

Supreme Court of Florida

Office of the Clerk
500 South Duval Street
Tallahassee, Florida 32399-1927

JOHN A. TOMASINO
CLERK
MARK CLAYTON
CHIEF DEPUTY CLERK
JULIA BREEDING
STAFF ATTORNEY

PHONE NUMBER: (850) 488-0125
www.floridasupremecourt.org

July 20, 2021

The Honorable Wilton Simpson
President
The Florida Senate
409 The Capitol
404 South Monroe Street
Tallahassee, Florida 32399-1100

The Honorable Chris Sprowls
Speaker
The Florida House of Representatives
420 The Capitol
402 South Monroe Street
Tallahassee, Florida 32399-1300

Re: Annual Report Required Pursuant to “Timely Justice Act of 2013”

Dear President Simpson and Speaker Sprowls:

Enacted as part of the Timely Justice Act of 2013, section 924.056(1), Florida Statutes, requires the Supreme Court to report annually to the Legislature on “the status of each capital case in which a postconviction action has been filed that has been continuously pending for more than 3 years.”

On June 30, 2021, ten capital postconviction actions were pending in the trial courts for more than three years (out of a total of 21 cases pending in the trial courts). Five of those cases involve defendants who were declared incompetent to proceed and thus those postconviction proceedings are stayed pending competency restoration.

The first section of this report details the five postconviction actions pending in circuit court for longer than three years as of June 30, 2021. The second section details the five cases involving defendants who are incompetent to proceed.

Pending for More than Three Years

Frank Walls, case number 461987CF000856XXXAXX, Okaloosa County, First Judicial Circuit, filed a successive postconviction motion on May 26, 2015. The motion was denied on July 10, 2015, and an appeal filed to the Florida Supreme Court on August 3, 2015. On appeal, the Florida Supreme Court remanded back down to the trial court for an evidentiary hearing on October 20, 2016. After the rehearing disposition issued on January 9, 2017, the mandate followed on January 25, 2017, and the proceedings in the trial court resumed. The defendant filed a Motion for Jury Determination of His Intellectual Disability Claim on April 13, 2018. An order Denying Defendant's Motion for a Jury Determination of His Intellectual Claim was issued July 20, 2018 and the rehearing was then denied on August 27, 2018. A scheduling order was issued February 18, 2019, setting forth due dates and scheduling an evidentiary hearing on for March 23, 2020, through March 30, 2020. The defendant filed an Emergency Motion for Telephonic Hearing and to Continue Evidentiary Hearing on March 13, 2020, premised on the Coronavirus pandemic. The motion was granted on March 18, 2020, and the evidentiary hearing was continued. On May 29, 2020, the State filed a motion for summary denial of the intellectual disability claim due to the decision in *Phillips v. State*, SC18-1149, 2020 WL 2563476 (Fla. May 21, 2020). On November 20, 2020, the Court held a hearing on the State's Motion for Summary Denial of the Intellectual Disability Claim, and the Court entered an order directing the parties to file briefs within 60 days. The Court held a status conference on March 5, 2021, and an evidentiary hearing on defendant's intellectual disability claim was held on June 29, 2021.

David Pittman, case number 531990CF002242A1XXXX, Polk County, Tenth Judicial Circuit, filed a successive postconviction motion on February 9, 2016. An amended motion was filed on October 14, 2016. The State filed a written response on November 7, 2016. The case is assigned to Judge Jalal A. Harb. Numerous status conferences were held during 2017 and 2018. An evidentiary hearing initially set for May 1, 2018, was continued due to ongoing issues with discovery and I.Q. testing. Status conferences were held on March 22, 2019, and May 10, 2019. On July 2, 2019, Judge Harb directed that additional doctors' reports regarding defendant's intellectual disability were to be submitted by September 1, 2019. Status conferences were held on August 9, 2019, and December 6, 2019. A status conference was held on January 9, 2020, where it was announced that counsel for defendant intended to withdraw from the case. At a status conference on February 11, 2020, CCRC-Middle Region was appointed to represent defendant, but also moved to withdraw. A hearing on the motion to withdraw was held in part and continued to March 18, 2020. On May 22, 2020, the Court denied the motion to withdraw. A status conference was held on August 14, 2020. On March 19, 2021, a hearing was held on the "State's Motion to Dismiss Claims I and IA of Second Amended Successive (Third) Motion for Postconviction Relief" filed on October 4, 2019, and the "Defendant's Motion under Rule 3.800(a) Challenging His Death Sentence as Illegal" filed on October 22, 2019. On May 28, 2021, the Court issued an order denying Defendant's Third Amended Successive Motion for Postconviction Relief and Defendant's Motion Under Rule 3.800(a) Challenging His Death Sentence as Illegal. Defendant filed a motion for rehearing on June 14, 2021.

Leon Davis (2), case numbers 532007CF00938601XXXX & 532007CF00961301XXXX, Polk County, Tenth Judicial Circuit, filed his initial postconviction motions on May 19, 2018. The Honorable Donald G. Jacobsen is the presiding judge. Multiple status hearings have been held since 2018. On May 3, 2021, the State filed a Motion to Dismiss Portions of Claim 17 in Case Number 07-CF-9386 and to Exclude Any and All Mental Health Testimony from Any Source & a Motion to Dismiss Portions of Claim 15 in Case Number 07-CF-9613 and to Exclude Any and All Mental Health Testimony or Evidence from Any Source. The Court heard argument on those motions on June 4, 2021. On June 8,

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2021, the Court granted the State's motions. A status conference is currently scheduled for July 29, 2021.

Daniel Doyle, case number 061981CF009310A88810, Broward County, Seventeenth Judicial Circuit, filed a successive postconviction motion on October 5, 2017. Judge Edward Merrigan, Jr. is the presiding judge. Multiple status conferences have been held since 2017. A Huff hearing was held on February 19, 2020. On June 15, 2020, the Court entered an order granting defendant's postconviction motion to the extent that he shall be entitled to an evidentiary hearing on his intellectual disability claim. A status conference is currently set for September 14, 2021, at which time a date will be set for the evidentiary hearing.

Incompetent to Proceed, Pending for More than Three Years

Tony Watts, case number 161988CF011505AXXXMA, Duval County, Fourth Judicial Circuit, filed his initial postconviction motion on September 16, 1993. Judge Lawrence P. Haddock presided from September 1993 through October 2011. Judge Brad Stetson was appointed in October 2011, and a commitment order dated April 30, 2015, was signed by Judge Waddell Wallace. On June 3, 2016, the court issued an Order for Competency Evaluation appointing a mental health expert to determine whether defendant was competent to proceed. During a status conference on June 21, 2016, parties reported that mental health experts were conducting their evaluations of defendant regarding his competency. Following several status hearings, Judge Wallace entered an order on March 24, 2017, continuing commitment of defendant and adjudging him incompetent to proceed. After a competency review hearing on June 13, 2018, Judge Angela Cox appointed an expert to further evaluate the defendant. The evaluations were reviewed before the court on August 1, 2018. On August 9, 2018, Judge Cox entered an order regarding defendant's continued commitment. Additional status conferences were held before Judge Cox on May 15, 2019, and June 13, 2019. At a status conference held before Judge Marianne Aho on December 18, 2019, the parties agreed to pass this case to February 4, 2020. On February 4, 2020, Judge Aho entered orders appointing two mental health experts to evaluate defendant's competency and a status conference was held on July 21, 2020. On August 18,

2020, a competency review hearing was held, and defendant was found incompetent to proceed. A status conference was held on June 15, 2021, and the next status conference is scheduled for July 21, 2021.

Gary McCray, II, case number 102004CF001149000AMX, Clay County, Fourth Judicial Circuit, filed his initial postconviction motion on March 12, 2013. The State filed its response to defendant's motion for postconviction relief on May 9, 2013. At the status conference on April 25, 2016, the court continued the proceedings to await the Florida Supreme Court's decision in *Lambrix*. Numerous status conferences were held throughout 2016, 2017, and 2018. On March 18, 2019, Judge Don H. Lester held that the defendant remained incompetent to proceed. A status conference was held June 17, 2019. A status conference was held on December 16, 2019, where it was determined that defendant remains incompetent to proceed. Multiple status conferences were held from December 2020 to May 2021. At a status conference on May 5, 2021, Counsel indicated they were seeking to have defendant evaluated again. The next status conference is scheduled for August 3, 2021.

Franklin Floyd, case number 521997CF020160XXXNO, Pinellas County, Sixth Judicial Circuit, filed his initial postconviction motion on January 8, 2007. The Honorable Nancy Ley is the presiding judge. A status conference was held on April 19, 2017. On May 2, 2017, the court issued an order stating the defendant was incompetent to proceed. Following another competency hearing on May 16, 2018, Judge Ley issued orders directing the Department of Corrections to release records on defendant's current medical condition to counsel and declaring that defendant remained incompetent to proceed. Following the June 12, 2019, status conference, Judge Ley held the defendant remained incompetent to proceed. Status conferences have been reset multiple times from August 2020 to March 2021, due to the COVID-19 Pandemic. A status conference is currently set for August 4, 2021.

Carlton Francis, case number 501997CF008545AXXXMB, Palm Beach County, Fifteenth Judicial Circuit, filed his initial postconviction motion on December 12, 2003. The Honorable Jeffrey Colbath was the presiding judge until July 2013. The case was reassigned to Judge Glenn Kelley. Status conferences regarding

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competency were held on January 10, 2018, January 17, 2018, May 15, 2018, May 15, 2019, and July 15, 2019. On June 13, 2019, the Department of Corrections submitted an updated report regarding defendant's current mental status pursuant to the trial court's direction. Status hearings were held on July 15, 2020, and September 15, 2020. A status conference is currently set for July 9, 2021, to determine defendant's competence to proceed.

Bill Marquardt, case number 602006CF000768CFAXFX, Sumter County, Fifth Judicial Circuit, filed his initial postconviction motion and a motion for determination of competency on September 21, 2016. The Honorable William Hallman is the presiding judge. A competency report was filed on November 21, 2016. A status conference was held December 12, 2016, where the Court appointed two additional doctors to evaluate defendant. Multiple status conferences were held, appointing additional experts to evaluate the competency of defendant. On May 20, 2020, the Court found defendant incompetent to proceed and he will be re-examined in one year. On April 16, 2021, a stipulated order was entered, directing Department of Corrections to release medical records and/or information as to the defendant's current medical condition.

Please do not hesitate to contact me if you have any questions regarding this report.

Sincerely,

A handwritten signature in black ink, appearing to be 'JAT', with a long horizontal line extending to the right.

John A. Tomasino

JAT/kac