Third District Court of Appeal

State of Florida

Opinion filed July 22, 2020.

No. 3D20-0417
Lower Tribunal No. 18-15454

Trenton Scott,
Petitioner,

vs.

The State of Florida,
Respondent.

A Case of Original Jurisdiction—Mandamus.

Carlos J. Martinez, Public Defender, and Deborah Prager, Assistant Public Defender, for petitioner.

Ashley Moody, Attorney General, and Linda Katz, Assistant Attorney General, for respondent.

Before SALTER, HENDON and LOBREE, JJ.

PER CURIAM.

ON CONFESSION OF ERROR

The petitioner, Trenton Scott, seeks mandamus relief to instruct the trial court to accept his written waiver of appearance at a sounding scheduled by the court. See Fla. R. Crim. P. 3.180(a)(3) ("In all prosecutions for crime the defendant shall be present . . . at any pretrial conference, unless waived by the defendant in writing[.]"); Fla. R. Crim. P. 3.220(o)(1) ("The trial court may hold 1 or more pretrial conferences, with trial counsel present, to consider such matters as will promote a fair and expeditious trial. The defendant shall be present unless the defendant waives this in writing."). Because the State concedes that "no good cause has been shown to override the defendant's waiver, we grant the petition for writ of mandamus and instruct the trial court to accept the petitioner's written waiver of appearance." Perozo v. State, 239 So. 3d 793, 794 (Fla. 3d DCA 2018) (citing Charlemagne v. Guevara, 183 So. 3d 1261, 1263 (Fla. 3d DCA 2016)); Cruz v. State, 822 So. 2d 595 (Fla. 3d DCA 2002).

Petition granted; writ of mandamus issued.

LOBREE, J. (specially concurring)

Based upon the State's confession that no good cause existed for the trial court to require the presence of the petitioner at the noticed sounding hearing, and the limited record before this court, I agree that the petitioner was entitled to recognition of his waiver of appearance at the prior hearing where an alias capias was issued (and later quashed). I write separately to stress that I do not believe that the extraordinary writ of mandamus should lie to compel the trial court to accept a waiver of appearance for a *future* sounding hearing where the court has good cause to require his personal appearance.

In order to be entitled to a writ of mandamus the petitioner must have a clear legal right to the requested relief, the respondent must have an indisputable legal duty to perform the requested action, and the petitioner must have no other adequate remedy available." Huffman v. State, 813 So. 2d 10, 11 (Fla. 2000). "It is well-settled that mandamus is neither the appropriate vehicle to seek review of an allegedly erroneous decision by another court, nor is it the proper vehicle to mandate the doing or undoing of a discretionary act." Mathews v. Crews, 132 So. 3d 776, 778 (Fla. 2014).

The authorities cited by the panel recognize that a trial court may compel a defendant's personal appearance at a pretrial conference where good cause has been

shown. Charlemagne, 183 So. 3d at 1263 ("[I]f there is a good reason to do so, a trial court may require the presence of the defendant in court even when the defendant has filed a written waiver [of appearance at pretrial conferences].") (citing Cruz, 822 So. 2d at 596); see also Jimenez v. State, 201 So. 3d 214, 217 (Fla. 2d DCA 2016) ("A court may require the attendance of a defendant if there is good reason to do so. . . . By instituting a policy that effectively eliminates the ability to waive appearance, the trial court is refusing to exercise the individualized discretion required by the rules."); Walters v. State, 905 So. 2d 974, 977 (Fla. 1st DCA 2005) ("absent a finding of good cause for requiring the presence of the defendant at a pre-trial conference, the trial court does not possess the discretion to deny a defendant the ability to waive his appearance at pre-trial proceedings") (citation omitted).

Here, the trial court did not accept the petitioner's waiver, based not only on noticed procedures that all defendants must be present for soundings, but also notice mailed to the petitioner of the sounding, and actual notice directly to his counsel that petitioner's presence would be required at a rescheduled sounding after the petitioner did not appear at a prior sounding date. The court explained that it does not routinely waive defendants' presence for sounding calendars because that obviates the purpose of the sounding, where the court colloquies defendants

regarding any outstanding discovery and plea offers before they come in for trial.[1] During the hearing on the motion to quash an alias capias issued after the petitioner's second absence, the defense reiterated that his presence should not have been required, as the trial court's policy contradicted the rules of criminal procedure. In response, the court explained:

> It defeats the purpose to have a sounding where the attorney announces ready and then on the day of trial on that Monday ten days later the defendant says they were never conveyed the plea offer, they wanted to accept that offer or they don't want to waive certain depositions not having been taken. Things that they are not able to tell the Court at sounding that does interfere with the calendar for the trial week.

"Many experienced trial judges believe that this type of hearing [a report regarding plea] is completely worthless if the defendant is not present to accept a satisfactory resolution." Cruz, 822 So. 2d at 597 (Sorondo, J., specially concurring). Like Judge Sorondo, I am not prepared to say that they are incorrect in this assessment, or that the rules of criminal procedure prohibit an efficiently conducted sounding or report hearing regarding a plea.

However, the record in this case reflects that the sounding where the petitioner failed to appear was prior to the fifth trial setting in this cause, and that there had been a prior report re. plea where the petitioner had been present for a colloquy by

[1] The court's posted procedure also emphasized that announcing "ready for trial" does not include ready subject to something, or that additional discovery is pending.

the court. As in Lopez Hernandez v. State, 277 So. 3d 137, 139 (Fla. 4th DCA 2019), "there is nothing in the record to suggest that requiring his presence would have resulted in the case being resolved, or that there was even [another] plea offer extended from the State." Had good cause been shown for requiring his presence prior to the sounding hearing, then mandamus would not lie "to mandate the doing or undoing of a discretionary act." Mathews, 132 So. 3d at 778. Because there was no clearly articulated basis on the record of what would be achieved prior to requiring the petitioner's appearance at the sounding, I agree that the petition warrants the relief sought.