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

CALLENE BARTON,

Petitioner,

v. Case No. 5D21-183

STATE OF FLORIDA,

Respondent.

_____/

Opinion filed September 3, 2021

Petition for Certiorari Review of Order from the Circuit Court for Orange County, Bob Leblanc, Judge.

Robert Wesley, Public Defender, and Robert S. Larr, Assistant Public Defender, Orlando, for Petitioner.

Ashley Moody, Attorney General, Tallahassee, and Pamela J. Koller, Assistant Attorney General, Daytona Beach, for Appellee.

PER CURIAM.

Petitioner Callene Barton was charged with several offenses, including first-degree felony murder, witness intimidation, and neglect of a child causing great bodily harm. In August 2018, the trial court found her incompetent to proceed and committed her to the Florida State Hospital. Since that time, Barton has been evaluated on at least six separate occasions, each one concluding that she remained incompetent. In light of indications that Barton was intentionally failing to cooperate with the evaluations, the State made several requests that malingering tests be conducted. Despite those requests, none of the evaluations of Barton conducted by the staff at the State Hospital addressed the malingering issue.

Eventually the State filed a motion seeking to have its own expert evaluate Barton to determine if she was, in fact, malingering. Following a hearing, the court granted the State's motion, specifically finding that there was no law that precluded the State from having Barton evaluated by its own expert. It is from this order that Barton seeks relief. Because Barton has failed to establish the basic requirements for certiorari relief, she has failed to invoke the jurisdiction of this Court, and her petition for writ of certiorari is dismissed.

To obtain a writ of certiorari, a petitioner must show that the nonfinal order constitutes: "(1) a departure from the *essential requirements* of the law,

(2) resulting in material injury for the remainder of the case (3) that cannot be corrected on postjudgment appeal." Williams v. Oken, 62 So. 3d 1129, 1132 (Fla. 2011) (emphasis added). The closest Barton comes to arguing the first element is her conclusory statement that the trial court's order departs from the procedure set forth in Florida Rule of Criminal Procedure 3.212(c)(5)(B).

Even if we were to find Barton's allegation sufficient to raise this first element for certiorari relief, she fails to sufficiently address the remaining requirements. The second and third elements are sometimes referred to as "irreparable harm," and they are jurisdictional. Fla. Dep't of Agric. & Consumer Servs. v. Mahon, 293 So. 3d 1091 (Fla. 5th DCA 2020) (citing Deutsche Bank Nat'l Tr. Co. v. Prevratil, 120 So. 3d 573, 575 (Fla. 2d DCA 2013)). Therefore, because irreparable harm is a jurisdictional question, this Court should not consider the merits of her claim unless the two elements that comprise "irreparable harm" have been established, even if the trial court was clearly wrong in its order. Laycock v. TMS Logistics, Inc., 209 So 3d 627, 628–29 (Fla. 1st DCA 2017). Absent such a showing, the petition for writ of certiorari must be dismissed. See Bared & Co. v. McGuire, 670 So. 2d 153, 157 (Fla. 4th DCA 1996) (explaining that dismissal, rather than denial, is the proper disposition of petition for writ of certiorari when appellate

court determines that there has been an insufficient showing of irreparable harm).

In her petition, Barton fails to establish how the trial court's order resulted in irreparable harm. In fact, Barton's petition is completely silent on these elements altogether. Because Barton makes no attempt to establish irreparable harm, and because doing so is a jurisdictional prerequisite to obtaining certiorari relief, we dismiss her petition for lack of jurisdiction.[1]

PETITION DISMISSED.

EDWARDS, HARRIS, and SASSO, JJ., concur.

[1] Respondent has not raised the question of this Court's jurisdiction over this appeal. Nevertheless, "[c]ourts are bound to take notice of the limits of their authority and if want of jurisdiction appears at any stage of the proceedings, original or appellate, the court should notice the defect and enter an appropriate order." Polk Cnty. v. Sofka, 702 So. 2d 1243, 1245 (Fla. 1997) (quoting W. 132 Feet v. City of Orlando, 80 Fla. 233, 86 So. 197, 198–99 (1920)).