

IN THE SUPREME COURT OF FLORIDA

LAWANDA BYRD,
Petitioner,
v.
STATE OF
FLORIDA,
Respondent.

CASE NO. SC03-284

JURISDICTIONAL BRIEF OF RESPONDENT

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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 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.

"PJB" will designate Petitioner's Jurisdictional Brief. That symbol is followed by the appropriate page number.

A bold typeface will be used to add emphasis. Italics appeared in original quotations, unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

The pertinent history and facts are set out in the decision of the lower tribunal, attached in opinion form, which appears in published form as Byrd v. State, 834 So.2d 873 (Fla. 1st DCA 2002).

The opinion reads as follows:

Petitioner, Lawanda Byrd, filed a petition for writ of certiorari to review the trial court's decision to deny her motion to dismiss without prejudice, which was filed pursuant to section 916.303(1), Florida Statutes (1999). 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 873.

SUMMARY OF ARGUMENT

A summary of the argument is omitted due to the brevity of the argument presented, which is within the page limitation set forth for the summary of the argument.

ARGUMENT

ISSUE I

WHETHER THE PETITIONER HAD PROVIDED THIS COURT WITH ANY AUTHORITY WHICH ESTABLISHES THAT F.S. 916.303(1) IS UNCONSTITUTIONAL TO JUSTIFY EXERCISE OF ITS JURISDICTION PURSUANT TO ARTICLE V, § 3(B)(1)? (Restated)

In filing her February 17, 2003 notice seeking review of the decision of the First District Court of Appeal, petitioner filed a notice invoking the discretionary jurisdiction of this Court. However, she now asserts that jurisdiction lies under Article V, § 3(b)(1).

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, the Petitioner has failed to provide this Court with any authority to support her proposition that F.S. 916.303(1) is invalid. For this reason, the Court should 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. 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."

As an additional matter, the State notes that the trial court, in making its findings that the Petitioner was incompetent to proceed and in committing her to a Department of Children and Family Services program, did so based upon its findings that she was both mentally retarded and suffering from post-traumatic stress disorder and psychotic symptoms. Should this Court accept jurisdiction, then it should remand the cause to the trial court for a determination whether the finding of incompetence was based solely upon retardation or incompetence or a combination of these mental conditions, since this Court should not proceed upon an incomplete record. In the event that the court below determines that an alternative basis for the finding of incompetence exists, then this Court would be without jurisdiction. See Hanft v. Phelan, 488 So.2d 531 (Fla. 1986).

CONCLUSION

Based on the foregoing reason, the State respectfully requests this Honorable Court decline to exercise jurisdiction.

SIGNATURE OF ATTORNEY AND CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to Ed Harvey, Assistant Public Defender, Counsel for Petitioner, Leon County Courthouse, 301 South Monroe Street, Suite 401, Tallahassee, Florida, 32301, by MAIL on April _____, 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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