

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

SHEMAR LATRELL ANTHONY,

Petitioner,

v.

Case No. 5D21-1536
LT Case No. 2017-CF-2031-A

STATE OF FLORIDA,

Respondent.

_____ /

Opinion filed October 22, 2021

Petition for Certiorari Review of Order
from the Circuit Court for Osceola County,
Tom Young, Judge.

Robert Wesley, Public Defender, Azalia
Romero-Sanchez and David Redfearn,
Assistant Public Defenders, Orlando, for
Petitioner.

Ashley Moody, Attorney General,
Tallahassee, and Robin A. Compton,
Assistant Attorney General, Daytona Beach,
for Respondent.

PER CURIAM.

Shemar Latrell Anthony petitions this Court for certiorari relief, seeking a dismissal of the charges against him due to his incompetence to proceed. We grant the petition and remand to the lower court for dismissal of the proceedings without prejudice to the State to refile the case should Anthony be declared competent to proceed in the future. See Fla. R. Crim. P. 3.213(a)(2).

In 2017, Anthony, a minor at the time, was charged with burglary of a structure, grand theft, and criminal mischief. He was subsequently evaluated for competency by two doctors, both of whom determined he was incompetent to proceed. As a result, the lower court entered an order finding Anthony incompetent “by virtue of mental retardation and intellectual disability.”¹

Anthony was ordered to participate in a competency restoration program and was subsequently evaluated on numerous occasions with differing opinions rendered. One doctor found Anthony competent to proceed but unwilling. The remaining doctors found him incompetent with varying, albeit unsuccessful, progress toward restoration of competency. By 2019, all the doctors’ reports found Anthony incompetent, either because of mental illness or intellectual disability. Thus, the lower court entered another order

¹ This order was entered by a predecessor judge.

adjudicating Anthony incompetent to proceed “due to his mental illness as defined in [sections] 916.106(7) or 913.301.”²

In 2021, Anthony moved to dismiss the charges against him, arguing that it had been more than two years since he was found incompetent due to intellectual disability, and the court had never deemed his competency restored. Anthony pointed out similar results in Henry v. State, 178 So. 3d 928 (Fla. 5th DCA 2015), and Hines v. State, 931 So. 2d 148 (Fla. 1st DCA 2006), and highlighted the requirements of section 916.303(1), Florida Statutes (2021). He acknowledged that dismissal would be without prejudice to the State’s ability to refile charges if he was declared competent to proceed in the future. With no hearing, and without any explanation, the lower court denied Anthony’s motion to dismiss. This petition for a writ of certiorari followed.

Anthony argues that the 2017 order finding him incompetent based on “mental retardation and intellectual disability” has not been set aside or superseded by the 2019 order, and still governs the resolution of the case. Additionally, he notes that the 2019 order found incompetence due to “mental illness” as defined in section 916.106(7), Florida Statutes (2021), which has

² A subsequent report once again found Anthony incompetent to proceed, finding both mental illness and intellectual limitations.

no helpful definition, and section 916.301, Florida Statutes (2021), which applies in cases of intellectual disability, thereby supporting that intellectual disability is still the basis for his incompetence.

In response, the State acknowledges the 2017 order finding Anthony incompetent due to intellectual disability but contends that the 2019 order controls, which found incompetence due to mental illness with no mention of intellectual disability. It notes that without a finding of intellectual disability, the denial of Anthony’s motion to dismiss was not a departure from the essential requirements of the law. The State asserts that Anthony “completely disregards” the 2019 order and that he is not entitled to a presumption of intellectual disability.

Because the lower court denied Anthony’s motion to dismiss without explanation, we have no way of knowing the basis for that decision. However, the parties articulate the issue presented as a dispute between which of two statutes applies to Anthony’s case—section 916.303, Florida Statutes (2021), or section 916.145, Florida Statutes (2021).³ The former

³ Section 916.303(1) provides:

(1) The charges against any defendant found to be incompetent to proceed due to intellectual disability . . . shall be dismissed without prejudice to the state if the defendant remains incompetent to proceed within a reasonable time after such determination, not to

addresses defendants deemed incompetent as a result of intellectual disability, while the latter governs defendants found incompetent due to mental illness. Under section 916.303(1), dismissal is required within a reasonable time after a determination of incompetence, not to exceed two years. Section 916.145(1) requires the passage of five years before dismissal.⁴

We agree with Anthony that the lower court's 2019 order did not set aside or otherwise alter the findings made in the 2017 order. Nothing in the 2019 order suggests that the lower court intended to obviate or contradict the 2017 order, which found Anthony incompetent due to intellectual disability. In any event, the two orders are reconcilable, as a defendant can

exceed 2 years The charges may be refiled by the state if the defendant is declared competent to proceed in the future.

Section 916.145(1) provides:

(1) The charges against a defendant adjudicated incompetent to proceed due to mental illness shall be dismissed without prejudice to the state if the defendant remains incompetent to proceed for 5 continuous, uninterrupted years after such determination

⁴ While section 916.145(1) also provides for dismissal after three years, Anthony was charged with a forcible felony, thus requiring five years to elapse before dismissal under that statute. See § 916.145(1)(p), Fla. Stat.

be incompetent due to both mental illness and intellectual disability at the same time. See § 916.106(14), Fla. Stat. (2021) (“For the purposes of this chapter, the term [‘mental illness’] does not apply to defendants who have only an intellectual disability . . . who lacks a co-occurring mental illness.”). In other words, mental illness and intellectual disability can be “co-occurring.”

At worst, the 2019 order added a new, additional basis for Anthony’s incompetence. The 2017 order finding Anthony incompetent due to intellectual disability is still intact, and as such, the two-year time period under section 916.303(1) is applicable to this case. Because more than two years have passed since the 2017 order, the lower court departed from the essential requirements of the law by failing to comply with the mandates of section 916.303(1) and rule 3.213(a)(2). Accordingly, we grant Anthony’s petition, quash the order denying his motion to dismiss, and remand for dismissal of the charges without prejudice to the State’s right to refile should Anthony become competent in the future. See Henry, 178 So. 3d at 929.

PETITION GRANTED.

LAMBERT, C.J., COHEN and HARRIS, JJ., concur.