

Supreme Court of Florida

No. SC02-1230

AMENDMENTS TO THE FLORIDA RULES OF CRIMINAL PROCEDURE.

[February 27, 2003]

PER CURIAM.

The Florida Bar Criminal Procedure Rules Committee (Rules Committee) has filed an emergency petition to amend the Florida Rules of Criminal Procedure. We have jurisdiction. See art. V, § 2(a), Fla. Const.; Fla. R. Jud. Admin. 2.130(e).

In this petition, the Rules Committee proposes two amendments in response to legislation that became effective July 1, 2001. The Rules Committee proposes new Florida Rule of Criminal Procedure 3.203, entitled “Defendant's Mental Retardation as a Bar to Imposition of Death Sentence.” As proposed, new rule 3.203 would govern procedures where a defendant charged with first-degree

murder asserts mental retardation as a bar to the imposition of the death penalty under recently enacted section 921.137, Florida Statutes (2001). See ch. 2001-202, § 1 at 1831-33, Laws of Fla. The Rules Committee also sought to amend rule 3.704, the Criminal Punishment Code, to comport with a recent amendment to section 921.0021(5), Florida Statutes (2000), which redefines the term "prior record" to include juvenile dispositions that were committed up to five years, rather than three years, before the primary offense. See ch. 2001-210, § 2 at 1878, Laws of Fla.

On September 27, 2002, the Rules Committee filed a supplement to its petition, notifying the Court that the portion of the petition seeking to amend rule 3.704 was moot in light of the Court's decision in Amendments to Florida Rules of Criminal Procedure 3.704 & 3.992 (Criminal Punishment Code), 810 So. 2d 826 (Fla. 2001). In that case, the Court amended rule 3.704(d)(14)(B) to comport with the 2001 amendment to section 921.0021(5). However, the Rules Committee asked the Court to approve its proposed Committee Note to rule 3.704. The Committee Note explains the 2001 amendment to that rule and alerts practitioners that the amendment applies to primary offenses committed on or after July 1, 2001, the effective date of the new legislation. The proposed Committee Note provides:

2001 Amendment. 3.704(d)(14)(B). The definition of "prior

record” was amended to include juvenile dispositions of offenses committed within 5 years prior to the date of the commission of the primary offense. “Prior record” was previously defined to include juvenile disposition of offenses committed within 3 years prior to the date of the commission of the primary offense. This amendment reflects the legislative change to section 921.0021, Florida Statutes, effective July 1, 2001. This new definition of prior record applies to primary offenses committed on or after July 1, 2001.

We approve the proposed Committee Note for publication. However, we defer consideration of proposed new rule 3.203 and will consider that proposal together with several pending cases that raise claims based on section 921.137 or the United States Supreme Court's recent decision in Atkins v. Virginia, 122 S. Ct. 2242 (2002). See Burns v. State, No. SC01-166 (Fla. notice of appeal filed Jan. 22, 2001); Miller v. State, No. SC01-837 (Fla. notice of appeal filed Apr. 19, 2001); Thomas v. State, No. SC00-1092 (Fla. notice of appeal filed Apr. 24, 2001).

Accordingly, we approve the proposed Committee Note to Florida Rule of Criminal Procedure 3.704 for publication. The Committee Note is offered for explanation only and is not adopted as an official part of the rules. The amendment shall become effective immediately upon the release of this opinion.

It is so ordered.

ANSTEAD, C.J., and WELLS, PARIENTE, LEWIS, QUINCE, CANTERO and BELL, JJ., concur.

THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THIS AMENDMENT.

Original Proceeding - Florida Rules of Criminal Procedure

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and Raymond J. Rafool, II, Chair, The Florida Bar Criminal Procedure Rules
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for Petitioner

Nancy Daniels, Public Defender, and David A. Davis, Assistant Public Defender,
Tallahassee, Florida, on behalf of the Florida Public Defender Association, Inc.;;
and Paul M. Rashkind, President, FACDL-Miami, Florida, on behalf of the Florida
Association of Criminal Defense Lawyers-Miami,

Responding with comments