

Supreme Court of Florida

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August 10, 2020

The Honorable Bill Galvano
President
The Florida Senate
409 The Capitol
404 South Monroe Street
Tallahassee, Florida 32399-1100

The Honorable Jose R. Oliva
Speaker
The Florida House of Representatives
420 The Capitol
402 South Monroe Street
Tallahassee, Florida 32399-1300

Re: Annual Report Required Pursuant to “Timely Justice Act of 2013”

Dear President Galvano and Speaker Oliva:

Enacted as part of the Timely Justice Act of 2013, section 924.056(1), Florida Statutes, requires the Supreme Court to report annually to the Legislature on “the status of each capital case in which a postconviction action has been filed that has been continuously pending for more than 3 years.”

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On June 30, 2020, ten capital postconviction actions were pending in the trial courts for more than three years (out of a total of 25 cases pending in the trial courts). Five of those cases involve defendants who were declared incompetent to proceed and thus those postconviction proceedings are stayed pending competency restoration.

The first section of this report details the five postconviction actions pending in circuit court for longer than three years as of June 30, 2020. The second section details the five cases involving defendants who are incompetent to proceed.

Pending for More than Three Years

Frank Walls, case number 461987CF000856XXXAXX, Okaloosa County, First Judicial Circuit, filed a successive postconviction motion on May 26, 2015. The motion was denied on July 10, 2015, and an appeal filed to the Florida Supreme Court on August 3, 2015. On appeal, the Florida Supreme Court remanded back down to the trial court for an evidentiary hearing on October 20, 2016. After the rehearing disposition issued on January 9, 2017, the mandate followed on January 25, 2017, and the proceedings in the trial court resumed. The defendant filed a Motion for Jury Determination of His Intellectual Disability Claim on April 13, 2018. An order Denying Defendant's Motion for a Jury Determination of His Intellectual Claim was issued July 20, 2018 and the rehearing was then denied on August 27, 2018. A scheduling order was issued February 18, 2019, setting forth due dates and scheduling an evidentiary hearing on for March 23, 2020, through March 30, 2020. The defendant filed an Emergency Motion for Telephonic Hearing and to Continue Evidentiary Hearing on March 13, 2020, premised on the Coronavirus pandemic. The motion was granted on March 18, 2020, and the evidentiary hearing was continued. On May 29, 2020, the State filed a motion for summary denial of the intellectual disability claim due to the recent decision in *Phillips v. State*, SC18-1149, 2020 WL 2563476 (Fla. May 21, 2020). On June 1, 2020, the defendant filed a motion requesting 30 days in which to file a response to the State's motion and requesting a hearing on the State's motion. On June 5, 2020, the Court entered an order granting the defense's request to file a response and for a hearing on the State's motion. The hearing date has not yet been set.

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Sonny Boy Oats, Jr., case number 421980CF000016CFAXXX, Marion County, Fifth Judicial Circuit, appealed the denial of his 3.203 Intellectual Disability Claims to the Florida Supreme Court on April 19, 2012. On March 31, 2016, the Florida Supreme Court remanded proceedings to the trial court for an evidentiary hearing. Between May 29, 2018, and July 13, 2018, trial court proceedings were stayed pending resolution of an interlocutory petition filed in the Florida Supreme Court. Multiple status conferences were held by Judge Jonathan D. Ohlman in 2019. At a status conference on February 6, 2020, the State advised it would stipulate that defendant has met the burden to establish his intellectual disability and the State is unable to overcome that burden. The Court ordered defendant to be resentenced. The resentencing hearing was to be held on March 24, 2020, but due to the Coronavirus pandemic, it will be rescheduled.

David Pittman, case number 531990CF002242A1XXXX, Polk County, Tenth Judicial Circuit, filed a successive postconviction motion on February 9, 2016. An amended motion was filed on October 14, 2016. The State filed a written response on November 7, 2016. The case is assigned to Judge Jalal A. Harb. Numerous status conferences were held during 2017 and 2018. An evidentiary hearing initially set for May 1, 2018, was continued due to ongoing issues with discovery and I.Q. testing. Status conferences were held on March 22, 2019, and May 10, 2019. On July 2, 2019, Judge Harb directed that additional doctors' reports regarding defendant's intellectual disability were to be submitted by September 1, 2019. Status conferences were held on August 9, 2019, and December 6, 2019. A status conference was held on January 9, 2020, where it was announced that counsel for defendant intended to withdraw from the case. At a status conference on February 11, 2020, CCRC-Middle Region was appointed to represent defendant, but also moved to withdraw. A hearing on the motion to withdraw was held in part and continued to March 18, 2020. On May 22, 2020, the Court denied the motion to withdraw. A status conference has been scheduled for August 14, 2020.

Andrew Gosciminski, case number 562002CF003515AXXXXX, St. Lucie County, Nineteenth Judicial Circuit, filed an initial postconviction motion on September 30, 2015. A Rule 3.853 motion was also filed by defendant on October 12, 2015. On March 30, 2016, defendant filed a petition for review of a nonfinal order concerning assigned Judge Robert E. Belanger with the Florida Supreme Court. The petition was denied, and the ruling became final on March 3, 2017. An

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amendment to the initial postconviction motion was filed on October 20, 2017. On November 1, 2017, defendant filed an appeal of the order denying in part the Rule 3.853 motion with the Florida Supreme Court. The lower court order was affirmed, and the Florida Supreme Court mandate was issued on January 23, 2019. During the appellate proceedings, the trial court proceedings were held in abeyance. On May 15, 2019, another amendment to the initial postconviction motion was filed. Multiple status conferences were scheduled and continued from August 2019 to April 2020. The next status conference is set for September 30, 2020.

William Thompson, case number 131976CF003350B000XX, Miami-Dade County, Eleventh Judicial Circuit. The Honorable Marisa Tinkler-Mendez is presiding over the case. On February 6, 2017, the Florida Supreme Court reversed and remanded this case to the trial court for a new evidentiary hearing regarding intellectual disability. There have been multiple status hearings held from 2017 to 2020. On June 19, 2020, the State filed a motion for reconsideration and request to deny defendant's Seventh Motion for Postconviction Relief. The next status hearing is scheduled for July 28, 2020.

Incompetent to Proceed, Pending for More than Three Years

Tony Watts, case number 161988CF011505AXXXMA, Duval County, Fourth Judicial Circuit, filed his initial postconviction motion on September 16, 1993. Judge Lawrence P. Haddock presided from September 1993 through October 2011. Judge Brad Stetson was appointed in October 2011, and a commitment order dated April 30, 2015, was signed by Judge Waddell Wallace. On June 3, 2016, the court issued an Order for Competency Evaluation appointing a mental health expert to determine whether defendant was competent to proceed. During a status conference on June 21, 2016, parties reported that mental health experts were conducting their evaluations of defendant regarding his competency. Following several status hearings, Judge Wallace entered an order on March 24, 2017, continuing commitment of defendant and adjudging him incompetent to proceed. After a competency review hearing on June 13, 2018, Judge Angela Cox appointed an expert to further evaluate the defendant. The evaluations were reviewed before the court on August 1, 2018. On August 9, 2018, Judge Cox entered an order regarding defendant's continued commitment. Additional status conferences were held before Judge Cox on May 15, 2019, and June 13, 2019. At a status

conference held before Judge Marianne Aho on December 18, 2019, the parties agreed to pass this case to February 4, 2020. On February 4, 2020, Judge Aho entered orders appointing two mental health experts to evaluate defendant's competency and scheduling the next status conference for July 21, 2020.

Gary McCray, II, case number 102004CF001149000AMX, Clay County, Fourth Judicial Circuit, filed his initial postconviction motion on March 12, 2013. The State filed its response to defendant's motion for postconviction relief on May 9, 2013. At the status conference on April 25, 2016, the court continued the proceedings to await the Florida Supreme Court's decision in *Lambrix*. Numerous status conferences were held throughout 2016, 2017, and 2018. On March 18, 2019, Judge Don H. Lester held that the defendant remained incompetent to proceed. A status conference was held June 17, 2019. A status conference was held on December 16, 2019, where it was determined that defendant remains incompetent to proceed. The next status conference is scheduled for December 21, 2020.

Franklin Floyd, case number 521997CF020160XXXNO, Pinellas County, Sixth Judicial Circuit, filed his initial postconviction motion on January 8, 2007. The Honorable Nancy Ley is the presiding judge. A status conference was held on April 19, 2017. On May 2, 2017, the court issued an order stating the defendant was incompetent to proceed. Following another competency hearing on May 16, 2018, Judge Ley issued orders directing the Department of Corrections to release records on defendant's current medical condition to counsel and declaring that defendant remained incompetent to proceed. Following the June 12, 2019, status conference, Judge Ley held the defendant remained incompetent to proceed. A competency review hearing has been scheduled for August 5, 2020.

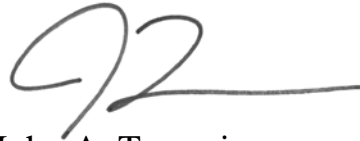
Carlton Francis, case number 501997CF008545AXXXMB, Palm Beach County, Fifteenth Judicial Circuit, filed his initial postconviction motion on December 12, 2003. The Honorable Jeffrey Colbath was the presiding judge until July 2013. The case was reassigned to Judge Glenn Kelley. Status conferences regarding competency were held on January 10, 2018, January 17, 2018, May 15, 2018, May 15, 2019, and July 15, 2019. On June 13, 2019, the Department of Corrections submitted an updated report regarding defendant's current mental status pursuant to the trial court's direction. Another competency status hearing has been scheduled for July 15, 2020.

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Bill Marquardt, case number 602006CF000768CFAXFX, Sumter County, Fifth Judicial Circuit, filed his initial postconviction motion and a motion for determination of competency on September 21, 2016. The Honorable William Hallman is the presiding judge. A competency report was filed on November 21, 2016. A status conference was held December 12, 2016, where the Court appointed two additional doctors to evaluate defendant. Multiple status conferences were held, appointing additional experts to evaluate the competency of defendant. On May 20, 2020, the Court found defendant incompetent to proceed and he will be re-examined in one year.

Please do not hesitate to contact me if you have any questions regarding this report.

Sincerely,

A handwritten signature in black ink, appearing to read 'JT', with a long horizontal line extending to the right.

John A. Tomasino

JAT/vbv