IN THE SUPREME COURT OF FLORIDA

LAWANDA BYRD,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

CASE NO. SC03-284

RESPONDENT'S ANSWER BRIEF

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PRELIMINARY STATEMENT

Respondent, the State of Florida, the Appellee in the District Court of Appeal (DCA) and the prosecuting authority in the trial court, will be referenced in this brief as Respondent, the prosecution, or the State. Petitioner, Lawanda Byrd, the Appellant in the DCA and the defendant in the trial court, will be referenced in this brief as Petitioner or by proper name.

The record on appeal consists of five volumes, which will be referenced as follows. The supplemental record shall be termed “S,” the record on appeal “R,” the transcript of the competency hearing of March 17 and April 29, 1999 “CH,” the transcript of the motion hearing of August 15, 2001 “MH,” and the transcript of the motion to dismiss hearing of November 7, 2001 “DH.” "IB" will designate Petitioner's Initial Brief. Each symbol will be followed by the appropriate page number in parentheses.

All emphasis through bold lettering is supplied unless the contrary is indicated.

STATEMENT OF THE CASE AND FACTS

The State agrees with Petitioner's statement of the case and facts, except as follows:

1) Petitioner was charged with armed robbery with a deadly weapon and first degree murder. (Progress docket, page 1; S, 27).

2) While the experts who testified at Petitioner’s competency hearing in the spring of 1999 all agreed that Petitioner was

mentally retarded, they all also recognized that Petitioner suffered from acute Post Traumatic Stress Disorder and psychosis. (CH, 45, 53, 88, 91, 154, 158).

3) The order finding Petitioner to be incompetent to proceed to trial made the following findings of fact: “the defendant is mentally retarded,” and “the defendant also suffers from Post Traumatic Stress Disorder and psychotic symptoms.” (R, 29). As a matter of law, the lower court concluded that “the defendant is incompetent to proceed due to the defendant’s mental retardation, as defined in S. 393.063, F.S., and due to the Post-Traumatic Stress Disorder and psychotic symptoms.” (R, 29).

4) In denying the Petitioner’s Motion to Dismiss, the trial court held: “...I find that the time requirements in S. 916.303, F.S. as to dismissal of charges for defendants found to be incompetent is superseded by Rule 3.213, Fl.R.Crim.P.” (R, 12-13).

SUMMARY OF ARGUMENT

In this case, Petitioner asserts that the First District Court of Appeal reversibly erred in denying her petition for writ of certiorari by affirming the lower court's order denying a motion to dismiss criminal charges for first degree murder and robbery. She asserts entitlement to dismissal based upon her continued incompetency as a result of mental retardation pursuant to F.S. 916.303, which provides for dismissal after a period of two years. She presents this Court with a three prong argument in support of her claim that the lower court erred in relying upon the provisions of Fla.R.Crim.P. 3.213, rather than those of F.S. 916.303(1) because: (1) the statute is substantive in nature and must therefore control, in view of the Legislature's clear intention to treat mentally retarded persons differently from mentally ill persons based upon its recognition that the former will not recover; 2) the Rule cannot supercede the statute when the statute is substantive in nature and must therefore control, and the rule was adopted prior to enactment of the statute; and, 3) she is entitled to dismissal and the state may seek involuntary civil commitment. The State respectfully disagrees.

Jurisdiction in the case was improvidently granted given the fact that the First District Court of Appeal decision did not find F.S. 916.303(1) to be unconstitutional nor did the opinion directly and expressly construe provisions of the Florida Constitution. Should this Court accept jurisdiction, however, it

should nonetheless decline to reach the merits of the case because Petitioner has presented both novel and altered arguments from those presented to the lower courts.

Even if the issue presented could be considered, the State asserts that it is without merit and the lower court should be affirmed.

First, the provision at issue, F.S. 916.303(1), is procedural, rather than substantive in nature. The provision does not create a substantive absolute right, rather it is akin to a triggering mechanism and sets forth the means by which a right may be asserted. It also may be interpreted as an allocation of a presumption of competence, which makes the provision non-substantive in nature.

Secondly, Petitioner was not entitled to dismissal under F.S. 916.303(1) in view of the fact that she was diagnosed as being mentally ill, as well as, mentally retarded. The longer time frame of five years found in F.S. 916.145 is thus the correct one.

Finally, Petitioner's claim that the State has the alternative of seeking civil commitment which is less burdensome to the Department of Children and Families is misplaced. Not only is the Department also responsible for persons committed under Chapter 393, civil commitment differs significantly from commitment under Chapter 916 and does not offer the safeguards available under Chapter 916 for defendants charged with the

types of serious crime at issue in this case, first degree murder and robbery.

ARGUMENT

ISSUE I

WHETHER THE DISTRICT COURT OF APPEAL ERRED IN DENYING MS. BYRD'S PETITION FOR WRIT OF CERTIORARI BY FINDING THAT THE PROVISIONS OF FLA.R.CRIM.P. 3.213(a) SUPERCEDE THOSE OF F.S. 916.303(1)? (Restated)

In this case, Petitioner asserts that the First District Court of Appeal reversibly erred in denying her petition for writ of certiorari by affirming the lower court's order denying a motion to dismiss criminal charges for first degree murder and robbery. Petitioner asserts entitlement to dismissal based upon her continued incompetency as a result of mental retardation pursuant to F.S. 916.303, which provides for dismissal after a period of two years.

She presents to this Court a three prong argument in support of her claim of error that the lower court erred in relying upon the provisions of Fla.R.Crim.P. 3.213, rather than those of F.S. 916.303(1) because: (1) the statute is substantive in nature and must therefore control, in view of the Legislature's clear intention to treat mentally retarded persons differently from mentally ill persons based upon its recognition that mentally retarded persons will not recover, 2) the Rule cannot supercede the statute when the statute is substantive in nature and must therefore control, and the rule was adopted prior to enactment

of the statute; and, 3) she is entitled to dismissal and the state may seek involuntary civil commitment in the alternative.

The State respectfully disagrees.

Jurisdiction

The Petitioner in this case seeks review before this Court asserting that the opinion of the First District Court of Appeal invalidated a state statute, F.S. 916.303(1) and necessarily construed Articles III, IV, and V of the Florida Constitution.

Fla. R. App. P. 9.030(a)(1)(A)(ii) parallels Article V, § 3(b)(1), Fla. Const. The constitution provides that the Florida Supreme Court:

> Shall hear appeals from final judgments of trial courts imposing the death penalty and from decisions of district courts of appeal declaring invalid a state statute or a provision of the state constitution.

While both constitutional provision and rule provide that the Supreme Court has exclusive jurisdiction to hear appeals from decisions of District Courts of Appeal declaring a state statute unconstitutional, in this case, Petitioner has failed to provide this Court with any authority to support her proposition that F.S. 916.303(1) is invalid and that the lower Court actually declared the statute unconstitutional. Consequently, this Court must decline to exercise its jurisdiction.

In making this assertion, however, the State acknowledges this Court's statement in Haven Federal Savings & Loan Association v. Kirian, 579 So.2d 730, 732 (Fla. 1991), to the effect that

"[w]here this Court promulgates rules relating to the practice and procedure of all courts and a statute provides a contrary practice or procedure, the statute is unconstitutional to the extent of the conflict." The State responds, however, that the decision of the First District Court of Appeal did not directly rule upon the constitutionality of any statute and, in view of the 1980 amendments to the Florida Constitution, which restricted this Court's jurisdiction under Article V(3)(b)(1) to those decisions directly declaring a state statute unconstitutional, the inherency doctrine does not apply and jurisdiction does not lie.

Standard of Review

Petitioner asserts that there are no factual disputes in this case and therefore the question presented is purely one of law. The State disagrees given Petitioner's representation that the trial court's finding of incompetency was solely based upon mental retardation thus bringing her under the auspices of F.S. 916.303. The record disputes this assertion and an underlying question of fact therefore exist which results in a mixed question of fact and law.

The purely legal aspect of the issue presented is to be determined via application of a *de novo* standard of review. Phillip J. Padovano, Florida Appellate Practice § 9.4, at 147 (2d ed. 1997). See e.g., Rittman v. Allstate Insurance Company, 727 So. 2d 391 (Fla. 1st DCA 1999) ("The standard of review of a trial court ruling on a pure issue of law is de novo, i.e., an

appellate court need not defer to the trial court on matters of law"). The factual aspect of the issue is entitled to review utilizing an abuse of discretion standard, in recognition of the deference to be afforded the trier of fact who is deemed to be in the best position to determine it. Ferguson v. State, 789 So.2d 306, 315 (Fla. 2001) ("We review a trial court's findings as to a defendant's competence to stand trial under an abuse of discretion standard.")

Thus, this case presents a mixed question of fact and law.

Preservation

Petitioner presents a three part argument in support of her assertion that the provisions of F.S. 916.303(1) create a substantive right, so that the provisions of Fla.R.Crim.P. 3.213 cannot supercede the statute. In the first prong, Petitioner argues that the fact that the Legislature took the original competency statute and split its provisions into F.S. 916.303 and 916.145 clearly shows that it intended to treat mentally retarded/autistic defendants differently from those who are mentally ill based upon its recognition that mentally retarded persons can never recover. She also likens the different time frames set forth in the two statutes to statutes of limitations which are deemed substantive law.

In the lower court, Petitioner asserted that the Legislature intended to treat those defendant who are mentally ill differently from those who are mentally retarded or autistic.

However, the argument made before this Court presents a statutory and rule analysis not made below.

In the second prong of Petitioner's argument, she contends that the provisions of Fla.R.Crim.P. 3.213 cannot supercede those of the statute where the statute creates a substantive right and the rule was adopted prior to enactment of F.S. 916.303. This argument is entirely novel to this appeal and was not made below.

Finally, the last prong of Petitioner's argument is that she is entitled to discharge because she remains incompetent and the State has the option of seeking involuntary commitment under F.S. 393.11. She contends that the imposition of such a civil commitment will lessen the burdens of the Department of Children and Families. Again, while Petitioner argued below that she was entitled to discharge based upon her claim the statute was substantive and thus prevailed over the rule, the argument presented here, was not made below.

An issue or legal argument presented on appeal which has not been presented to a lower court for its consideration is not preserved for purposes of appellate review. F.S. 924.051. The State asserts that because Petitioner has either altered the argument presented below for presentation to this Court or has presented novel argument to this Court, the issue presented is not properly preserved.

Merits

Even if Petitioner's claim may be presented to this Court, however, she may not prevail on the merits.

In support of her position that the provisions of F.S. 916.303(1) are substantive law, Petitioner likens the different time frames at issue to statutes of limitations which are generally deemed substantive law. Not only is this characterization inaccurate for several reasons, Petitioner has failed to cite to any authority for this proposition.

Substantive law, which is the legislature's domain, is that part of the law which creates, defines, and regulates rights. Haven Federal Savings & Loan Association v. Kirian, 579 So.2d 730 (Fla. 1991). Procedural law, which is the sole responsibility of the Courts, encompasses the course, form, manner, means, method, mode, order, process, or steps by which a party enforces substantive rights or obtains redress for their invasion. Id.

The legislature therefore lacks the authority to prescribe procedures for judicial proceedings, and any attempt to do so is invalid. Department of Health & Rehabilitative Services v. Crossdale, 585 So.2d 481 (Fla. 4th DCA 1991), superceded on other grounds by statute, Department of Health v. Coyle, 624 So.2d 400 (Fla. 5th DCA 1993). "[T]he limitation upon the legislature enacting procedural law is not absolute; rather, it is prohibited only in the event the proposed statute conflicts with an existing rule of procedure adopted by the Supreme Court, and where a statute is both procedural and substantive, the

entire statute may not be declared unconstitutional if the statutory provisions are severable." 10 Fla.Jur.2d, Constitutional Law § 184. The doctrine of separation of powers requires that where procedural aspects of a statute encroach upon the procedural practice of the court system, the legislative provision must give way to the rule established by the Supreme Court. Article 2, § 3, Fla. Const.; Kalway v. State, 730 So.2d 861 (Fla. 1st DCA 1999), review denied, 2002 Fla. Lexis 356.

The provisions of F.S. 916.303(1) are procedural in nature and do not establish a primary right which is substantive in nature. As recognized by the lower court, the legislature's attempt to dictate the means by which dismissal is sought via the establishment of a two year time frame, is procedural in nature and this portion of the statute is therefore an encroachment upon the authority of the Court to promulgate rules regulating practice within the court system. Where the procedural aspects of the statute conflict with the provisions of Fla.R.Crim.P. 3.213, the statute must give way to the Rule.

Petitioner's attempt to liken the time limit in the statute to a statute of limitations to bring the two year limit within the realm of substantive law must fail. A statute of limitations is a statute prescribing limitations to the **right** of action. Such statutes are mandatory in nature, in that the failure to act within the time period essentially 'cuts off' all right of action thereafter. They therefore create an absolute right.

In contrast, the statute under which Petitioner claims entitlement to relief, F.S. 916.303(1), does not create an absolute right. The statute cannot be deemed to do so where the court has discretion to extend the statutory period. [1] F.S. 916.145 contains a similar provision affording the trial court discretion to extend the time period. The provision of the statute at issue in this case seeks to establish the **means** by which the right of dismissal is exercised. Because the trial court is afforded discretion, the statutory provisions in question, unlike those involved in statute of limitations laws, cannot be substantive in nature.

The statute at issue in this case, is more akin to those dealing with speedy trial rights which are deemed to be 'triggering mechanisms' rather than law creating substantive rights. See Landry v. State, 666 So.2d 121, 125 (Fla. 1995) ("...the purpose of Florida's speedy trial rule is to give the court control of its docket..."); (State v. D.L., 841 So. 2d 663 (Fla. 4th DCA 2003) (a minor who is not arraigned prior to the expiration of speedy trial is not automatically entitled to dismissal of the charges); see also A.L. v. State, 787 So. 2d 942, 944 (Fla. 4th DCA 2001), citing to R.J.A. v. Foster, 603

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[1]F.S. 916.303(1) provides that the court shall discharge a mentally retarded or autistic defendant who remains incompetent after two years, "**unless the court in its order specifies its reasons for believing that the defendant will become competent to proceed within the foreseeable future and specifies the time within which the defendant is expected to become competent to proceed.**"

So.2d 1167 (Fla. 1992)(rejecting the argument that the failure to arraign within the ninety-day speedy trial time constitutes automatic grounds for dismissal of charges; "the right to a speedy trial is a procedural right, not a substantive right.").

Similarly, the lower court was correct in finding the provision at issue was more analogous to Rule 1.420, Fla.R.Civ.P., than a statute of limitation. Fla.R.Civ.P. 1.420, adopted from § 45.19, F.S., which was repealed in 1967, provides for dismissal of cases where there is no record activity for a period of one year. The statute was repealed since the various sections were found to be either obsolete, redundant or in conflict with the Florida Rules of Civil Procedure.

The lower court also found offer of judgment statutes and the comparable rule instructive, citing to Leapai v. Milton, 595 So.2d 12 (Fla. 1992), in which the Florida Supreme Court held that a statute subjecting parties to sanctions for failure to accept certain offers of settlement was substantive and thus constitutional to the extent that it’s procedural provision had not been superceded by the offer of judgment rule. The court found significant the fact that the right to be compensated for attorney fees and costs under certain conditions was substantive, while the manner in which that right was to be determined and enforced was procedural. Further support for the trial court’s analysis is found in Allen v. Butterworth, 756 So.2d 52 (Fla. 2000), in which this Court rejected the State’s argument that the time limits for filing of post-conviction

motions was substantive in nature, holding that Article V, § 2(a) granted the Court the exclusive right to establish these deadlines.

To further support the first prong of her argument, Petitioner engages in a lengthy analysis of the development of the competency statutes and Rule 3.213 to support of her claim that the fact that the Legislature took the original competency statute and split its provisions into F.S. 916.303 and 916.145 establishes the Legislature's intention to treat mentally retarded/autistic defendants differently from those who are mentally ill because it recognized that mentally retarded persons can never recover.

While it is true that the Legislature split the original competency statute into three parts to allow for separate statutory provisions for mentally retarded/autistic defendants and mentally ill defendants, the rationale for doing so was not based on a recognition that retarded persons will never recover. Rather, the legislative history of CS/CS/SB 442, shows that the Legislature made this alteration to correct the "misconception that persons who have a mental illness and persons who have mental retardation or autism require the same services or treatment and training milieu." Thus, Petitioner's claim that she is entitled to dismissal pursuant to a shortened time frame due to her mental retardation, from which she will not recover, is without merit. While Petitioner may remain mentally retarded, the Legislature recognized the fact that with appropriate

training, a mentally retarded defendant could be made to become legally competent to proceed and that such training could be successfully completed within a two year period, whereas treatment for mental illness would require a longer period of time to determine whether treatment to restore the defendant to competency would be successful.

Furthermore, the provisions of F.S. 916.302, the statute that provides for the involuntary commitment of defendants who are determined to be incompetent due to retardation or autism, also refutes Petitioner's contention on this point. F.S. 916.302(1)(d) and (3) show that the Legislature recognized that incompetency due to retardation can be successfully treated via an appropriate form of training or treatment. Thus Petitioner's statutory analysis fails to support her claim.

For all of these reasons, the State submits that the first prong of Petitioner's argument must fail.

In the second prong of her argument, Petitioner argues that the provisions of Fla.R.Crim.P. 3.213 cannot prevail over those of F.S. 916.303(1) because the provisions of F.S. 916.303 are substantive in nature and the Rule was enacted prior to the statute. Petitioner relies upon Benyard v. Wainwright, 322 So.2d 473 (Fla. 1975). Benyard, which is easily distinguishable from the case at bar.

There, Benyard sought a writ of mandamus against the Department of Corrections seeking recalculation of his release date. The court denied the writ, declining to follow the

provisions of Fla.R.Crim.P. 3.722, which made sentences concurrent unless designated consecutive by the sentencing court and instead relied upon F.S. 921.16 (1973), which made a sentence for a separate offense consecutive to a previous sentence when the sentencing court was silent. This Court recognized the existence of direct conflict between the rule and the statute and denied the petition finding that the subject involved was one of substantive law, on the grounds that "[t]he prescribed punishment for a criminal offense is clearly substantive law. State v. Garcia, 229 So.2d 236 (Fla. 1969)." Id. at 475.

The statute at issue in the case at hand, is not one which involves an issue of substantive law such as sentencing or punishment for a criminal offense, as in Benyard. Because F.S. 916.303(1) is not substantive, the fact that the rule was adopted prior to the Legislature's determination to separate the contents of Chapter 916 to distinguish between mentally retarded or autistic persons and mentally ill persons with regard to placement, is meaningless.

Petitioner's argument is fatally flawed for another reason which she studiously attempts to avoid- the significance of the fact that the trial court made dual diagnoses as to her incompetence. The record reflects that, at the competency hearing conducted by the trial court, three experts testified regarding her condition. Dr. McClaren opined that Petitioner was incompetent to proceed "due to her mental retardation **taken**

together with symptoms that could be consistent with post traumatic stress disorder or possibly a psychotic condition...” (CH, 45). Dr. McClaren specifically stated that Petitioner had mental illnesses which overlay her mental retardation which **needed to be addressed for the petitioner to be competent**. (CH, 53).

Another expert who testified at the hearing, Dr. Pritchard, was asked to evaluate Petitioner for competence as to her mental retardation. (CH, 87, 107). While Pritchard found Petitioner to be incompetent due to mental retardation, he too found that Petitioner suffered from post traumatic stress disorder. (CH, 158).

Finally, the last expert who participated in the competency proceeding, Dr. Benoit, testified that mentally retarded persons could be trained to become legally competent and diagnosed the Petitioner’s mental retardation, while also finding that her capacity was significantly impaired due to her psychotic condition. (CH, 158). Thus, while the petitioner is correct in her claim that all of the experts found that she suffered from mentally retardation, she totally ignores the true nature of the experts’ findings which establish dual diagnoses of her incompetence.

Similarly, the trial court’s order of incompetence in this case also made specific findings of dual diagnoses of mental incompetence. The trial court made the following findings of fact: “1. The defendant is mentally retarded. 2. The defendant

also suffers from Post Traumatic Stress Disorder and psychotic symptoms." (S, 29). In the lower court's conclusions of law, it ruled that: "[t]he defendant is incompetent to proceed due to the defendant's mental retardation, as defined in S. 393.063, F.S., **and** due to the Post Traumatic Stress Disorder and psychotic symptoms." (S, 29).

Petitioner asserts that where dual diagnoses are made, the primary condition controls as to the right to move for dismissal of charges due to incompetence. While F.S. 916.302 provides that in cases where defendants are both mentally retarded and mentally ill, **evaluations** must address which condition is primary for purposes of placement for treatment purposes, that statute addresses the question of involuntary commitment, it simply does not stand for the proposition argued by Petitioner, that dismissal is controlled by primary diagnosis. These are separate statutory provisions addressing separate matters.

The State asserts that Petitioner's argument as to this point violates legislative intent, as well as, common sense. As previously stated, the Legislature clearly recognized that mentally retarded persons who are legally incompetent may be trained to successfully become competent to proceed. Here, Petitioner was found to have mental illnesses which must be treated prior to her becoming competent. Even if one were to assume for the sake of argument that Petitioner was correct in asserting that the two year time frame in the statute controlled for purposes of mental retardation, it would be illogical to

allow a person with dual diagnoses to move for dismissal under F.S. 916.303(1) when she was dually diagnosed with mental illnesses which were determined to require treatment before Petitioner could regain competence which would activate the provisions of F.S. 916.145.

The decision in State v. Offill, 837 So.2d 533 (Fla. 2d DCA 2003), review granted, Offill v. State, Florida SC03-0390, is supportive of the State's position.[2] There, the State challenged a trial court's dismissal of charges against Offill, who had previously been found incompetent due to mental illness under F.S. 916.145, pursuant to the provisions of Fla.R.Crim.P. 3.213. While the Second District Court reversed and remanded due to the trial court's failure to address and make specific findings in the three areas set forth in the rule, the Offill Court found the time frames involved were procedural in nature and the Rule therefore prevailed.

In relevant part to this case, the Offill Court stated:

> We next observe that the statute addressing this situation, section 916.145, Florida Statutes (2001), appears to conflict with the corresponding rule of criminal procedure, rule 3.213, concerning the presumption that applies to competency determinations. Section 916.145 provides that the court shall dismiss the charges after the expiration of five years unless the court specifies why it believes the defendant will

[2] The issue in Offill currently before this Court has been phrased as whether the trial court erred in not determining whether Offill remained incompetent to stand trial and in not allowing the State to seek an evaluation of him. The parties therein are therefore not making the substantive argument presented in the case at hand, nor did the two cases reach this Court via the same procedural background.

> become competent in the foreseeable future. By contrast, the rule provides that after the expiration of five years, the court shall dismiss the charges if it finds, after a hearing, that (1) the defendant remains incompetent to stand trial, and (2) there is no substantial probability that the defendant will become mentally competent to stand trial, and (3) the defendant does not meet the criteria for commitment. Fla.R.Crim.P. 3.213.
>
> The distinction between the statute and the rule is procedural in nature since the difference is based on allocation of the presumption. While the statute presumes continued incompetence upon the passage of five years, the rule seems to presume competence upon the passage of five years unless continued incompetence can be shown by competent evidence. The rule further requires a hearing for consideration of such evidence.
>
> Because matters of procedure are generally governed by rule while matters of substance are governed by statute, Hart v. State, 405 So.2d 1048 (Fla. 4th DCA 1981), and the distinction here is procedural, we conclude that rule 3.213 controls. 837 So.2d at 534.

The trial court's finding that the provisions of F.S. 916.303(1) are procedural are therefore buttressed by the fact that the statute, which tracks 916.145 with the exception of time frames, also deals with the allocation of the presumption. The rationale relied upon by the Offill Court therefore also applies in this case. The fact that neither the trial court nor the First District Court relied upon this analysis in affirming the lower court's order, is irrelevant since a lower court must be affirmed if any reason exists to support the ruling. A trial court's reasoning is not the controlling factor in determining whether an appellate court will affirm the trial court's decision. As this Court has repeatedly held, the fundamental question in an appeal is whether the result reached by the trial court is correct, for whatever reason. Carraway v. Armour & Co.,

156 So.2d 494 (Fla. 1963). If there is any theory upon which a trial court may properly have acted, then an appellate court is correct in affirming, even though the trial court's stated or indicated reasons are erroneous. Stuart v State, 360 So 2d 406 (Fla. 1978). Thus, whether the reasons employed by the court are sound and well-founded in law is immaterial if the ultimate conclusion reached as expressed in the order is correct.

Finally, Petitioner asserts that she is entitled to dismissal and attempts to assuage the Court with the fact that she would nevertheless be subject to civil commitment. In support of this aspect of her argument, she argues that civil commitment would lessen the financial and other burdens of the Department of Children and Families which is responsible for individuals committed pursuant to Chapter 916.

The argument is without merit. Not only is the Department also responsible for persons who are civilly committed pursuant to Chapter 393, so that the burden of the Department is not altered, other significant differences in the statutes exist.

Chapter 916 applies solely to mentally retarded and mentally ill persons who are criminal defendants charged with serious crimes, i.e., felonies, whereas Chapter 393 applies to the mentally retarded. A proceeding for involuntary commitment under Chapter 916 requires a finding of incompetence; no such finding under Chapter 393 is required; to the contrary, F.S. 393.11(9)(a) specifically states that commitment pursuant to its

provisions are not an adjudication of incompetency and subsection (10) states that the question of competence is a totally separate issue. Additionally, the Legislature, in enacting Chapter 393, indicated its intent to place developmentally disabled persons in community based residential facilities akin to family living environments. F.S. 393.062.

Clearly, the Legislature sought to treat mentally retarded and mentally ill persons found to be incompetent who had engaged in serious crimes differently from the developmentally disabled who had not engaged in serious crime. It is not logical to assume that any defendant charged with a felony is entitled to, or may be safely placed in, a community based residential family living facility, and this is particularly true where as here, Petitioner is charged with the ultimate crime of murder.

For all of these reasons, the State asserts that this Court should decline to accept jurisdiction in this case. In the event that this Court accepts jurisdiction, this Court should affirm the decision below.

CONCLUSION

Based on the foregoing, the State respectfully submits that the decision of the District Court of Appeal, reported as Lawanda Byrd v. State, 834 So.2d 872 (Fla. 1st DCA 2002), should be approved, and the ruling denying Petitioner's motion to dismiss entered in the trial court should be affirmed.

SIGNATURE OF ATTORNEY AND CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to Edward L. Harvey and P. Douglas Brinkmeyer, Esq., Assistant Public Defenders, Leon County Courthouse, Suite 401, 301 South Monroe Street, Tallahassee, Florida 32301, by MAIL on August _____, 2003.

Respectfully submitted and served,

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[AGO# L03-1-7128]

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the font requirements of Fla. R. App. P. 9.210.

_____
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