

# Third District Court of Appeal

State of Florida, January Term, A.D. 2013

Opinion filed February 20, 2013.

Not final until disposition of timely filed motion for rehearing.

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No. 3D11-254

Lower Tribunal No. 00-17015

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**Arturo Rodriguez,**  
Appellant,

vs.

**The State of Florida,**  
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Jacqueline Hogan Scola, Judge.

Carlos J. Martinez, Public Defender, and Daniel Tibbitt, Assistant Public Defender, for appellant.

Pamela Jo Bondi, Attorney General, and Douglas J. Gland, Senior Assistant Attorney General, for appellee.

Before SUAREZ, LAGOA and SALTER, JJ.

SUAREZ, J.

The defendant, Arturo Rodriguez, appeals his conviction and sentence for second-degree murder with a deadly weapon and for aggravated assault with a deadly weapon. We reverse as the trial court failed to conduct a competency hearing pursuant to Florida Rule of Criminal Procedure 3.210.

The standard of review of whether a defendant is competent to stand trial is abuse of discretion. See Ponticelli v. State, 593 So. 2d 483 (Fla. 1991). In determining whether a defendant is competent to stand trial, the trial court must decide whether the defendant “has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding . . . as well as [a] factual understanding of the proceedings against him.” See Dusky v. United States, 362 U.S. 402, 402 (1960); Muhammad v. State, 494 So. 2d 969 (Fla. 1986); § 916.12(1), Fla. Stat. (2012).

In 2000, Rodriguez was charged with one count of second-degree murder with a deadly weapon and one count of aggravated assault with a deadly weapon. He was diagnosed as a paranoid schizophrenic and was psychiatrically evaluated at least seven times in the following years; some psychiatric evaluations found him competent to stand trial, while others did not. The first trial, in May 2006, was reversed and remanded as the trial court failed to conduct a proper Faretta<sup>1</sup> inquiry when Rodriguez made an unequivocal request to represent himself. See Rodriguez

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<sup>1</sup> Faretta v. California, 422 U.S. 806, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975).

v. State, 982 So. 2d 1272 (Fla. 3d DCA 2008). He then was scheduled to be evaluated in August 2009, when he refused to be evaluated, and in January 2010, eleven months before the trial verdict now being appealed. The doctor from the January evaluation stated that he could not make a competency conclusion.

The record before the trial judge reflected that there were no recent reports evaluating Rodriguez's competency to stand trial; the last being eleven months prior. The defendant's court-appointed standby counsel raised concerns about the defendant's competency to stand trial. The evaluation reports of record as well as the defendant's behavior in front of the court, both before and after trial, combined with the fact that there was no recent evaluation of record, were sufficient to create reasonable grounds to question whether the defendant was competent to stand trial. See Muhammad, 494 So. 2d at 973; Sampson v. State, 88 So. 3d 209 (Fla. 3d DCA 2011); see also § 916.12(1), Fla. Stat. (2012); Fla. R. Crim. P. 3.210.

The issue raised in this appeal is not whether Rodriguez was competent to stand trial. That is for determination upon remand. The question is whether the trial court, at the time of trial, had information that created reasonable grounds to believe Rodriguez might be incompetent. The record shows there was such evidence. The evidence, combined with the number of years of evaluation and no recent evaluation, created reasonable grounds such that the trial court was required to conduct a competency hearing, after ordering and receiving a new competency

evaluation. See Brockman v. State, 852 So. 2d 330 (Fla. 2d DCA 2003); see also § 916.12(1), Fla. Stat. (2012); Fla. R. Crim. P. 3.210(3).

Therefore, we conclude that the trial court abused its discretion in failing to order a competency hearing pursuant to Florida Rule of Criminal Procedure 3.210(3), where there were reasonable grounds to believe the defendant was not mentally competent to proceed at the time of trial.

Reversed and remanded.<sup>2</sup>

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<sup>2</sup> Upon remand, if the defendant is found competent to stand trial, after a competency hearing, and the defendant requests to represent himself, the trial court shall conduct a Faretta hearing applying the standards of Florida Rule of Criminal Procedure 3.111(3). See Vollmer v. State, 101 So. 3d 383 (Fla. 2d DCA 2012).