

Supreme Court of Florida

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July 19, 2023

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

The Honorable Paul Renner
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 Passidomo and Speaker Renner:

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, 2023, thirteen capital postconviction actions were pending in the trial courts for more than three years (out of a total of thirty-six cases pending in the trial courts). Four 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 nine postconviction actions pending in circuit court for longer than three years as of June 30, 2023. The second section details the four cases involving defendants who are incompetent to proceed.

Pending for More than Three Years

Jermaine Foster, case number 491993CF000346XXCRXX, Osceola County, Ninth Judicial Circuit, filed a postconviction motion on October 17, 2018, and an amended motion on September 14, 2021. The Honorable Jalal Harb is the presiding judge. On March 21, 2023, a *Huff* hearing was held. On May 3, 2023, the Court denied the postconviction motion, in part, and granted an evidentiary hearing on two grounds of the motion. A status conference is currently set for September 6, 2023. On January 17, 2019, the Florida Supreme Court remanded for an evidentiary hearing on Defendant's intellectual disability claim. Multiple status hearings have been held since 2019. On June 17, 2020, the State filed a Motion for Summary Denial of the Intellectual Disability Claim, which was denied on February 18, 2021. On March 31, 2022, the State renewed its Motion for Summary Denial of the Intellectual Disability Claim. On May 4, 2023, the court entered an order granting the State's Renewed Motion for Summary Denial and Denying Defendant's Intellectual Disability Claim.

Mark Poole, case number 532001CF007078A0XXXX, Polk County, Tenth Judicial Circuit, had his death sentenced reinstated by the Florida Supreme Court on April 20, 2020. The Florida Supreme

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Court also remanded to the circuit court for resolution of any remaining penalty-phase claims that were raised in Defendant's postconviction motion but not addressed on the merits by the trial court. The Honorable J. Kevin Abdoney is the presiding judge. Status hearings have been held in January and April 2023. Defendant filed an amended postconviction motion on June 29, 2023. The next status hearing is set for July 14, 2023, and an evidentiary hearing is currently scheduled for August 14, 2023.

Randy Tundidor, case number 062010CF006496A88810, Broward County, Seventeenth Judicial Circuit, filed his initial postconviction motion on February 26, 2019. Multiple status conferences were held from 2019 until April of 2020, when they were temporarily paused due to the COVID-19 pandemic. The Honorable Elizabeth Scherer was the presiding judge. Multiple status conferences have been held from April 27, 2021, to present. On December 15, 2022, Defendant filed a petition in the Florida Supreme Court, asking that Judge Scherer be removed from the case. The proceedings in the circuit court were stayed pending disposition of the Florida Supreme Court case. On April 13, 2023, the Florida Supreme Court granted the petition and Judge Scherer recused herself from the case. The case was reassigned to Judge Ernest Kollra who also recused himself. The case has been reassigned to the Honorable Tim Bailey, who is currently reviewing the case.

Darious Wilcox, case number 062008CF003736A88810, Broward County, Seventeenth Judicial Circuit, filed his initial postconviction motion on February 19, 2016, and an amended motion on September 22, 2017. On January 18, 2018, the circuit entered an order summarily denying postconviction relief on all claims. On September 13, 2019, the Florida Supreme Court vacated the trial court's order dated January 18, 2018, and remanded for a *Huff* hearing and further proceedings. The Honorable Martin S. Fein is presiding over the case. Status conferences were held from October 2019 to December of 2020, when they were temporarily paused due

to the COVID-19 pandemic. On August 9, 2021, Defendant filed an amended postconviction motion. On February 18, 2022, a *Huff* hearing was held. Multiple public records hearings were held in 2022 and multiple status conferences have been held since 2022. An evidentiary hearing was held on April 19, 2023, and the court has ordered that counsel for the parties shall each file a post-hearing memorandum by July 21, 2023.

Henry Jones, case number 052009CF031876AXXXX, Brevard County, Eighteenth Judicial Circuit, filed his initial postconviction motion on September 20, 2018. The Honorable Nancy Maloney is the presiding judge. On March 19, 2019, Judge Maloney entered an order staying Defendant's postconviction proceedings until the resolution of Defendant's Tennessee warrant. On November 15, 2019, an order was entered appointing experts for a competency evaluation of the Defendant. Multiple status conferences have been held since 2019. A competency hearing began on December 13, 2022, and continued on April 18, 2023. On May 10, 2023, Judge Maloney entered an order finding Defendant competent to proceed further in postconviction proceedings. The Court held a case management conference on June 13, 2023. An amended initial postconviction motion was filed on June 20, 2023. An evidentiary hearing is currently scheduled for September 7, 2023, but Defendant filed an unopposed motion to continue the hearing and the parties are to provide dates to the court for rescheduling.

Dale Middleton, case number 472009CF000448CFAXMX, Okeechobee County, Nineteenth Judicial Circuit, filed his initial postconviction motion on February 23, 2019. Judge Robert Belanger is the presiding judge. There have been multiple status conferences held from 2019 to present. There have also been multiple public records hearings held, but there are currently no outstanding public records issues. An amended postconviction motion was filed on September 6, 2022. The State was granted two extensions of time due to heavy death penalty case workload and

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filed their response on January 4, 2023. A case management conference was held on March 31, 2023. The next status conference is set for September 14, 2023, and an evidentiary hearing is currently set for October 23, 2023.

Rodney Lowe, case number 311990CF000658AXXXXX, Indian River County, Nineteenth Judicial Circuit, filed his initial postconviction motion on June 13, 2020, and an amended postconviction motion on September 6, 2022. On November 7, 2022, the State's answer was filed. Successor Judge Michael Heisey was disqualified from the case and Chief Judge Charles A. Schwab was reassigned to the case. Status conferences were held in March and June 2023. An evidentiary hearing is currently scheduled for July 17, 2023.

Mesac Damas, case number 112009CF002298AXXXXX, Collier County, Twentieth Judicial Circuit, filed his initial postconviction motion on March 20, 2020. The Honorable Ramiro Manalich is the presiding judge. Multiple status conferences have been held. On August 9, 2022, Judge Manalich appointed two experts to evaluate Defendant's competency. A competency hearing was held on November 2, 2022. On November 14, 2022, Judge Manalich entered an order finding Defendant competent to proceed. An evidentiary hearing was held November 15, 2022, through November 18, 2022. The parties filed their written closing arguments on June 2, 2023, and the Court intends to issue its final order on the Rule 3.851 motion on or before August 3, 2023.

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 was the presiding judge until January 2022. 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.

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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. On April 16, 2021, a stipulated order was entered, directing Department of Corrections to release medical records and/or information as to the Defendant's current medical condition. On September 15, 2021, an order was entered appointing experts to evaluate Defendant's competency. On January 25, 2022, the case was reassigned to the Honorable G. Richard Singletary. A competency hearing was scheduled for March 28, 2022, but was canceled. An order was issued on April 14, 2022, appointing experts to evaluate Defendant's competency. On October 24, 2022, a competency review hearing was held and on November 11, 2022, the State filed their closing arguments. On April 20, 2023, the court determined that Defendant is competent to proceed.

Incompetent to Proceed, Pending for More than Three Years

Steven Cozzie, case number 662011CF000353CFAXMX, Walton County, First Judicial Circuit, filed his initial postconviction motion on March 1, 2019. The Honorable Kelvin Wells is the presiding judge. At a status conference held on May 7, 2019, Defendant had a pending motion to determine competency and an order was issued appointing experts. As of December 30, 2019, the Court was waiting on the report from the second expert's evaluation, which was set back due to COVID-19 and Defendant's competency remained pending. A status conference was held on May 17, 2022. On June 27, 2022, Judge Wells issued an order appointing two experts to complete new competency evaluations for Defendant. Multiple status hearings have been held. As of July 11, 2023, one of the competency evaluation reports is still outstanding. The next status conference is set for July 18, 2023, to address the status of the second expert's report and whether a third expert will need to be appointed or whether a competency hearing will be scheduled.

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 a status conference was held on July 21, 2020. On August 18, 2020, a competency review hearing was held, and Defendant was found incompetent to proceed. Status conferences were held on July 15, 2021, and July 23, 2021. On August 8, 2021, a hearing was held on Defendant's competency and on September 7, 2021, the Defendant was adjudged incompetent and was ordered continued commitment. Another competency review hearing was scheduled for June 28, 2022, and then July 7, 2022, but was postponed until August 2, 2022, as there was a delay in the experts' reports. On August 2, 2022, a competency review hearing was held in part. On August 19, 2022, an additional

expert was appointed for competency review. On December 2, 2022, the remainder of the competency review hearing continued, and the hearing was concluded on February 17, 2023. On March 16, 2023, the court issued an order finding that Defendant remains incompetent. Another competency review hearing is currently scheduled for November 17, 2023.

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 on June 17, 2019. At a status conference on December 16, 2019, it was determined that Defendant remains incompetent to proceed. Multiple status conferences were held from December 2020 to May 2021. On July 13, 2021, an expert was appointed to determine Defendant's competency. On January 4, 2022, a status conference was held, and it was determined that Defendant remains incompetent. In October 2022, the court determined that Defendant remains incompetent. Another competency review hearing was scheduled for April 11, 2023, but continued. A status conference was held on June 27, 2023, where counsel for Defendant requested additional medical records for review before the conclusion of the competency hearing. A status hearing is currently scheduled for November 2, 2023.

Carlton Francis, case number 501997CF008545AXXXMB, Palm Beach County, Fifteenth Judicial Circuit, filed his initial postconviction motion on December 12, 2003. The Honorable Jeffrey Gillen is the presiding judge. Status conferences regarding competency were held on January 10, 2018, January 17, 2018,

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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 mental status pursuant to the trial court's direction. Status hearings were held on July 15, 2020, and September 15, 2020. On July 1, 2022, it was determined that Defendant remains incompetent. A competency review hearing was held on June 30, 2023, and on July 5, 2023, the court issued an order finding that Defendant remains incompetent. The next status hearing is set for June 28, 2024.

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

Sincerely,

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

John A. Tomasino

JAT/kac