

FIRST DISTRICT COURT OF APPEAL  
STATE OF FLORIDA

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No. 1D22-1205

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GAGE EASTBURN,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

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Petition for Writ of Certiorari—Original Jurisdiction.  
Jason L. Jones, Judge.

October 26, 2022

PER CURIAM.

The Court dismisses the petition for a writ of certiorari.

The Court denies the alternative petition for a writ of mandamus. Below, Petitioner filed a motion requesting the court find him incompetent to proceed based on a previous incompetency order in a separate case. Eight days later, the trial court held a hearing on the motion. The trial court was reluctant because the competency evaluation from the other case was a year and a half old. After a cordial discussion with the parties about what would be in Petitioner's best interests, the Assistant Public Defender representing Petitioner agreed to obtain a new competency evaluation saying "I will, happily have him evaluated. That is, I

think, a decision that makes sense, to just kind of continue with having documentation of what is going on.” The trial court then released Petitioner on mental health pretrial release. There is nothing in the filings on review to indicate that the competency evaluation ever took place. Instead, Petitioner now seeks mandamus to force the trial court to decide the issue without the benefit of a current evaluation.

Based on the record before us, it does not appear that this new position was presented to the trial court before the petition was filed. The only objection at the hearing was that Petitioner “was presumed legally incompetent based on the other cases.” The trial court expressly did not rule on Petitioner’s competency because it was waiting on Petitioner’s updated evaluation. What brought about Petitioner’s change in position is unclear. The transcript and filings submitted with the petition do not indicate that Petitioner has obtained an updated evaluation or asked the trial court to do anything different than what was agreed upon at the hearing.

It is true that the trial court will need to rule on Petitioner’s competency. And if the public defender’s office will not complete the evaluation as agreed at the hearing, the trial court may need to order one on its own accord. *See Addison v. State*, 327 So. 3d 979, 983 (Fla. 1st DCA 2021) (holding that where there are reasonable grounds to question a defendant’s competency, the court must order a competency evaluation if the defense declines to obtain one).

We encourage the trial court to take up the issue, order an evaluation if necessary, and address Petitioner’s competency. But under these circumstances we exercise our discretion and decline to issue the extraordinary writ of mandamus.

B.L. THOMAS, RAY, and LONG, JJ., concur.

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*Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.*

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Jessica J. Yeary, Public Defender, and Justin Karpf, Assistant Public Defender, Tallahassee, for Petitioner.

Ashley Moody, Attorney General, and Sharon S. Traxler, Assistant Attorney General, Tallahassee, for Respondent.