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IN THE SUPREME COURT OF FLORIDA

CASE NO. SC14-888

HUGO MIRANDA,

Petitioner,

-vs-

THE STATE OF FLORIDA

Respondents.

ON PETITION FOR DISCRETIONARY REVIEW

BRIEF OF PETITIONER ON JURISDICTION

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INTRODUCTION

The Third DCA's opinion in this case transformed county jails into long-term mental health treatment facilities. The law in the First, Second, and Fourth DCAs is that upon a finding of incompetency, the Circuit Courts could order only commitment to a forensic hospital or conditional release—holding in jail is not an option.

Jails are not designed as mental health treatment centers. Under the current system, sheriffs must hold incompetent defendants only until they can be placed in hospitals or out-patient treatment on conditional release. The Department of Children and Families ("DCF"), however, will not provide treatment in jails, and corrections officers are not mental healthcare workers. The lack of treatment for incompetent defendants in both jails and state prisons raise serious questions about the ramifications of the Third DCA's decision.

STATEMENT OF THE CASE AND FACTS

The state appealed an order of the Circuit Court finding Hugo Miranda incompetent and placing him on conditional release. After competency was raised, "all three psychologists concluded the defendant did not have a mental illness, but was incompetent to proceed due to his intellectual deficits" (A. 3), [1] and "that the

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[1] References to pages numbers in the appendix filed pursuant to Florida Rule of Appellate Procedure 9.220. will be abbreviated "A" followed by a page number.

defendant did not meet the criteria for involuntary commitment under Chapter 916, Florida Statutes (2011), because, in their opinion, the defendant did not pose a danger to himself or others." (A. 3). The trial court found Mr. Miranda incompetent, but instead of committing him to a hospital or releasing him on conditional release, the trial court ordered that he be held in jail and given education to attempt to restore him to competency. (A. 4).

Miami-Dade County entered an appearance and argued that it had no duty to provide competency restoration and that ordering it to do so violates the constitutional separation of powers. Mr. Miranda filed a written motion for reconsideration arguing two points: (1) the case law requires conditional release when there is no showing of a substantial probability that the defendant can be restored to competency; and (2) Equal Protection forbids commitment for criminal defendants on standards that are less rigorous than those for civil commitments.

The trial court reconsidered and,

> found that because the defendant does not meet the criteria for forensic commitment under Chapter 916, the trial court had only two options: (1) civil commitment under the Baker Act (Chapter 394, Part I, Florida Statutes (2011)), or (2) conditional release pursuant to Florida Rule of Criminal Procedure 3.212(d). Based on the psychologists' reports, wherein the psychologists found that the defendant is not a danger to himself or others, the trial court found the defendant did not meet the criteria for civil commitment and, thus, the only option was to conditionally release the defendant under rule 3.212(d).

(A. 5-6). As conditions for release, the trial court ordered, *inter alia*, that Mr. Miranda stay away from the alleged victims and enroll in a school or teaching facility to learn how to read and write. (A. 6).

The state appealed. The important part of the Third DCA's opinion starts on page 17, where the it holds that in addition to the options established by law, trial judges may order incompetent defendants to be held for treatment in county jails. (A. 19-20). The balance of the holds that the trial court must conduct a further evidentiary hearing on Hugo Miranda's mental retardation, competency and treatment. (A. 6-17). Thus, at that hearing, the trial court could again find Mr. Miranda incompetent and order him detained in jail for treatment.

SUMMARY OF THE ARGUMENT

This Court should accept review of this case to determine if jails can be used as treatment facilities for incompetent defendants. The law in the First, Second and Fourth DCAs is that after finding a defendant incompetent, the trial judge must either commit to a forensic hospital or release to out-patient treatment through conditional release. In this case, the Third DCA, relying on dicta in previous cases, held for the first time that a trial judge can order an incompetent defendant to be held for treatment in jail.

This requirement affects a class of constitutional officers, namely the county sheriffs. Heretofore, the sheriffs were responsible only for temporarily

holding defendants until they could be sent to either the hospital or out-patient treatment facilities. Under the decision in this case, the sheriffs would now be responsible for holding incompetent defendants during their treatment. Corrections officers are not mental healthcare workers and the current system of temporary housing already creates systemic stresses, as shown by a series of deaths of mentally ill prisoners. Holding these defendants long-term would exacerbate that situation.

This Court should accept jurisdiction to determine if it intended to create this substantive alternative to the statutory scheme for treatment when it promulgated Rule 3.212(c)(2), and whether such an alternative comports with Equal Protection.

ARGUMENT

I.
THE DECISION BELOWS EXPRESSLY AND DIRECTLY CONFLICTS WITH PRECEDENT FROM THREE OTHER DCAs.

Until the Third DCA's decision in this case, Florida law held that trial courts' only options after finding a defendant incompetent were commitment or conditional release. "But where, as here, a defendant has been found incompetent to proceed and is then released upon conditions and commits a new offense, section 916.17(2) leaves the trial judge with only two options: modify the conditions of release or involuntarily commit the defendant to DCFS for

treatment." *Douse v. State*, 930 So. 2d 838 (Fla. 4th DCA 2006); *Miller v. State*, 960 So. 2d 7, 8 n.1 (Fla. 4th DCA 2007) ("This court in *Douse* actually found the trial court had only two options: modification of the conditions of release or involuntary commitment to the department for treatment.").

This case law traces back to the First DCA's seminal case of *Mosher v. State*, 876 So. 2d 1230, 1232 (Fla. 1st DCA 2004), where that court held:

> Because it was determined at the hearing that there is not a substantial probability that Mosher will regain competency to proceed in the reasonably foreseeable future, she no longer meets the criteria for involuntary commitment required by section 916.13(1)(c). Therefore, pursuant to *Jackson,* the State must either institute civil commitment proceedings or release her.

Id. at 1232 (footnote omitted); *see also Oren v. Judd*, 940 So. 2d 1271, 1274 (Fla. 2d DCA 2006) (referring to *Mosher*, the court wrote: "she no longer met the criteria for involuntary commitment under section 916.13(1)(c). For that reason, the court held, the State must institute civil commitment proceedings or Mosher must be released. The facts in the present case compel the same result."); *Department of Children & Families v. Gilliland*, 947 So. 2d 1262, 1263 (Fla. 5th DCA 2007) ("As the court explained in *Oren,* the State will have to institute civil commitment proceedings or Gilliland will have to be released.").[2]

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[2] It may appear that there is conflict between the two options in *Douse* and the three options in *Mosher*, but that is not the case. *Douse* was speaking of the trial judge's two options. The third option, initiating civil commitment proceedings, is

The Third DCA in this case, however, held that there were two more options (here numbered 2 and 3), that really boil down to using local jails as treatment facilities:

> Thus, contrary to the trial court's finding that it only had two options pursuant to rule 3.212, it had four available options. Specifically, the trial court may have: (1) released the defendant on bail or other release conditions to be treated in the community, see Fla. R. Crim. P. 3.212(c)(1); (2) ordered the defendant to receive treatment at his current custodial facility, as he was incarcerated due to his violation of the initial pre-trial release conditions, see Fla. R. Crim. P. 3.212(c)(2); (3) ordered the defendant to receive treatment at a different custodial facility, as he was already incarcerated, see Fla. R. Crim. P. 3.212(c)(2); or (4) involuntarily committed [sic] the defendant if he met the statutory criteria in Chapter 916, see Fla. R. Crim. P. 3.212(c)(3).

(A. 19).

The Third DCA relied on previous dicta to that same effect in *Graham v. Jenne*, 837 So. 2d 554 (Fla. 4th DCA 2003). (A. 19-20). The issue in *Graham* was whether a deaf mute defendant met the criteria for involuntary forensic commitment set forth in Chapter 916. *Id.* at 558-59. The court held that he did not, and granted a writ of habeas corpus. In the penultimate paragraph, that court suggested there may be other options, and quoted Florida Rule of Criminal Procedure 3.212(c)(2) for the proposition that "the court may order treatment to be

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an option for the state, not the judge, as *Mosher* makes clear. *Mosher,* 876 So. 2d at 1232.

administered at the custodial facility." *Id*. at 559. That gratuitous observation was not part of the holding.[3]

Thus, the Third DCA's decision in this case expressly and directly conflicts with *Douse*, *Mosher*, and their progeny and leaves the question for this Court to resolve the following question: Is commitment to a local jail for treatment appropriate for an incompetent defendant? The answer is "no" in the First, Second, and probably[4] the Fourth DCAs. The answer is "yes" in the Third DCA.

This Court needs to determine whether in promulgating Rule 3.212(c)(2) it intended to create a separate commitment to county jails for incompetent defendants who do not meet the criteria for commitment to forensic hospitals, and whether such a separate commitment would be constitutional under the Equal Protection Clause. *See Jackson v. Indiana*, 406 U.S. 715, 724 (1972) ("If criminal conviction and imposition of sentence are insufficient to justify less procedural and substantive protection against indefinite commitment than that generally available to all others, the mere filing of criminal charges surely cannot suffice.").

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[3] Although not cited by the opinion, similar dicta exists in *Miller v. State*, 960 So. 2d 7, 9 (Fla. 4th DCA 2007). That case again involved the Fourth DCA granting a writ of habeas corpus for a defendant who was committed to the hospital even though he did not meet the criteria for commitment. *Id*. at 8-9. Again, the suggestion of using local jails as treatment facilities was a gratuitous aside in the penultimate paragraph of the opinion. *Id*. at 9.

[4] Assuming the Fourth DCA follows its precedent in *Douse*, and not its dicta in *Graham*.

II.
THIS DECISION AFFECTS SHERIFFS, A CLASS OF CONSTITUTITONAL OFFICERS.

Before this decision, the county sheriffs only had to hold incompetent defendants until they could be transferred for treatment either in a hospital or out-patient through conditional release. Under the Third DCAs opinion, the county sheriff now has to house these incompetent inmates for treatment. This change is significant.

As Judge Leifman has observed, even under the current sytem the Miami-Dade County Jail is already "the largest psychiatric institution in Florida, housing 1,200 individuals with mental illnesses, and costing taxpayers $65 million annually." Steve Leifman, Give people with mental illness treatment, not a jail cell, The Miami Herald, May 17, 2014.

The Third DCA's opinion in this case would expand the sheriffs' duties by allowing Circuit Court judges to require the county jails to hold and house incompetent defendants for however long it takes to treat those defendants.

As the Fourth DCA observed of Mr. Douse, "jailhouse treatment for his incompetency is unlikely." *Douse*, 930 So. 2d at 840. DCF has no duty to provide treatment to defendants who are not committed to a forensic hospital, and actively resists doing so. *See Department of Children and Family Services v. Amaya*, 10 So. 3d 152, 157 (Fla. 4th DCA 2009) (Amaya does not qualify for

commitment to DCF under section 916.13, 916.15, or 916.302; he is, therefore, not a "forensic client" as defined by the statute, and DCF cannot be made responsible for his care and supervision as ordered by the trial court.").

Corrections officers are not mental healthcare workers. Even under the current system of providing only temporary housing, incompetent defendants create enormous stress on the corrections system. There have been several recent deaths of mentally ill defendants in the Miami-Dade jail,[5] and in state prisons.[6] Adding long-term housing of incompetent defendants in the County jails is a prescription for disaster.

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[5] Joaquin Cairo died of internal bleeding from a pelvis fractured during an attempted rape by another inmate. Apparently because he was mentally ill, the jail disregarded his distress and did not take him to the hospital for seven days. By the time the jail did anything, it was too late. David Ovalle, Police probing Miami-Dade death of mentally ill inmate, Miami Herald (July 26, 2013). As Judge Leifman observed about the death of Mr. Cairo: "You shouldn't get the death penalty for a misdemeanor because you have a mental illness." *Id.*

Joseph Wilner and Juan Matos-Flores also died on the mental health floor of the jail. David Ovalle, Another inmate death at Miami-Dade's jail psychiatric ward, Miami Herald (Aug. 26, 2013). Both of those deaths also appear to have been the result of delayed medical care.

[6] Darren Rainey, a mentally ill inmate, died when correctional officers put him into a locked shower with scalding water. Julie K. Brown, Behind bars, a brutal and unexplained death, The Miami Herald, May 18, 2014, at A1. Richard Mair, another mentally ill inmate, committed suicide leaving behind a note that explained he did so because of sexual exploitation by corrections officers. *Id.* Damion Foster, also mentally ill, was killed by correctional officers during a "cell extraction" in the Charlotte Correctional Institution. Julie K. Brown, After latest death, Florida prison system faces more scrutiny, The Miami Herald, May 22, 2014.

This Court should therefore also grant discretionary review to decide whether in promulgating Florida Rule of Criminal Procedure 3.212(c)(2), this Court intended a substantive change in the law to expand sheriffs' duties to include long-term housing and care for incompetent defendants. Sheriffs are constitutional officers. *Everette v. Florida Dept. of Children and Families*, 961 So. 2d 270, 273 (Fla. 2007).

CONCLUSION

This Court should exercise its discretion and accept this case to determine if county jails will now be used as mental health treatment facilities.

CERTIFICATE OF SERVICE AND FONT

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered by electronic mail to counsel for the State of Florida, the Office of the Attorney General, CrimApp.MIA@MyFloridaLegal.com, this eleventh day of June 2014. I HEREBY CERTIFY that this brief is printed in 14 point Times New Roman.

Respectfully submitted,

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