Serial: 173121

IN THE SUPREME COURT OF MISSISSIPPI

No. 2009-CT-01228-SCT

LAWANDA DILLON

v.

STATE OF MISSISSIPPI

ORDER

This matter is before the Court on the Petition for Writ of Certiorari filed by Lawanda Dillon. The petition was granted by order of this Court on June 16, 2011. Upon further consideration, the Court finds that the petition was improvidently granted and should be dismissed.

IT IS THEREFORE ORDERED, on the Court's own motion and pursuant to Rule 17(f) of the Mississippi Rules of Appellate Procedure, that the petition for writ of certiorari filed by Lawanda Dillon is dismissed as improvidently granted.

SO ORDERED, this the 28th day of November, 2011.

/s/ William L. Waller, Jr.

WILLIAM L. WALLER, JR.
CHIEF JUSTICE

TO DISMISS: WALLER, C.J., CARLSON, P.J., RANDOLPH, LAMAR AND CHANDLER, JJ.

DICKINSON, P.J., OBJECTS TO THE ORDER WITH SEPARATE WRITTEN STATEMENT JOINED BY KITCHENS AND PIERCE, JJ.

NOT PARTICIPATING: KING, J.

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DICKINSON, PRESIDING JUSTICE, OBJECTING TO THE ORDER WITH SEPARATE WRITTEN STATEMENT:

¶1. I object to this order.

¶2. A trial judge ordered a psychiatric evaluation to determine a defendant's competency to stand trial, but never held a hearing as required by Rule 9.06.[1] The defendant filed a petition for post-conviction relief, claiming the trial court should have held a hearing on her competency to stand trial or plead guilty. The Court of Appeals overlooked the trial judge's failure to comply with the rule requiring a hearing and incorrectly shifted the burden to the defendant to demonstrate that a hearing was necessary.[2]

¶3. Recognizing (as we did in ***Sanders v. State***[3]) that incompetents cannot waive anything,[4] and that – even in the absence of any evidence presented by the defendant – trial judges who order competency evaluations must comply with Uniform Rule of Circuit and

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[1] URCCC 9.06.

[2] ***Dillon v. State***, 2009-CP-01228-COA, 2010 WL 4723190 (Miss. Ct. App. Nov. 23, 2010).

[3] ***Sanders v. State***, 9 So. 3d 1132 (Miss. 2009)

[4] *See, e.g.,* ***id***. at 1136 ("The Supreme Court unambiguously stated that 'it is contradictory to argue that a defendant may be incompetent, and yet knowingly or intelligently 'waive' his right to have the court determine his capacity to stand trial.'")(*quoting* ***Pate v. Robinson***, 383 U.S. 375, 384, 86 S. Ct. 836, 15 L. Ed. 2d 815 (1966)).

County Court Practice 9.06's requirement of a hearing[5] – we granted certiorari. Today, by its decision to declare that this Court improvidently granted Lawanda Dillon's petition for certiorari, the majority changes directions. I cannot join that decision.

¶4. Dillon argued that "the circuit court had a duty to conduct an evidentiary hearing regarding her mental and emotional well-being, prior to accepting her guilty plea."[6] The Court of Appeals rejected Dillon's argument, finding "no error in the circuit court's failure to conduct a formal competency hearing as there was no 'reasonable ground' presented that Dillon was incompetent to enter her guilty plea." This statement incorrectly presumes that, unless the defendant presents evidence of incompetence, the trial judge is not required to conduct a hearing.

¶5. URCCC Rule 9.06 provides, in relevant part:

> If before or during trial the court, of its own motion or upon motion of an attorney, has *reasonable ground* to believe that the defendant is incompetent to stand trial, the court shall order the defendant to submit to a mental examination by some competent psychiatrist selected by the court in accordance with § 99-13-11 of the Mississippi Code Annotated of 1972.
>
> After the examination *the court shall conduct a hearing* to determine if the defendant is competent to stand trial.[7]

¶6. As the majority of this Court said in ***Sanders***, the State will not be heard to argue that the trial court did not have reasonable ground to believe the defendant is incompetent to stand

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[5]***Sanders***, 9 So. 3d at 1136-37 (competency hearing required where trial judge orders evaluation to determine competency).

[6]***Dillon***, 2010 WL 4723190, at *4.

[7]URCCC 9.06 (emphasis added).

trial when the trial judge has ordered a defendant to submit to a mental examination for that purpose.[8] We further held that the plain language of Rule 9.06

> requires an on-the-record hearing to determine competency once the court has reasonable ground to believe that the defendant is incompetent. The rule clearly uses the directive "shall" and not the permissive "may" language. The rule requires that the trial court first, "shall conduct a hearing to determine if the defendant is competent" and, second, "shall make a finding a matter of record."[9]

¶7. We stated in clear and precise language that the requirement for a hearing is triggered by a trial judge's order of an evaluation for competency to stand trial. Specifically, we said:

> In the face of [URCCC 9.06's] plain language, it is evident that it would be error not to hold a competency hearing ***once a trial court orders a psychiatric evaluation*** to determine competency to stand trial.[10]

¶8. The reason for this rule is as obvious now as it was when we handed down ***Sanders***: When a trial judge makes the decision to expend public funds for a mental examination, that decision is tantamount to a reasonable belief on the trial judge's part that reasonable grounds exist for the examination. Holding otherwise presumes the trial judge had no such reasonable belief.

¶9. Once the trial judge ordered a mental competency evaluation, it was the trial judge's duty under Rule 9.06 to conduct a formal, on-the-record competency hearing. The trial court failed to do so. We should follow our precedent, reverse this case, and remand for the trial court to conduct a competency hearing.

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[8] ***Sanders***, 9 So. 3d at 1137.

[9] ***Id.*** (quoting URCCC 9.06)

[10] ***Id***. at 1136 (emphasis added).

KITCHENS AND PIERCE, JJ., JOIN THIS SEPARATE WRITTEN STATEMENT.