

IN THE SUPREME COURT OF FLORIDA

LAWANDA BYRD,

Petitioner,

v.

CASE NO. SC03-284

STATE OF FLORIDA,

Respondent.

AMENDED BRIEF ON JURISDICTION

I. PRELIMINARY STATEMENT

Petitioner, Lawanda Byrd, was the defendant below and will be referred to in this brief as "petitioner," "defendant," or by her proper name.

II. STATEMENT OF THE CASE THE FACTS

The court of Appeals, First District, found that Lawanda Byrd filed a motion to dismiss in the trial court, under the provision of Section 916.303 (1), Florida Statutes (1999). The trial court denied the motion. Ms. Byrd petitioned the district court for review. The First District denied the petition, holding that the statute is superseded by Fla. R. Crim. P. 3.213(a). The district court acknowledged that their decision negates "...the Legislature's clear intention to differentiate between defendants who are incompetent to proceed due to mental illness,... and those whose incompetent it due to mental retardation ..." Byrd v. State, 834 So.2d 872, 873 (Fla. 1st DCA 2002), reh. den. January 17, 2003.

III. SUMMARY OF THE ARGUMENT

A formal summary will be omitted here, because the length of the actual argument is within the page limitation for a summary of the argument.

IV. ARGUMENT

THE DECISION OF THE DISTRICT COURT IN BYRD V. STATE, 834 SO. 2D 872, (FLA. 1ST DCA 2002) DECLARES SECTION 916.303 (1) FLORIDA STATUTES (1999) INVALID HOLDING THAT IT IS SUPERSEDED BY FLA. R. CRM. P. 3.213 (A), THUS JURISDICTION FOR REVIEW IS IN THIS COURT UNDER ARTICLE V, SECTION 3 (B)(1), CONSTITUTION OF FLORIDA, AND FLA. R. APP. P. 9.030 (A)(1)(A)(II)

Lawanda Byrd filed her motion to dismiss in the trial court under the provisions of section 916.303, Florida Statutes (1999) which states that:

(1) The charges against any defendant found to be incompetent to proceed due to retardation or autism shall be dismissed without prejudice to the state if the defendant remains incompetent to proceed within a reasonable time after such determination, not to exceed 2 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. The charges against the defendant are dismissed without prejudice to the state to refile the charge should the defendant be declared competent to proceed in the future.

Statute 916.303 (1), Florida Statutes (1999), added by chapter 98-92, section 27, laws of Florida, effective October 1, 1998. (Emphasis Supplied)

The rule that the court of appeal held “superseded the statute states in pertinent part that:

(a) If at any time after 5 years after determining a person incompetent to stand trial or proceed with a probation or community control violation hearing when charged with a felony, or 1 year when charged with a misdemeanor, the court after hearing, determines that the defendant remains incompetent to stand trial or proceed with a probation or community control violation hearing in the foreseeable future, and that the defendant does not meet the criteria for commitment, it shall dismiss the charges ... against the defendant the defendant without prejudice to the state to refile the charges should the defendant be declared

competent to proceed in the future.

Fla. R. Crm. P. 3.213 (a), adopted at 389 So. 2d 610 (Fla. 1980). (Emphasis supplied)

In its opinion, the district court of appeal acknowledged the difference between the two provisions relating to when a motion to dismiss could be granted:

We agree with the trial court's finding that Florida Rule of Criminal Procedure 3.213 (a) supersedes the statute and required denying the motion to dismiss. However, given the Legislature's clear intention to differentiate between defendants who are incompetent to proceed due to mental illness, which is often curable, and those whose incompetence is due to mental retardation or autism, for which there is no "cure," the Florida Supreme Court may find it appropriate to consider amending Rule 3.213 to reflect such a distinction..

834 So. 2d, at 873. (Emphasis supplied)

The notice invoking this court's jurisdiction filed on February 17, 2003, is titled as invoking discretionary jurisdiction. The notice, however, specifically alleges jurisdiction under the provisions of Article V, section 3 (b) (1), Florida of Constitution, and Fla. R. App. P. 9.030 (a): "decisions of district courts of appeal declaring invalid a state statute..." (Emphasis supplied)

The language "declaring invalid" a state statute replaced the former language: "initially and directly passing on the validity of" a state statute: see: amended Article V, section 3 (b) (1), Florida Constitution (1980) as approved by the electorate on March 11, 1980;

The language "declaring invalid" differs significantly from the language of the former rule, and from the language in amended Article V and the 1980 amendments to appellate rules, that confer discretionary jurisdiction: "expressly" declaring valid a state statute, construing a state or federal constitution provision, or affecting a class of constitutional or state officers. (Emphasis supplied).

The ground invoked here for the jurisdiction of this court requires neither a “direct” nor “express” declaration on the part of the district court of appeal. It requires simply that the district court’s opinion declare a statute invalid.

Here, Ms. Byrd meets the requirements for dismissal under the statute. By holding that the statute could not apply because it was superseded by a rule, with different requirements that Ms. Byrd does meet, the district court declared the statute’s requirements for dismissal invalid.

There can be no question that she has been committed for the time required by the statute, and that the motion was denied because she has not been committed for “5 years or more,” as required by the rule.

The plain reading of the court’s opinion can leave no doubt that it declared the requisite time requirement for retarded defendants invalid.

V. CONCLUSION

As the committee note accompanying the 1980 amendments to the rules of appellate procedure states: “ Subdivision (a) [Fla. R. Crm. P. 9.030] has been extensively revised to reflect the constitutional modification in the supreme courts jurisdiction ... revised subdivision (a) limits... jurisdiction to cases that substantially affect the law of the state...” 381 So. 2d 1370 (Fla. 1980)

Committee notes are not controlling, however the note quoted above is helpful when analyzing the question of jurisdiction in this case.

The court should exercise its jurisdiction because of the substantial impact the opinion below will have: on the state agencies charged with returning incompetent defendants to a state of competence to proceed, on the question of whether the Legislature can exercise its policy- making authority to require that retarded defendants be treated differently than those who are mentally ill, and on the courts who are charged with seeing that justice is done.

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a copy of the foregoing has been furnished by U.S. Mail to **JAMES W. ROGERS**, Assistant Attorney General, The Capitol, Plaza Level, Tallahassee, Florida 32399-1050; Lorraine Novak, Assistant General Counsel, Department of Children and Families, 1323 Winewood Boulevard, Building 2, Room 204, Tallahassee, FL 32301, on this date, March 26, 2003.

CERTIFICATE OF FONT SIZE

I hereby certify that this brief has been prepared using Time New Roman 13 point font in compliance with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

Respectfully submitted,

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IN THE SUPREME COURT OF FLORIDA

LAWANDA BYRD, :

Appellant, :
v. :

CASE NO. SC03-284

STATE OF FLORIDA, :

Appellee. :
_____:

ON APPEAL FROM THE CIRCUIT COURT
OF THE SECOND JUDICIAL CIRCUIT,
IN AND FOR GADSDEN COUNTY, FLORIDA

AMENDED BRIEF ON JURISDICTIONAL

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