

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO
FLORIDA RULE OF
CRIMINAL PROCEDURE 3.111

Case No. SC08-2163

COMMENT OF
THE FLORIDA PUBLIC DEFENDER ASSOCIATION

The Public Defender for the Second Judicial Circuit, on behalf of the Florida Public Defender Association, offers the following comments on the proposed amendment to Florida Rule of Criminal Procedure 3.111(d)(3):

1. In light of Indiana v. Edwards, 128 S.Ct. 2379 (2008), the Committee proposes amending Rule 3.111(d)(3) to provide:

(3) Regardless of the defendant's legal skills or the complexity of the case, the court shall not deny a defendant's unequivocal request to represent himself or herself, if the court makes a determination of record that the defendant has made a knowing and intelligent waiver of the right to counsel, and does not suffer from severe mental illness to the point where the defendant is not competent to conduct trial proceedings by his or her self.

2. The Association respectfully suggests that the rule can be further amended in accord with Edwards to provide greater guidance to trial courts considering requests to forEgo representation without violating a mentally competent defendant's Sixth Amendment right to self-representation as interpreted

in Faretta v. California, 422 U.S. 806 (1975), and State v. Bowen, 698 So. 2d 248 (Fla. 1997).

3. Edwards specifically concerned self-representation at trial. The Court answered yes to the question “whether the Constitution permits a State to limit that defendant's self-representation right by insisting upon representation by counsel at trial -- on the ground that the defendant lacks the mental capacity to conduct his trial defense unless represented.” Id. at 2379 (emphasis supplied). The Court distinguished Godinez v. Moran, 509 U.S. 389 (1993), in which it held that a State is not constitutionally precluded from allowing a defendant who has been found competent for trial to waive his right to counsel and enter a guilty plea. There the Court did not “consider the defendant’s ‘technical legal knowledge’ about how to proceed at trial.” Edwards, 128 S.Ct. at 2385 (quoting Godinez, 509 U.S. at 400).

4. The Committee’s proposal retains language in rule 3.111(d)(3) precluding consideration of the complexity of the case in assessing a defendant’s request for self-representation. The Association suggests that this language may be excised because it is not compelled by Edwards, Faretta, or Bowen when the defendant seeks to proceed pro se at trial. Moreover, although case complexity is of little concern when a defendant decides to discharge counsel and plead guilty, as in Godinez, criminal defense counsel in Florida’s court system has no choice but to accept a client’s plea decision. See Fla. R. Prof. Conduct 4-1.2(a) (“In a criminal

case, the lawyer shall abide by the client’s decision, after consultation with the lawyer, as to a plea to be entered”). This makes the Godinez scenario unlikely in the courts of this state. Accordingly, the Association proposes language that makes a defendant’s capacity to participate in either a plea negotiation or trial a consideration in addressing a request for self-representation.

5. The Association also suggests that language in the Committee’s proposal referring to “severe mental illness to the point where the defendant is not competent to conduct trial proceedings” does not provide trial courts adequate guidance. It is acknowledged that this language is taken verbatim from Edwards, 128 S.Ct. at 2388. However, as noted above, the Edwards majority opinion elsewhere refers to a defendant’s “capacity” rather than “competence” in framing the issue. Id. at 2385-86 (posing issue in terms of whether defendant “lacks the mental capacity to conduct his trial defense unless represented.”). Further, in his dissenting opinion in Edwards, Justice Scalia lamented that the Court’s holding is “extraordinarily vague” in failing to define the circumstances in which lack of mental competence justifies denial of self-representation. He observed that “the indeterminacy makes a bad holding worse.” Id. at 2394 (Scalia, J, dissenting). The Association suggests language that focuses on the defendant’s capacity to participate in plea negotiations or in trial proceedings rather than on the defendant’s mental illness and competence. This language will direct the trial

court's inquiry toward the depth of a defendant's mental resources rather his or her degree of mental illness.

6. The Association notes that the language proposed below requires neither that the defendant possess legal skills nor that he or she be able to mount an effective defense, either of which would violate the Sixth Amendment right to self-representation. See Faretta, 422 U.S. at 835 (“[A] defendant need not himself have the skill and experience of a lawyer in order to competently and intelligently choose self-representation . . .”); Bowen, 698 So. 2d at 251 (“The court may not inquire further into whether the defendant could provide himself with a substantively qualitative defense, for it is within the defendant's rights, if he or she so chooses, to sit mute and mount no defense at all.”). Instead, this language ensures that a defendant is mentally capable of gaining legal knowledge and mounting a defense if he or she so chooses.

FOR THESE REASONS, the Association proposes amending Rule 3.111(d)(3) as it presently appears, in the following manner:

(3) Regardless of the defendant's legal skills ~~or the complexity of the case~~, the court shall not deny a defendant's unequivocal request to represent himself or herself; if the court makes a determination of record that the defendant (a) has made a knowing and intelligent waiver of the right to counsel, and (b) has the mental capacity to participate in plea negotiations or, if necessary, in trial proceedings by himself or herself.

SIGNATURES OF ATTORNEYS AND
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by hand deilvery to The Honorable Thomas H. Bateman III, Committee Chair, Leon County Courthouse, 301 S. Monroe St., Suite Room 225, Tallahassee, FL, this ____ day of January, 2009.

Respectfully submitted,

NANCY A. DANIELS
PUBLIC DEFENDER
FLORIDA BAR NO. 242705
SECOND JUDICIAL CIRCUIT
FOR FLORIDA PUBLIC DEFENDER
ASSOCIATION

GLEN P. GIFFORD
ASSISTANT PUBLIC DEFENDER
APPELLATE DIVISION CHIEF
FLORIDA BAR NO. 664261
LEON COUNTY COURTHOUSE
301 S. MONROE, SUITE 401
TALLAHASSEE, FLORIDA 32301
(850) 606-8500