail, first class postage prepaid, to all counsel of record on October 5, 2000.

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