IN THE SUPREME COURT OF FLORIDA

LAWANDA BYRD,

Petitioner,

v. CASE NO. SC03-284

STATE OF FLORIDA,

Respondent.

_____/

ON DISCRETIONARY REVIEW FROM
THE FIRST DISTRICT COURT OF APPEAL

# REPLY BRIEF OF PETITIONER

NANCY A. DANIELS
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

P. DOUGLAS BRINKMEYER
FLA. BAR NO. 197890

EDWARD L. HARVEY
FLA. BAR NO. 173783

ASSISTANT PUBLIC DEFENDERS
LEON COUNTY COURTHOUSE
SUITE 401
301 SOUTH MONROE STREET
TALLAHASSEE, FLORIDA 32301
(904) 488-2458

ATTORNEYS FOR PETITIONER

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REPLY BRIEF OF PETITIONER

PRELIMINARY STATEMENT

Petitioner was the defendant before the trial court and the appellant in the lower tribunal. A one volume record on appeal and one volume supplement will be referred to as "I or II R," followed by the appropriate page number in parentheses. A one volume transcript of competency hearings held in 1999 will be referred to as “I T.” A one volume transcript of a motion hearing held on August 15, 2001, will be referred to as “II T.” A one volume transcript of a motion hearing held on November

7, 2001, will be referred to as “III T.”

The answer brief of respondent will be referred to as “AB.”

Attached hereto as an appendix is the opinion of the lower tribunal, which has been reported as Byrd v. State, 834 So. 2d 872 (Fla. 1st DCA 2002). This brief is also being submitted on a disk in WordPerfect 9 format.

## ARGUMENT

### ARGUMENT IN REPLY TO RESPONDENT AND IN SUPPORT OF THE PROPOSITION THAT FLA. R. CRIM. P. 3.213(a) DOES NOT SUPERSEDE §916.303(1), FLA. STAT. (1999).

The facts are undisputed. Petitioner was found incompetent to stand trial in 1999 due to her mental retardation. When two years elapsed without her regaining her competency, her counsel filed a motion to dismiss the criminal charges in 2001 under the controlling statute. The judge denied the motion because this Court’s rule allows a five year period.

The standard of review is de novo, for this is purely a question of law.

The legal issue is equally simple -- whether the two year statute, §916.303(1),

Fla. Stat. (1999), or the five year rule, Fla. R. Crim. P. 3.213(a), controls the dismissal of petitioner's criminal charges. The First District's opinion in this case held that this Court's rule superseded the statute.

Respondent seeks to obfuscate the relatively simple facts and legal issue in a number of ways. First, respondent contends that the issue is not preserved (AB at 8). Not so. Petitioner argued in the trial court and on appeal that the two year statute specifically for mentally retarded individuals was in conflict with the five-year rule generally for anyone found incompetent to stand trial, whether by mental retardation or mental illness (II T 6-7).

Next, respondent asserts that petitioner has never argued that the rule cannot supersede the statute (AB at 8-9). Again, not so. Petitioner argued in the trial court (II T 16-18) and in her initial brief at 18-19 the statute was substantive law and could not be trumped by the rule. Both the trial court and the lower tribunal held that the rule superseded the statute. Neither would have so ruled if petitioner had not made her argument to the contrary.

Finally, respondent asserts that petitioner has never stated that she should be

civilly committed under §393.11, Fla. Stat. (AB at 9). Again, not so. That is the precise relief petitioner asked for in her motion to dismiss the criminal charges (I R 1-2).

On the merits, respondent disagrees that the two year time period in §916.303(1), Fla. Stat. (1999), is substantive law (AB at 9-12). In her initial brief at 8-10, petitioner has demonstrated that the Legislature has made a reasoned distinction between those who are incompetent to stand trial due to mental retardation, as opposed to mental illness, by requiring that the criminal charges against the former be dismissed after two years,[1] while the criminal charges against the latter may languish for five years.[2]

In her initial brief at 10-12, petitioner has demonstrated that the Legislature's major overhaul of Ch. 916, Fla. Stat. (1997), by ch. 98-92, Laws of Fla., discloses its intent that mentally retarded defendants are to be treated differently than those

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[1]§916.303(1), Fla. Stat. (1999).

[2]§916.145, Fla. Stat. (2003).

who are mentally ill,[3] a distinction that this Court's procedural rule has never made since it was originally enacted in 1980.

Respondent contends that §916.303(1) "is more akin" to the speedy trial rule (AB at 12), and that it is not substantive law (AB at 15-16). Petitioner demonstrated in her initial brief at 15 that the statute "is more akin" to the statute of limitations, since it gives petitioner a substantive right to have her criminal charges dismissed after two years.

Respondent totally ignores petitioner's common-sense argument in the initial brief at 18 that the a rule cannot supersede a statute when the statute was not in effect at the time the rule was adopted.

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[3]Ch. 98-92, Laws of Fla., also created §916.301(1), Fla. Stat. (2003), which requires DCF to provide the courts with a list of experts who are competent to evaluate a mentally retarded defendant to determine if he or she is competent to proceed. That session law also requires the judge to appoint DCF's Developmental Services Program as one of the two experts. §916.301(2), Fla. Stat. (2003).

That session law also created a special test for the experts to use in determining whether a retarded defendant is competent to proceed. §916.3012, Fla. Stat. (2003). That session law also created a special test for the judge to use in determining whether a retarded defendant is incompetent to proceed and should be committed. §916.302, Fla. Stat. (2003).

Finally, respondent seeks to further muddy the waters by claiming that petitioner has "dual diagnoses" of mental retardation and mental illness (AB at 16-18). While it is true that there was some testimony regarding both conditions at the 1999 competency hearings, and the judge found that petitioner also suffered from post-traumatic stress disorder, the order which committed petitioner in 1999 cited the mental retardation statutes and found her incompetent to proceed due to mental retardation and placed her in the Developmental Services Program, not in the Forensic Unit of the State Hospital (II R 28-31).

Moreover, as counsel noted in his written arguments in support of petitioner's motion to dismiss, if there was any dispute whether petitioner was no longer mentally retarded, or was no longer mentally ill, the proper remedy was to conduct an evidentiary hearing. The judge who denied the motion to dismiss apparently found no such dispute, because he did not order an evidentiary hearing to resolve the issue, and his order denying petitioner's motion to dismiss only referred to the retardation statute, §916.303(1), and never mentioned the words "mental illness" (I R 1-2).

Finally respondent seems to rely on State v. Offill, 837 So. 2d 533 (Fla. 2nd DCA 2003), *rev. pending,* case no. SC03-390(AB at 18-19), but then acknowledges in footnote 2 that State v. Offill is not really on point. That case is not on point, since it had nothing whatsoever to do with the mental retardation statutes and rule.

Thus, respondent's attempt to obfuscate the relatively simple facts and legal issue has failed. The proper remedy is to reverse the decision of the lower tribunal and remand with directions to dismiss the charges.

## CONCLUSION

Based upon the arguments presented here, as well as those in the initial brief, petitioner respectfully asks this Court to quash the decision below and hold that the statute creates a substantive right to dismissal of the criminal charges after two years if the mentally retarded defendant is not restored to competency. Petitioner further requests this Court to amend its rule to conform to the statute.

Respectfully submitted,

NANCY A. DANIELS
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

_____
P. DOUGLAS BRINKMEYER
Fla. Bar no. 197890
Assistant Public Defender

_____
EDWARD L. HARVEY
Fla. Bar no. 173783

Assistant Public Defenders
Leon County Courthouse
Suite 401
301 South Monroe Street

Tallahassee, Florida 32301
(904) 488-2458

ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. mail to: Robert Wheeler and Giselle Lylen Rivera, Assistant Attorneys General, The Capitol, Plaza Level, Tallahassee, Florida; and petitioner, c/o Florida State Hospital, P.O. Box 1000, Chattahoochee, Florida 32324; on this ___ day of September, 2003.

_____
P. DOUGLAS BRINKMEYER

CERTIFICATE OF FONT SIZE

I HEREBY CERTIFY that this brief was prepared in Courier New 12 point type.

_____
P. DOUGLAS BRINKMEYER

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IN THE SUPREME COURT OF FLORIDA

LAWANDA BYRD,

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v. CASE NO. SC03-284

STATE OF FLORIDA,

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ON DISCRETIONARY REVIEW FROM
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# APPENDIX TO REPLY BRIEF OF PETITIONER

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In the District Court of Appeal of Florida,
First District.

**Lawanda BYRD, Petitioner,**
**v.**
**STATE of Florida, Respondent.**

**No. 1D01-4683.**

Oct. 23, 2002.
Rehearing Denied Jan. 17, 2003.

Petition for Writ of Certiorari--Original Jurisdiction.

Nancy A. Daniels, Public Defender; Ed Harvey, Assistant Public Defender, Tallahassee, for Petitioner.

Robert A. Butterworth, Attorney General, Tallahassee; Giselle Lylen Rivera, Assistant Attorney General, Tallahassee, for Respondent.

MINER, J.

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.

DENIED.

BENTON and LEWIS, JJ., concur in result.