IN THE SUPREME COURT OF FLORIDA

CASE NO.

STATE OF FLORIDA,
DEPARTMENT OF CORRECTIONS
Appellant,

-vs-

TONY RANDALL WATTS,

Appellee.

ON DIRECT APPEAL OF THE FOURTH JUDICIAL CIRCUIT, IN AND FOR DUVAL COUNTY, FLORIDA, CASE NO. 88-11505 CF CR-C

APPELLANT'S INITIAL BRIEF

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PRELIMINARY STATEMENT AND CERTIFICATION OF TYPE SIZE

The Appellant, Florida Department of Corrections, will be referred to as FDC or the Department. The Appellee, Tony Randall Watts is an inmate under sentence of death. He will be referred to as Appellee or by name. All references to the Florida Statutes will be to the 1999 edition unless specified. References to the Record will be denoted by the letter "R", followed by the corresponding page number. Appellant's Initial Brief is certified as being typed in 12 point Courier New, a font that is not proportionally spaced.

JURISDICTIONAL STATEMENT

Appellee, Tony Randall Watts, is an inmate under sentence of death. This appeal challenges the sentencing court's order requiring the continued involuntary placement of inmate Watts at Corrections Mental Health Institution.

Pursuant to Article V, section 3(b)(1) of the Florida Constitution and Florida Rule of Appellate Procedure 9.030(a)(1)(A)(i) , the Florida Supreme Court has jurisdiction to hear appeals of final judgments of trial courts imposing the death penalty.

STATEMENT OF THE CASE AND FACTS

Appellee Watts was sentenced to death on September 15, 1989 by the Honorable L.P. Haddock in the Fourth Judicial Circuit Case no. 88-11505-CF. (R 1-9) This court affirmed the conviction and sentence in Watts v. State, 593 So.2d 198 (1992) *cert. denied* 505 U.S. 1210 (1992). Watts' competency had been an issue at trial and on appeal, but the court determined that he was competent to stand trial. Id, at 202.

In collateral proceedings, Watts competence to aid in his defense was again raised. On May 4, 1999, the circuit court entered an order determining Watts was not competent to proceed and ordered his transfer and commitment to Corrections Mental Health Institution (CMHI) at Florida State Hospital[1] pursuant to §394.467, Florida Statutes. (R. 10-11). The order further provided that Watts "shall not be discharged or released from involuntary hospitalization without further Order of this Court." (R. 11).

On July 19, 1999, FDC filed a Motion to Return Defendant from Corrections Mental Health Institution. (R. 13-15) The motion explained that while FDC could not make a competency determination, it had determined that inmate Watts was not in need of involuntary commitment because he was not a threat to himself or others due to his mental condition. (R. 13) FDC argued that the treatment and placement of a sentenced inmate was within the discretion of the Department of

[1] . CMHI was later moved to Zephyrhills, Florida and the court authorized inmate Watts to be transferred to the new facility. (R.26)

Corrections. (R. 13). The lower court denied the motion on October 1, 1999, but agreed that the court did not have authority to instruct FDC on where to house inmate Watts. (R. 16, 140).

On October 26, 1999, the state attorney's office for the Fourth Judicial Circuit filed a Suggestion of Competency. (R. 28) Attached to the motion was a status report completed by Dr. George Kantzler, which concluded "In my opinion, I feel inmate no longer needs continued hospitalization and is appropriate to be evaluated for competency. However, he will need continued mental health treatment." (R. 30).

On October 30, 1999, the lower court entered an Order Authorizing Continued Involuntary Placement of inmate Watt at CMHI for one year. (R. 31) On January 03, 2000, FDC filed a Motion for Amended Order asking for authorization to transfer inmate Watts to another facility for outpatient treatment. (R. 33-35) Counsel for inmate Watts filed a Response opposing the transfer of inmate Watts. (R. 36-41).

Dr. Bruce Welch testified at hearing on January 7, 2000 that CMHI is a mental hospital designed to treat the most severe mental health cases and patients that require involuntary medication. (R. 201). Dr. Welch explained that inmate Watts did not require a hospital setting or involuntary medication and a less restrictive setting would be appropriate to care for inmate Watts. (R. 201-211) FDC argued that the housing of inmate Watts at CMHI was taking up limited hospital resources that could better serve inmates who are in need of a hospital setting. (R. 212-217) After hearing argument, Judge Haddock denied

FDC's motion and ruled that inmate Watt's must remain at CMHI until his situation is stable and he is voluntarily taking his medication. (R 242-243)

On April 12, 2000, FDC submitted a status report from Dr. Bruce Welch, which concluded that inmate Watts does not meet the criteria for involuntary hospitalization and recommending that he be transferred to receive outpatient treatment. (R. 50-51) On April 18, 2000, Judge Haddock memoralized his oral ruling of January 7, 2000 by entering an Order requiring inmate Watts to "remain at CMHI for further treatment until such time as the Department of Corrections can show the Court that the Defendant is voluntarily taking his medication, is stable and can be returned to UCI." (R. 52)

On May 1, 2000, FDC timely appealed the April 18, 2000 Order. *See* R.S. Johnson v. Citizens State Bank, 537 So.2d 96 (Fla. 1989) (notice of appeal filed with circuit court within 30 days of order is sufficient to demonstrate timely filing of appeal). This appeal follows.

SUMMARY OF THE ARGUMENT

The lower court's order directing FDC to house inmate Watts in a hospital setting at CMHI until the court is assured that inmate Watts is voluntarily taking his medicine, is contrary to Florida Statute §945.43 and 944.17. Physicians employed by FDC have determined that inmate Watts does not meet the criteria for continued placement at CMHI and can be treated in a less restrictive environment. The lower court's order amounted to a usurption of FDC's executive determination of where to house and treat inmates properly committed to FDC's custody. The order should be reversed as violative of the doctrine of separation of powers.

ARGUMENT

WHETHER A CRIMINAL COURT HAS JURISDICTION TO DIRECT THE DEPARTMENT OF CORRECTIONS INTO THE PLACEMNT OF A SENTENCED INDIVIDUAL

Appellee Watts was initially committed to Corrections Mental Health Institution (CMHI) on May, 4 1999, based on Florida Statute §394.467 and §916.12. (R. 10,11) The lower court based the commitment on Appellee not being competent to proceed in the collateral appeal of his death sentence.

Florida Statute 394.467, commonly known as the Baker Act, allows individuals to be involuntarily committed to a treatment facility when the individual's mental illness causes a likelihood of harm if left untreated. The Baker Act does not address restoration of competency to proceed in criminal matters. On April 17, 2000, the court entered an order extending Appellee's commitment to CMHI until FDC can demonstrate to the court that Watts is "voluntarily taking his medication, is stable and can be returned to UCI." (R. 52) None of the criteria for continuing hospitalization under the Baker Act, such as a hearing and finding of likelihood of harm, was addressed by the court. *See* Fla. Stat. 394.467(7). The effect of this order is to put inmate Watts in control of where he is housed within the Department of Corrections. Watts can refuse medication and remain at CMHI indefinitely. The lower court usurped FDC's authority to determine where to house and treat a

sentenced individual and gave control to inmate Watts.

FDC is mindful of the court's desire to have sufficient mental health care available to inmate Watts so that he can become able to aid in his defense. FDC is also aware that under Florida Rule of Criminal Procedure 3.212(c)(2)

[2] and Florida Statute 916.13 the court may order treatment if a defendant is found incompetent to proceed in criminal proceedings.

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[2] Fla. R. Crim. P. 3.212(c) states:

> (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 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).
>
> (3) A defendant may be committed for treatment to restore a defendant's competence to proceed if the court finds that:
>
> (A)the defendant meets the criteria for commitment as set forth by statute;
>
> (B) there is a substantial probability that the mental illness or mental retardation causing the defendant's incompetence will respond to treatment and that the defendant will regain competency to proceed in the reasonably forseeable future;
>
> (C)treatment appropriate for restoration of the defendant's competence to proceed is available; and
>
> (D) no appropriate treatment alternative less restrictive than that involving commitment is available.

Florida Statute §916.13, however, only authorizes involuntary commitment to the Department of Children and Family Services for incompetent defendants. No similar grant of legislative authority authorizes FDC to treat a sentenced individual for the purpose of restoring competency. The lower court erred in committing inmate Watts to CMHI, which is not a facility designated by statute for restoring competency.

CMHI is designated by Florida Statute §945.41 for inmates who have mental illnesses that require hospitalization and intensive psychiatric inpatient treatment or care. An inmate may be admitted to CMHI after notice and hearing if his or her mental illness poses a real and present threat of substantial harm to the inmate's well-being or to the safety of others. Fla. Stat. §945.42 and 945.43. An inmate who has been transferred to CMHI for the purpose of mental health treatment may be transferred to another facility if the warden determines the inmate is either (a) no longer in need of treatment or (b) continues to be mentally ill, but is not in need of care and treatment as an inpatient, and can be provided appropriate outpatient and aftercare services. Fla. Stat. §945.47.

Inmate Tony Watts was not admitted to CMHI pursuant to the procedures outlined in Florida Statute §945.43 and does not meet the criteria for continued placement at CMHI under Florida Statute §945.45.

By statute, commitment to CMHI is based on a finding that the inmate is a threat to himself or others. *See* Florida Statute §945.43.

Competency does not enter into the equation and FDC has consistently maintained that it can not make a determination on competency. (R.14, 121, 148, 202, 208, 213) Pursuant to Florida Statute §945.47, FDC should be allowed to release inmate Watts from CMHI, regardless of his competency, once FDC determines he does not need inpatient treatment. Florida Statute §944.17(2) and (7), further authorize FDC to transfer prisoners within the Corrections system as FDC deems appropriate.

Judge Haddock agreed that according to the statutes, he could not direct FDC on where to house inmate Watts. (R. 140). Nonetheless, his orders specifically directed FDC not to release inmate Watts from CMHI without the court's approval. (R. 11, 52) In doing so, the lower court has directed an executive agency to act contrary to its legislative authority in violation of the separation of powers doctrine. *See* Art. II, Section 3, Florida Constitution. Generally, a sentencing court lacks the authority to regulate the treatment of an inmate properly committed to the custody of the Department of Corrections. *See* Singletary v. Acosta, 659 So.2d 449 (Fla. 3rd DCA 1995) (a trial court wholly lacks the authority to regulate the placement and treatment of a sentenced inmate); Florida Dep't of Health and Rehabilitative Services v. Gross, 421 So.2d 44 (3rd DCA 1982), (orders entered in criminal proceedings, committing defendants to the Mentally Disordered Sex Offender Program, constituted an unwarranted judicial incursion into the executive function and authority of the Department of Health and Rehabilitative Services); State, ex rel. Dep't of Health and

Rehabilitative Services v. Sepe, 291 So.2d 108 (Fla. 3d DCA 1974) (a trial court's order committing a defendant in a criminal case to a state hospital and undertaking to direct a state agency as to treatment, amounted to a usurpation of the authority of the state agency and invaded the functions of the state agency as a division of the executive department in derogation of the doctrine of the separation of powers). Criminal courts should not be in a position to dictate where to house a sentenced inmate or what level of treatment should be provided.

The order on appeal in this case, directs FDC in the placement and treatment of inmate Watts without statutory authority. Compounding the lower court's usurption of FDC's authority to regulate the placement and treatment of sentenced offenders, is the portion of the order directing that inmate Watts can not be released until he is voluntarily taking his medication. The physicians treating inmate Watts have prescribed medication, but indicated that his occasional refusal to take the medicine was not compromising his mental stability. (R. 30, 50) By requiring FDC to continue hospitalizing an inmate until he voluntarily takes his medication is contrary to statute and logic. By refusing medicine, inmate Watts may elect to remain hospitalized indefinitely despite the determination of FDC and his treating physicians that he can be returned to an institutional setting.

It is not necessary to wait until Watts is determined to be competent to authorize his release from CMHI. Watts can receive out

patient treatment at Union Correctional Institution or Florida State Prison and can be evaluated for competency at those locations. In fact, it may be easier to assess Watt's true level of competency in his normal living conditions than in the confines of a hospital.

CONCLUSION

The lower court usurped FDC's authority to regulate the treatment and placement of an individual sentenced to its custody. FDC respectfully requests that the lower court order directing FDC to provide continued hospitalization at CMHI be reversed.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Initial Brief was mailed this day of August, 2000, to the Honorable L.P. Haddock, 103 Duval County Courthouse, 330 E. Bay Street, Jacksonville, Fl 32202, Andrew Thomas, Asst. CCRC-N, P.O. Box 5498, Tallahassee, Fl 32314-5498, Barbara Yates, Asst. Attorney General, PL-01, the Capitol, Tallahassee, Fl 32399-1050, Stephen Bledsoe, Asst.

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