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Florida Dep't of Corrections v. Tony Randall Watts

MR. CHIEF JUSTICE: NEXT CASE ON THE COURT'S ORAL ARGUMENT CALENDAR IS THE DEPARTMENT OF CORRECTIONS VERSUS WATTS. MS. SCHWARTZ.

YES. THANK YOU. MAY IT PLEASE THE COURT. I AM SUSAN SCHWARTZ, COUNSEL FOR THE APPELLANT, FLORIDA DEPARTMENT OF CORRECTIONS. WITH ME IS ROGER HECKLES, AND THIS MORNING THE ISSUE IS HOSPITALIZATION OF A THAT MATE WHO HAS BEEN FOUND INCOMPETENT TO PROCEED WITH HIS COLLATERAL 3.850 MOTION BUT DOES NOT MEET THE CITE EAR YEAH FOR -- MEET THE CRITERIA FOR HOSPITALIZATION.

WHAT IS THE ALTERNATIVE FOR MR. WATTS, THERE, AS FAR AS HIS CONFINEMENT IS CONCERNED? IS IT -- AS FAR AS THE DEPARTMENT IS CONCERNED. IS IT, EITHER, HE BE AT THIS MONTH, OR -- AT THIS HOSPITAL OR HE BE CONFINED WITHIN THE REQUIREMENTS OF WHAT WE REFER TO AS DEATH ROW?

YES. THAT WOULD BE HIS OPTIONS, AND WE BELIEVE THAT, EVEN AT DEATH ROW AT UNION CI OR AT FLORIDA STATE PRISON, HE COULD RECEIVE SUBSTANTIAL MENTAL HEALTH TREATMENT.

THE PROBLEM, OF COURSE, THAT THIS CASE FOCUSES ON UPON HIS FOCUSES UPON HIS THAT -- UPON, IS THAT WE HAVE A SITUATION IN WHICH THE JUDGMENTS OF THE COURT HAVE BEEN THAT THERE SHALL BE AN EXECUTION OF THIS DEFENDANT. THAT THE DEFENDANT, THOUGH, HAS AN ENTITLEMENT TO TEST THAT JUDGMENT, IN A POSTCONVICTION SETTING. NOW, AND, THE DEPARTMENT HAS MADE THE DECISION THAT, THEN, THIS DEFENDANT WILL BE CONFINED, WITHIN VERY RESTRICTIVE CONFINEMENT, DURING THE PERIOD OF POSTCONVICTION UNTIL THE POSTCONVICTION EITHER RELEASES HIM FROM THE SENTENCE OR HE IS SENTENCED TO DEATH, CANNOT BE DONE, BECAUSE HE IS INCOMPETENT TO GO THROUGH POSTCONVICTION, SO MY CONCERN IS WE ESSENTIALLY HAVE THIS DEFENDANT, AND I KNOW THAT THERE ARE SEVERAL OTHERS, IN A STATE OF LIMBO, AND ISN'T THAT A PROBLEM THAT THE STATE SHOULD ADDRESS?

WELL, WE AGREE THAT HE SHOULD NOT BE FORCED TO PROCEED WITH MATTERS THAT ONLY HE CAN ASSIST COUNSEL, WITH UNTIL HE HAS BEEN RESTORED TO COMPETENCY, AND EITHER AT FLORIDA STATE PRISON, UCI, OR CMHI, IS HE IS GOING TO BE IN A RESTRICTIVE ENVIRONMENT.

WHAT KIND OF MENTAL HEALTH FACILITIES ARE AT FLORIDA STATE PRISON? I THOUGHT THAT THIS CHMI WAS THE ONLY TRUE MENTAL HEALTH FACILITY IN D.O.C..

IT IS THE ONLY HOSPITAL. HOWEVER, AT UCI, THEY HAVE TRANSITIONAL CARE UNITS, WHICH WOULD BE THE EQUIVALENT OF A CLINIC, AND THEY HAVE OUTPATIENT SERVICES FOR INMATES THAT ARE CONFINED TO THEIR CELLS, SO JUST LIKE ANY PERSON WITH A MEDICAL CONDITION WOULD NOT NECESSARILY GO TO A HOSPITAL, NOT EVERYONE WITH A MENTAL HEALTH ILLNESS GOES TO A HOSPITAL.

WHERE HAVE YOU PREVIOUSLY HOUSED PEOPLE WHO WERE FOUND INCOMPETENT NOT TO STAND TRIAL BUT INCOMPETENT LATER. I KNOW THERE ARE OTHER DEATH ROW INMATES, IN FACT, WHO HAVE BEEN FOUND INCOMPETENT TO PROCEED IN POSTCONVICTION. WHERE WERE THEY HOUSED?

WELL, AS IN THE CASE OF ANTONIO CARTER, WHEN HE MET THE STATUTORY CRITERIA, WE

HOUSED HIM AT CMHI. AND THEN HE PROCEEDED, NOT BEING COMPETENT, CONTINUED ON AT UCI.

SO, AS I UNDERSTAND THIS CASE, THOUGH, HIS COMPETENCY HAS NOT BEEN RESTORED.

THAT'S CORRECT.

AND SO, BUT, YOU HAVE THE AUTHORITY TO LET HIM OUT OF HIS HOSPITALIZATION, EVEN THOUGH HIS COMPETENCY HAS BEEN NOT BEEN RESTORED -- HAS NOT BEEN RESTORED.

RIGHT. THERE IS DISTINCTION WITH HIS COMPETENCE TO PROCEED, WITH HIS 3.850, AND THAT HIS MENTAL ILLNESS HAS DETERIORATED TO THE POINT WHERE HE WOULD REQUIRE HOSPITALIZATION.

AND THAT CRITERIA WOULD BE IF HE WERE A DACKER TO HIMSELF OR TO -- A DANGER TO HIMSELF OR TO OTHERS, IS THAT TRUE?

THAT'S CORRECT.

SO ACCORDING TO OUR PRONOUNCEMENT IN CARTER, THAT THERE HAS TO BE -- THAT THE DEFENDANT HAS A RIGHT TO BE COMPETENT, IN ORDER TO PROCEED IN POSTCONVICTION THAT REQUIRES HIS ASSISTANCE, AS IS THE CASE IN PRETRIAL SITUATIONS, BUT THERE IS NO CONCOMITANT DUTY ON THE DOC, AS THERE IS ON DCF, PRETRIAL, TO TREAT A PERSON, TO RESTORE THEM TO COMPETENCY, SO WE HAVE THAT DICHOTOMY, AND THEN THE OTHER ASPECT, THEN, IS THE NEW RULE THAT HAS, NOW, GONE INTO EFFECT THAT I REALIZE WASN'T IN EFFECT AT THE TIME, THAT SAYS THAT IT IS FOR THE TRIAL COURT TO DETERMINE, WHETHER, TO THE EXTENT PRACTICABLE, WHETHER TREATMENT TAKES PLACE AT A DOC FACILITY OR AT ANOTHER PLACE. UNDER YOUR POSITION IN THIS LITIGATION, THAT RULE, THE NEW RULE, WOULD BE A NULLITY, BECAUSE IT WOULD NOT AFFORD THE TRIAL COURT ANY DISCRETION TO DECIDE WHETHER THE TREATMENT SHOULD TAKE PLACE IN -- AT THE PRISON OR AT THE ONLY MENTAL HEALTH FACILITY UNDER DOC'S CONTROL.

I WANT TO CLARIFY THAT IS NOT THE ONLY MENTAL HEALTH FACILITY BUT IT IS THE ONLY MENTAL HEALTH HOSPITAL. WE HAVE PSYCHIATRISTS AVAILABLE AT UCI FOR TREATMENT, AND I DON'T THINK THE RULE IS A NULLITY, AND WHAT WE ASKED JUDGE HADDOCK TO DO WAS TO STATE OR PROVIDE US WITH THE ABILITY TO TREAT INMATE WATTS, AND JUST OMIT THE PORTION THAT SAYS "AT CMHI", SO THEY COULD HAVE ENTERED AN ORDER SAYING YOU WILL CONTINUE TO TREAT INMATE WATTS.

THEY ARE SUPPOSED TO REPORT ON ANY RECOMMENDED TREATMENT TO THE PRISONER TO OBTAIN COMPETENCE.

YES.

WHAT WERE THE EXPERT'S REPORT ON WHAT NEEDED TO BE DONE TO RESTORE THIS PRISONATORY COMPETENCE? APPARENTLY BEING ABLE TO HAVE THIS DEFENDANT TAKE HIS MEDICATION IS CRITICAL TO RESTORING HIS COMPETENCY, AND FOR THIS REASON, THAT THE JUDGE FELT THAT ONLY IN THE CONFINES OF CMHI, COULD COMPLIANCE WITH THE MEDICATION BE ASSURED.

WELL, AT THE HEARING ON JANUARY 7, 2000, WE ASKED FOR COPIES OF THE EXPERT REPORTS AND COUNSEL AND MR. WATTS VEHEMENTLY OBJECTED, AND SO WE NEVER GOT THOSE REPORTS, SO ALL I HAVE TO GONE ON IS WHAT THEY INFORMED IS, WHICH -- HAVE TO GO ON IS WHAT THEY HAVE INFORMED US, WHICH IS THAT THE EXPERTS REQUIRE HIM TO TAKE MEDICATION, AND HE TAKES IT ALL OF THE TIME, HOWEVER WE CAN'T ENFORCE IT, UNLESS HE MEETS THE OTHER CRITERIA.

WHAT DO WE DO WITH THE BROADER CASES, WHERE A DEFENDANT HAS KNOWLEDGE OF FACTUAL MATTERS TO SUPPORT THE CLAIM FOR POSTCONVICTION RELIEF, AND IN A HYPOTHETICAL, FOR INSTANCE, MAYBE HE HAS SPECIFICALLY INFORMED HIS LAWYERS ABOUT THESE THINGS, AND SO HE WANTS TO GO FORWARD WITH THE CLAIM, BECAUSE HE THINKS HE IS ENTITLED TO GET OFF OF DEATH ROW AND GET OUT OF THERE OR WHATEVER, BUT IN ORDER TO DO THAT, HE HAS TO RECEIVE THE MEDICAL TREATMENT THAT WILL RESTORE HIM TO COMPETENCY, AND HE IS ANXIOUS TO HAVE HIS CLAIM BE HELD, BUT HE HAS GOT THIS ISSUE ABOUT BEING RESTORED TO COMPETENCY. NOW, THE JUDGE DETERMINES THAT THAT IS THE CASE. THAT IS THAT HE IS ENTITLED TO BE RESTORED, AND HIS CLAIM HINGES ON HIM BEING RESTORED, HAVING A HEARING ON THAT HINGES ON THAT. WOULDN'T A TRIAL COURT, IN THAT SITUATION, SAY THAT JUDGE UNDER DUE PROCESS CONSIDERATIONS OF BEING ABLE TO GET YOUR CLAIM HEARD, THEN, ON THE MERITS, THAT THE STATE WOULD HAVE AN OBLIGATION TO AFFIRMATIVELY GO FORWARD TO RESTORE HIM TO COMPETENCY, IN THE MOST EXPEDITIOUS FASHION POSSIBLE?

WE ARE, AND BASED ON OUR LEGISLATIVE MANDATE, WE MUST TREAT MENTALLY ILL INMATES AND WE HAVE BEEN. INMATE WATTS DOES NOT HAVE THAT GREAT OF AN INCENTIVE TO IMPROVE RIGHT NOW, BUT WE ARE TREATING HIM, AND IF HIS MENTAL ILLNESS WERE TO BE SUCCESSFULLY TREATED, HE WOULD, THEN, BE RESTORED TO COMPETENCY.

WELL, IF WE TAKE THE SITUATION WHERE THE TRIAL COURT, THOUGH, DETERMINES THAT THIS IS NOT GOING TO OCCUR, WHERE HE IS IN UNION CORRECTIONAL OR FLORIDA STATE PRISON OR WHEREVER, AND THAT IT HAS AN EXCELLENT CHANCE OF OCCURRING, THOUGH, IF HE IS INSTITUTIONALIZED IN A HOSPITAL SETTING THAT IS AVAILABLE THERE, WOULDN'T THE TRIAL COURT HAVE THAT AUTHORITY, THEN, TO DETERMINE THAT THIS IS WHERE HE SHOULD BE, IN ORDER TO HAVE THE SHORTEST PERIOD OF TIME AND THE BEST CHANCE OF RESTORING HIM TO COMPETENCY THE SOONEST? WHY WOULDN'T A TRIAL COURT HAVE THAT AUTHORITY, IF WE ARE SORT OF ALL AGREEING ON THE SCHEME OF THINGS ABOUT HIS RIGHT TO BE RESTORED TO COMPETENCY, AS EARLY AS POSSIBLE? WHY WOULDN'T THE TRIAL COURT, THEN, HAVE THAT, IF, AFTER HAVING AN EVIDENTIARY HEARING AND EVERYTHING, THE TRIAL COURT DETERMINES THAT IS WHERE HE SHOULD BE, BECAUSE THAT IS WHERE HE WILL RECEIVE THE CONCENTRATED AND CONTROLLED TREATMENT AND WHERE THE BEST CHANCE WILL BE OF HIM BEING RESTORED TO COMPETENCY.

BECAUSE, THEN, THE TRIAL COURT IS SUBSTITUTING ITS JUDGMENT ON WHAT IS BEST FOR THE PATIENT, IN OPPOSITION TO HIS TREATING PHYSICIANS.

BUT ISN'T THE RIGHT TO BE RESTORED TO COMPETENCY SORT OF SUPERSEDING THE ISSUE OF WHERE WE SEND PRISONERS AND HOW WE TREAT THEM FOR MEDICAL CONDITIONS? THIS IS TOTALLY SEPARATE AND BEYOND THAT CONTEXT, IS IT NOT?

WELL, WE AGREE THAT HE SHOULD BE TREATED, AND THAT THEY SHOULD NOT PROCEED UNTIL HE IS RESTORED TO COMPETENCY, BUT WE FEEL LIKE THE LEGISLATURE HAS GIVEN US THE AUTHORITY TO DETERMINE WHERE THE BEST TREATMENT COULD BE AND WHAT THE MOST APPROPRIATE TREATMENT FOR THIS PARTICULAR INMATE.

FOLLOWING UP WITH THAT, I NOTICE THAT THE DEPARTMENT OF CORRECTIONS IS HERE, BUT IS THE ATTORNEY GENERAL TAKING A POSITION ON THIS ISSUE?

THE ATTORNEY GENERAL JOINED WITH DEFENSE IN THAT THEY WANTED TO SEE TREATMENT AT CMHI.

HOW ABOUT THE STATES ATTORNEY THAT IS IN THE FOURTH CIRCUIT?

THE STATE ATTORNEY DID NOT TAKE A POSITION THAT I AM AWARE OF.

SHOULDN'T WE HEAR -- I MEAN, THE FOURTH CIRCUIT STATES ATTORNEY IS THE STATES ATTORNEY THAT IS INVOLVED IN THE ACTUAL CASE.

CORRECT.

CORRECT?

YES.

AND THEY JUST DIDN'T APPEAR?

WELL, THEY WERE PRESENT AT THE HEARINGS ON THIS MATTER, AND --

BUT THEY DIDN'T HAVE A POSITION?

I THINK ALL PARTIES ARE IN AGREEMENT THAT HE NEEDS TO BE TREATED. THE QUESTION AS TO WHERE HE SHOULD BE TREATED, AS I SAID, IS WITHIN OUR LEGISLATIVE AUTHORITY TO DETERMINE, AND WE BELIEVE THAT THE CIRCUIT COURT USURPED OUR AUTHORITY, BY TELLING US THAT HE WILL BE HOSPITALIZED, AND WE -- THE REQUIREMENTS FOR HOSPITALIZATION, THIS PARTICULAR INMATE HAS NOT MET.

ISN'T THE PROBLEM, THOUGH, AND WHAT THIS COURT SHOULD BE CONCERNED ABOUT, BECAUSE, AND I GUESS, WERE YOU THE COUNSEL IN THE TRIAL COURT?

YES.

YOU AGREE THAT, RIGHT NOW, THERE IS NOT A STATUTORY OBLIGATION THAT IMPOSED ON DOC TO RESTORE DON'T INMATES TO COMPETENCY. IS THAT CORRECT? THERE IS NO STATUTORY REQUIREMENT.

YES.

AND YET THIS COURT SAID, IN CARTER, THERE IS A RIGHT TO BE RESTORED TO COMPETENCY, SO THAT THE INMATE CAN PROCEED IN THE POSTCONVICTION SETTING, AND THE STATE HAS THAT INTEREST IN THE ULTIMATE FINALITY, SO THAT ITS SENTENCE CAN BE CARRIED OUT. IF THE CONVICTION IS ULTIMATELY NOT SET ASIDE. WITH DOC TAKING THE POSITION THAT THEIR ONLY OBLIGATION IS TO TREAT MENTALLY ILL INMATES AND MAKING THEM CAPABLE AND COMPLIANT IN LIVING IN A PRISON SETTING, REALLY IS T IS NOT SUPER SEEING THE -- SUPERSEDING THE TRIAL COURT JUDGMENT WITH THIS COURT'S JUDGMENT. IT IS JUST THAT DIFFERENT INTERESTS ARE BEING FURTHERED, AND WITH DOC TAKING THE POSITION, THEY ARE NOT SAYING IT IS BETTER FOR HIM TO BE TREATED, TO BE RESTORED TO COMPETENCY AT FLORIDA STATE PRISON. THEY ARE JUST SAYING WE DON'T WANT HIM AT CMHI, BECAUSE WE HAVE LIMITED BEDS, AND WE HAVE GOT TO, REALLY, WORRY ABOUT THE PEOPLE THAT ARE GOING TO DISRUPT THE PRISON. THAT IS WHERE WE HAVE GOT LIMITED RESOURCES AND THAT IS WHAT WE NEED TO DO, SO WE ARE, REALLY, TALKING ABOUT TWO DIFFERENT INTESS -- INTERESTS, AND IN THAT SITUATION, ISN'T IT THAT THE TRIAL COURT IS SAYING, IN TWO DIFFERENT CASES, THAT I DON'T THINK YOU ARE TREATING HIM IN THE BEST POSSIBLE SETTING. THE DOC IS SAYING WE DON'T HAVE THIS OBLIGATION TO DO THIS, AND SO BECAUSE HE IS COMPLIANT, WE CAN TAKE HIM BACK THERE, AND SO, REALLY, THE TRIAL COURT IS LOOKING OUT FOR WHAT IS IN THE INTEREST OF THE STATE OF FLORIDA, WHICH IS THE OTHER PART OF WHAT THE STATE WANTS, WHICH IS TO GET HIM RESTORED, AND WHICH IS, ALSO, WHAT HIS ATTORNEY WANTS, FOR HIM TO BE RESTORED TO COMPETENCY.

WE ARE NOT SAYING THAT, ONCE HE IS COMPLIANT AND CAPABLE OF BEING RELEASED FROM CMHI, WE ARE GOING TO CEASE ALL MENTAL HEALTH TREATMENT. WE ARE CONTINUING TO TREAT HIS MENTAL HEALTH ILLNESS.

BUT IT IS DR. WELCH THAT SAYS THAT, UNDER THE CURRENT TREATMENT PLAN THEY WILL DO, IT BYE-BYE HAPPENSTANCE, MAYBE THEY WILL GET HIM RESTORED TO COMPETENCY. THAT IS NOT THEIR TREATMENT GOAL. THAT IS NOT THEIR JOB.

THAT CREATES A CONFLICT OF INTEREST FOR THE TREATING PHYSICIAN, IF HE IS TREATING AND INMATE WATTS, ALSO, RECOGNIZES THAT HE IS ACTING AS AN AGENT OF THE COURT, SEEKING TO RESTORE HIM TO COMPETENCY, THEN INMATE WATTS COULD BE DISTRUSTFUL OF HIS TREATING PHYSICIANS, SO WE TREAT THEM WITH THE PURPOSE OF CURING THEIR MENTAL ILLNESS. -- THEIR MENTAL ILLNESS.

SO THAT IS THEIR GOAL, NOT JUST TO MAKE THEM COMPLIANT.

NO. NO. IF MY ARGUMENT OR PLEADING SUGGESTED THAT, I AM SORRY. OUR OVERALL GOAL AND WITH LEGISLATIVE AUTHORITY, IS TO TREAT THE MENTAL ILLNESS, WITH THE HOPE THAT IT WILL SUBSIDE SUBSTANTIALLY OR DISAPPEAR.

SO, BUT, ONCE YOU HAVE THEM IN A SITUATION WHERE THEY ARE NO LONGER DANGEROUS TO THEMSELVES OR TO OTHERS, YOU, THEN, TAKE THEM SOMEPLACE ELSE TO TREAT THIS MENTAL ILLNESS.

THAT'S CORRECT.

NO MATTER HOW SEVERE THEIR MENTAL ILLNESS IS.

RIGHT. -- THEIR MENTAL ILLNESS IS.

RIGHT. THEIR MENTAL ILLNESS CAN BE TREATED AT ALMOST ALL OF OUR INSTITUTIONS. WE HAVE PSYCHIATRISTS AND PSYCHOLOGISTS AND STAFF AVAILABLE FOR THAT.

IS THIS SIMPLY A RESOURCE ISSUE? IN OTHER WORDS IS THIS WHAT WAS PRESENTED TO THE TRIAL COURT JUDGE, IS THAT, JUDGE, WE ARE JUST OVERWHELMED, AND AS FAR AS ON THE PECKING ORDER, WE HAVE A LIMITED AMOUNT TO OFFER. WE ARE GOING TO DO OUR BEST BUT A LIMITED AMOUNT TO OFFER, AND THE RESOURCES UP HERE ARE, REALLY, OVERTAXED RIGHT NOW. IS THAT --

IF INMATE WATTS WAS -- MET THE CRITERIA, WE WOULD HOUSE HIM AT CMHI, WITHOUT ANY QUESTIONS, IF HE MET THE CRITERIA UNDER STATUTES. THE MATTER IS THAT HE DOESN'T MEET THE CRITERIA, UNDER STATUTE.

BUT IT SEEMS AS THOUGH WE ARE TALKING ABOUT TO DIFFERENT THINGS. AS I READ ALL OF THE MATERIAL THAT HAS BEEN PROVIDED, YOU GET THE VERY DISTINCT, AT LEAST IMPRESSION, THAT HE IS BEING TREATED TO BECOME COMPLIANT? AND THAT THERE IS THIS YO-YO EFFECT THAT, WELL, MAYBE, WE CAN PUT HIM OVER THERE AND THEN HE WILL COME BACK AND HE WILL BOUNCE BACK AND FORTH. IS THERE NOT EVIDENCE IN THE RECORD? IS THIS SOMETHING THAT IS JUST IMPLIED? WAS THERE NOT INFORMATION ABOUT MAKING HIM COMPLIANT AND EVIDENCE ABOUT THE YO-YO EFFECT AND THAT MAYBE IT WILL WORK AND MAYBE IT WON'T AND BOUNCING BACK AND FORTH? WASN'T THERE EVIDENCE BEFORE THIS TRIAL JUDGE, ABOUT THAT?

AS I SAID, I HAVEN'T SEEN THE EXPERT'S REPORTS, SO I DON'T KNOW WHAT THE EVIDENCE WAS BEFORE THE --

DID THE TRIAL JUDGE MAKE HIS DETERMINATION, BASED ON ON THE REPORTS?

YES, HE DID. HE MADE HIS DECISION, BASED ON THE EXPERTS REPORTS, BUT WE WERE NOT GIVEN ACCESS TO THOSE.

SOMEONE, EXPERTS OTHER THAN DR. WELCH?

YES. DR. BARNARD AND DR. FENNEL WERE THE ONES THAT WERE THE COURT-APPOINTED EXPERTS ON THE COMPETENCY ISSUE.

BUT DIDN'T DR. WELCH, ALSO, PROVIDE SOME OF THAT INFORMATION?

NO, NOT TO THE TRIAL COURT. AS I SAID, WE WEREN'T GOING TO MAKE ANY KIND OF STATEMENT ABOUT HIS COMPETENCY. WE CAN ONLY MAKE STATEMENTS ABOUT HIS MENTAL HEALTH, TO AVOID THE CONFLICT OF INTEREST OF DOCTORS. MR. CHIEF JUSTICE: YOU ARE INTO YOUR REBUTTAL.

OKAY. I WILL RESERVE THE REST OF MY TIME, UNLESS THERE ARE NO FURTHER QUESTIONS. THANK YOU.

MAY IT PLEASE THE COURT. MY NAME IS JOHN TOMASINO. I AM HERE, REPRESENTING THE APPELLEE, MR. TONY RANDALL WATTS. MR. SMITH ASKED ME TO HANDLE THIS LAST WEEK, AFTER OUR MOTION TO POSTPONE THIS WAS PUT OFF, SO I AM JUST PUTTING THIS OUT THERE, THAT I PICKED THIS UP LAST WEEK, TO SEE IF I COULD ASSIST THIS COURT WITH THIS ISSUE. I AM AGREEING WITH MOST OF WHAT I HAVE HEARD. THERE IS A VOID. THE LEGISLATURE HAS NOT ACTED, AS TO WHAT TO DO, IF AN INMATE IS FOUND INCOMPETENT TO PROCEED IN POSTCONVICTION. THERE IS AN ENTIRE SECTION OF THE FLORIDA STATUTES, CHAPTER 916, THAT INSTRUCTS THE DEPARTMENT OF CHILDREN AND FAMILIES AS TO HOW TO PROCEED, WHEN A DEFENDANT IS FOUND INCOMPETENT TO PROCEED PRETRIAL. AND THEN THERE IS 945.40, WHICH IS THE MENTAL HEALTH SECTION OF THE DEPARTMENT OF CORRECTIONS STATUTE, AND THAT DEALS WITH WHEN YOU HAVE A MENTALLY ILL INMATE, AND, OF COURSE, IT DOES NOT, IN ANY WAY, DISCUSS POSTCONVICTION, SO WE DO HAVE A PROBLEM WITH THE LEGISLATURE, WHERE IT HAS BEEN SILENT, AFTER THIS COURT'S DECISION IN CARTER.

IT WOULD SEEM THAT 945, REALLY, DEALS WITH, REALLY, PROTECTING THE INMATE WHO MAY NOT WANT TO BE WHEREVER THE DOC DECIDES TO PUT HIM, TO MAKE SURE THAT THOSE RIGHTS ARE PROTECTED.

ABSOLUTESLY. THAT'S CORRECT -- ABSOLUTELY, THAT'S CORRECT. AND IF YOU LOOK AT 945, WITH REGARD TO QUALITY OF CARE, 945.48, IT SAYS RIGHTS OF INMATES PROVIDE TREATMENT, ALL IT SAYS THAT AN INMATE IN A MENTAL HEALTH FACILITY HAS A TREATMENT RIGHT WHICH IS SUITED TO HIS OR HER NEEDS, BUT IF YOU LOOK AT THE CORRESPONDING POSITION OF CHAPTER 916, WHICH IS 916.107, SUB4, QUALITY OF TREATMENT, IT SPECIFICALLY STATES THAT THE PURPOSE OF THE TREATMENT, UNDER 916, IS TO RESTORE THE 2KE69 TO COMPETENCY, SO -- THE DEFENDANT TO COMPETENCY, SO THEY CAN GO BACK TO COURT AND TAKE THEIR OF THEIR OUTSTANDING CHARGES. NOW, CARTER DID CREATE THE RIGHT TO BE COMPETENT IN POSTCONVICTION, AND I WILL AGREE WITH DEPARTMENT OF CORRECTION THAT IS THERE ARE A PLETHORA OF CASES OUT THERE THAT STATE THAT, ONCE A CIRCUIT COURT HAS SUBMITTED SOMEONE TO THE H.R.S., DEPARTMENT OF CHILDREN AND FAMILIES, DEPARTMENT OF CORRECTIONS, THAT IT IS, THEN, AN EXECUTIVE DECISION AS TO WHERE THAT PERSON IS PLACED. HOWEVER, ALL OF THOSE CASES WORK WITHIN THE STATUTORY FRAMEWORK OF WHERE THE LEGISLATURE HAS SPOKEN. IN THIS SITUATION, THE LEGISLATURE HAS BEEN SILENT, AND THE DEPARTMENT DID POINT OUT THE DADE COUNTY TEACHERS ASSOCIATION VERSUS THE LEGISLATURE CASE, WHICH STATES THAT, WHEN YOU ARE PROTECTING AN INHERENT OR

FUNDAMENTAL RIGHT, AND THE LEGISLATURE HAS BEEN SILENT ON IT, AND THEY HAVE HAD TIME TO ACT, THEN IT IS, THEN, WITHIN THE INHERENT AUTHORITY OF THIS COURT AND THE CIRCUIT COURT, TO FASHION A REMEDY, AND THAT IS EXACTLY WHAT HAS HAPPENED IN THIS CASE. THE LEGISLATURE HAS BEEN SILENT AS TO WHAT WE DO IN THIS SITUATION. THE JUDGE HADDOCK, THE LOWER COURT JUDGE, EVALUATED THE REPORTS OF THE TWO DOCTORS, DR. BARNARD AND DR. FENNEL, WHO WERE THE ORIGINAL TREATING DOCTORS FROM TRIAL, AND BOTH OF THEM SPECIFICALLY STATED, FOLLOWING THE DICTATES OF 2.111, THAT THIS IS THE BEST TREATMENT FOR THIS INMATE THAT, IF HE STAYS AT UCI, THERE IS A HISTORY OF HIM REFUSING TO TAKE THOSE MEDICINES.

I REALIZE THAT YOU HAVE GOT THIS CASE LATE, BUT HAVE THOSE REPORTS NOT BE FURNISHED TO THE DOC?

I DON'T NOTE. I WILL CHECK INTO THAT, WHEN I RETURN TO THE OFFICE. I DO KNOW THAT THESE ARE NOT CONFIDENTIAL EXPERTS. THESE ARE COURT-APPOINTED EXPERTS, SO I WOULD THINK THAT IT WOULD BE PART OF THE REPORT.

-- PART OF THE RECORD.

IS THERE ANY DISPUTE ABOUT WHAT THE JUDGE WAS RELYING ON, IN MAKING A DECISION HERE?

IN THIS CASE CURRENTLY? NOT THAT I KNOW OF, YOUR HONOR. FROM MY UNDERSTANDING THE EVIDENCE WAS UNREBUTTED, BY DR. BARNARD AND DR. FENNEL, THAT IT WOULD BE THE BEST TREATMENT PLAN FOR THIS INMATE, WITH THE GOAL OF RESTORING HIM TO COMPETENCE.

IS THIS A CUSTODYIAL FAST -- A CUSTODIAL FACILITY, CMHI?

THAT'S CORRECT.

SO THE RULE THAT SAYS THE JUDGE, REALLY, EVEN HAS THE DISCRETION TO ORDER AN IN MADE TO BE AT A FACILITY OTHER THAN A DOC FACILITY IN A POSTCONVICTION SETTING? I AM TALKING ABOUT THE NEW RULE. IT SAYS THE TRIAL COURT HAS TO DETERMINE WHETHER, TO THE EXTENT PRACTICAL TREATMENT MUST TAKE PLACE AT A DOC FACILITY, UNDER THE SPECIFICS OF D.O.C.. DO YOU READ THAT RULE AS, EVEN GIVING A JUDGE THE AUTHORITY TO SAY IF CMHI WAS OVERLOADED, TO PUT THAT INMATE IN A DCF FACILITY?

YES, AND THAT IS, ALSO, IF YOU LOOK AT THE LEGISLATIVE INTENT OF 945, 945.41 SUB-1, IT STATES THAT THE DEPARTMENT OF CORRECTIONS SHALL CONTRACT, SHALL CONTRACT WITH THE DEPARTMENT OF CHILDREN AND FAMILIES, TO PROVIDE MENTAL HEALTH SERVICES, SO WE ARE LOOKING FOR A SOLUTION IN THIS CASE, A VERY SIMPLE ONE, AS TO IF THE DEPARTMENT OF CORRECTIONS IS GOING TO INSIST THAT THEY HAVE NOT BEEN TOLD RESTORE INMATES TO COMPETENCY, JUST GIVE THEM MENTAL HEALTH TREATMENT, WELL, THERE IS A WHOLE SECTION IN 916 THAT DICTATES THAT THE DEPARTMENT OF CHILDREN AND FAMILY EXPERTS THAT THEY SHALL EMPLOYEE SHALL BE WELL-VERSED IN THE REQUIREMENTS OF 211, BECAUSE THE CONTRACT TO GO IN THERE AND RESTORE THESE DEFENDANTS TO COMPETENCY, SO IF THE DOC HASN'T BEEN TOLD BY THE LEGISLATURE TO DO THIS AND WE DON'T KNOW HOW TO DO THIS, THEN THE LEGISLATURE HAS TO CONTRACT WITH SOMEBODY AT UCI, WHICH IS PRIOR TO TRIAL.

THAT IS NOT THE ISSUE.

THE ISSUE IS AS TO WHETHER OR NOT JUDGE HADDOCK HAD THE AUTHORITY, TO TRANSFER INMATE WATTS TO CMHI.

YOU ARE SAYING THAT, IF THOSE REPORTS ARE NOT IN OUR RECORD, THAT THOSE REPORTS WILL VERIFY THAT THIS IS SPECIFIC TREATMENT THAT WAS REQUIRED BY THE EXPERTS, THAT THE

TRIAL COURT RELIED ON, IN, FIRST OF ALL, DETERMINING THAT THIS DEFENDANT WAS IN COMPETENT TENSE TENT TO -- INCOMPETENT TO PROCEED AND WHAT WAS NECESSARY TO RESTORE HIM TO COMPETENCY?

I BELIEVE THAT NOT ONLY THE REPORTS WILL REFLECT THAT, BUT I BELIEVE JUDGE HADDOCK SPECIFICALLY ADDRESSED THIS IN THE ISSUE, SAYING THESE ARE THE REASONS WHY HE SHOULD GO TO THIS SPECIFIC FACILITY, THAT THERE IS A IN-HOUSE SETTING WHERE MR. WATTS WILL BE RESTORED TO COMPETENCY AND THAT HE WILL TAKE HIS MEDICINES. HE IS DIAGNOSED WITH A PARANOID SCHIZOPHRENIA TYPE, AND HE NEEDS HIS MEDS.

DO I UNDERSTAND THAT THE ONLY FACILITY THAT CMHI HAS FOR TREATING SERIOUSLY ILL MENTAL HEALTH CONDITIONS?

THAT IS MY UNDERSTANDING, JUSTICE SHAW.

HOW DO YOU GET OUT OF THAT, THAT IF HE LEAVES THERE, HE REFUSES TO TAKE HIS MEDICATION, AND IF HE REFUSES TO TAKE HIS MEDICATION, HE DOESN'T IMPROVE, SO HE GOES BACK THERE. YOU ARE IN A CIRCLE. HOW DO YOU BREAK OUT OF THAT?

I THINK THAT IS WHY JUDGE HADDOCK, AND I DON'T KNOW IF HE CONSCIOUSLY WAS USING HIS INHERENT AUTHORITY, BUT I THINK THAT IS WHY HE ORDERED INMATE WATTS TO CMHI, BECAUSE HE BELIEVED, BASED ON UNREBUTTED EVIDENCE, THAT THAT WAS THE BEST CHANCE OF RESTORING HIS COMPETENCY. THERE IS A DIFFERENCE, TOO. IN 945, WHEN IT DISCUSSES THE CRITERIA TO TRANSFER AN INMATE TO THE ONE FORENSIC HOSPITAL, WHICH IS AT CHATTAHOOCHEE IN ZEPHYRHILLS, IT DEFINES IT AS SUBSTANTIAL, REAL AND PRESENT THREAT OF DOING HARM TO YOURSELF OR OTHERS, AND IF YOU LOOK AT 916, FOR BEING ADMITTED INTO A DCF FACILITY, IT IS JUST WHETHER OR NOT THERE IS A RISK OF HARM. IT IS A MUCH LOWER STANDARD, WHICH, AGAIN, MAKES -- SINCE THEY USE TWO DIFFERENT STANDARDS BETWEEN 916 AND 945, IT IS CLEAR THE LEGISLATURE UNDERSTOOD, WITH PRETRIAL, WITH INCOMPETENT TO PROCEED AND, ALSO, WITHING IN BY REASON OF INSANITY, THEY USE A LESSER STANDARD FOR ONE OF THEIR FACILITIES, WITH REFERENCE TO RESTORING COMPETENCY.

BUT SOMEBODY HAS TO BITE THE BULLET AND MAKE THAT FINAL CALL THAT YOU HAVE A FINITE FACILITY THAT CAN ONLY HOUSE SO MANY PEOPLE, AND ASSUMING THAT THIS IS THE ONLY FACILITY THAT WILL HOW IS THE SERIOUSLY MENTALLY DISTURBED, SO WHEN DOC MAKES THAT CALL, WHY ISN'T THAT WITHIN THEIR DISCRETION? SOMEBODY HAS TO MAKE IT AT A CERTAIN POINT, AND HERE YOU HAVE AN IFFY TYPE OF SITUATION, ANYWAY, BECAUSE HE SEEMS TO BE YO-YOING BACK AND FORTH. THIS IS NOT THE BEST CASE SCENARIO FOR THIS ALL TO AGAIN WITH.

IF THE LEGISLATURE HAD SPOKEN ON THIS ISSUE OF INCOMPETENCE TO PROCEED IN POSTCONVICTION, THEN, I THINK, IT IS WITHIN THE DEPARTMENT'S DISCRETION TO MAKE THAT CALL, BUT THEY HAVEN'T SPOKEN. THERE IS A VOID IN THIS AREA, OTHER THAN THE RECENT ADOPTION TO 3.852-D, INCOMPETENCE TO PROCEED IN POSTCONVICTION, THAT IS IT, AND CARTER, SO I THINK IN THE ABSENCE OF THE LEGISLATURE ACTING ON THIS AREA, THAT JUDGE HADDOCK DID HAVE THE POWER TO SAY, OKAY, BASED ON THE EXPERT TESTIMONY HERE, THIS IS WHAT I HAVE TO DO.

WE HAVE GOT THE AUTHORITY IN THIS CASE, THOUGH. AREN'T WE, IN THE SITUATION WHERE TRIAL JUDGES ARE GOING TO BE MANAGING THE RESOURCES AVAILABLE IN DOCK? THAT IS THAT WE ARE -- IN D.O.C.? THAT IS THAT WE ARE JUST TALKING ABOUT ONE CASE HERE. WE ARE TALKING ABOUT VERY LIMITED RESOURCES, AND WE ARE TALKING ABOUT LOTS OF PRISONERS OUT THERE, NOT JUST PRISONERS ON DEATH LOW BUT PRISONERS GENERALLY, SO AREN'T WE TREADING DOWN A VERY DANGEROUS PATH, HERE, IF WE ARE GOING TO ALLOW, NOW, WHAT HAS TRADITIONALLY BEEN THE AUTHORITY OF D.O.C. TO MANAGE THESE KINDS OF ISSUES, NOW TO

ALLOW TRIAL JUDGES, IN SELECTIVE CASES, TO DETERMINE WHAT RESOURCES ARE GOING TO BE USED?

I AGREE, AND I BELIEVE THAT THIS COURT SHOULD INCLUDE LANGUAGE TO THE LEGISLATURE THAT THEY NEED TO ADDRESS THIS ISSUE. I MEAN, THIS HAS COME UP IN THE TENTH JUDICIAL CIRCUIT PUBLIC DEFENDER CASE, WHERE A COURT SAID WE NEED TO EXERCISE OUR INHERENT AUTHORITY, TAN THIS COURT INCLUDED LANGUAGE TO THE LEGISLATURE THAT, IF YOU DO NOT START FUNDING THE TENTH JUDICIAL CIRCUIT PUBLIC DEFENDERS OFFICE TO HANDLE THE APPEALS, THEN THE REMEDY, ACTUALLY, AT THAT TIME, IF THIS IS NOT HANDLE, IF THE LEGISLATURE DOES NOT LOOK INTO THIS, AND WE ARE STUCK WITH MENTALLY INCOMPETENT DEFENDANTS IN SIX-BIO NINE CELLS ON DEATH ROW, THEN IT IS GOING TO INTERFERE WITH THEIR RIGHT OF HABEAS CORPUS, AND IT IS GOING TO CONTRADICT --

I TAKE IT THAT YOU WOULD, REALLY, WE ARE NOT TALKING ABOUT THE WHOLE CENSUS OF PEOPLE THAT ARE IN THE PRISON. WE ARE TALKING ABOUT PEOPLE WHO ONLY COME WITHIN CARTER, AND THIS PROVISION OF THE RULE, WHICH HAS NOW BEEN AMEND, TO TAKE CARE OF INCOMPETENT TO PROCEED IN CAPITAL CASES. I MEAN, THAT IS THE POPULATION OF PEOPLE WE ARE TALKING ABOUT.

THAT'S CORRECT. I DO AGREE THAT IT IS A NARROW POPULATION, BUT I DO AGREE THAT IT WILL, MOST LIKELY, COME UP, AGAIN, TO MY UNDERSTANDING. CARTER IS THE ONLY OTHER CASE THAT I KNOW OF THAT IS CURRENTLY IN THE STATE OF BEING INCOMPETENT TO PROCEED, BUT THIS IS OFF RECORD INFORMATION, BUT HE WAS FOUND TO MEET THE SUBSTANTIAL REQUIREMENTS OF HARM, BECAUSE HE WAS LOSING SO MUCH WEIGHT, SO THE ISSUE DID NOT COME UP IN THE FIRST CASE, BECAUSE HE DID NOT MEET THE MORE STRINGENT DEFINITION CONTAINED IN 945, SO THAT IS ONE RECOGNITION THAT HAS TO BE RECFIED IS WHY IS THERE A COMMISSION TO A DCF FACILITY. THIS IS ABOUT LIMITED BED SPACE AT ZEPHYRHILLS, BUT THAT, STILL, CANNOT TAKE THE PLACE OF MR. WHAT'S RIGHT TO THE WRIT OF HABEAS CORPUS AND MR. WHAT THE'S ABILITY TO -- AND MR. WATT'S ABILITY TO CHALLENGE HIS SENTENCE. SO THE TRANSFER OF AUTHORITY TO CMHI, HE BASED THAT ON SUBSTANTIAL AND COMPETENT RECORDS, IT IS MY UNDERSTANDING, AND UNTIL THE LEGISLATURE ACTS ON THIS, I BELIEVE THAT, SO WE ARE NOT STUCK IN THIS CIRCLE, THE CIRCUIT COURT JUDGES HAVE TO HAVE THE ABILITY TO DO THIS. IF NOT, THEN ONCE THE RECORD IS MORE DOST IN A YEAR OR TWO, THEN WE ARE GOING TO HAVE TO BE HERE, SAYING AN EXECUTIVE BRANCH AGENCY IS INTERFERING WITH OUR CLIENT'S RIGHT TO THE ACCESS TO COURTS, TO THE MEANINGFUL REVIEW, TO THE WRIT OF HABEAS CORPUS.

DO YOU AGREE AT THIS TIME THAT THE ISSUE OF WHETHER THE TREATMENT THE DOC IS GIVING MR. WATTS, IN ORDER TO RESTORE HIM TO COMPETENCY, WHETHER IT IS ADEQUATE OR INADEQUATE, IS NOT THE ISSUE BEFORE THIS COURT?

THE ISSUE THAT WAS BEFORE THIS COURT WAS VERY NARROWLY PRESENTED BY THE DEPARTMENT OF CORRECTIONS, WHICH IS DID JUDGE HADDOCK HAVE THE STATUTORY AUTHORITY OR THE SEPARATION OF PRINCE ELSE, AND I BELIEVE, DUE TO THE LEGISLATURE'S ACTION ON THIS, THAT HE DOES HAVE THE ABILITY, UNDER ROSE V STATE, DADE COUNTY TEACHERS ASSOCIATION VERSUS THE LEGISLATURE, TO INVOKE HIS INHERENT AUTHORITY TO ADDRESS THIS SITUATION, BECAUSE HE IS PROTECTING A FUNDAMENTAL RIGHT, THE RIGHT TO THE WRIT OF HABEAS CORPUS, THE RIGHT TO BE COMPETENT TO PROCEED IN POSTCONVICTION. THANK YOU.

THANK YOU VERY MUCH REBUTTAL?

YES. I DON'T THINK THE LEGISLATURE WAS SILENT. I THINK THE LEGISLATURE, VERY CLEARLY, IN 944.17, SAID THAT THE DEPARTMENT OF CORRECTIONS SHALL TRANSFER INMATES, BUT THEN --

THAT ARE PROPERLY COMMITTED TO THE DEPARTMENT OF CORRECTIONS, AND THEN, IN 945, TOLD US HOW WE ARE TO HANDLE ALL MENTALLY INCOMPETENT INMATES -- I AM SORRY. MEBTALLY ILL IN -- MENTALLY ILL INMATES.

GOING BACK TO THE NEW RULE, DOC DIDN'T FILE ANY OBJECTIONS, THAT I AM AWARE OF, IN OPPOSITION TO THE NEW RULE, AND I AM TALKING ABOUT D, IF, WHAT IS YOUR UNDERSTANDING, THEN, OF WHAT THE TRIAL COURT'S OPTIONS ARE, UNDER THE NEW RULE, IN DETERMINING WHAT TREATMENT IS EITHER PRACTICABLE OR IN PRACTICABLE, WITHIN DOC OR OUTSIDE OF D.O.C.? DOES THE TRIAL COURT HAVE THE AUTHORITY TO SAY I WANT THIS INMATE PLACED IN A FACILITY UNDER DCF'S CONTROL? IS THAT AUTHORITY GIVEN BY THE RULE AND WOULD THAT CONFLICT WITH THE STATUTE?

THE TRIAL COURT SAYING THAT HE BE TREATED WITHIN THE DEPARTMENT OF CORRECTIONS, AND THEN THEY WOULD TELL US AS TO WHERE TO HOUSE HIM. EVEN IF THEY WERE TO, AND DCF WASN'T A PARTY TO THE PROCEEDINGS, SO I DON'T KNOW EXACTLY WHAT THEIR POSITION WOULD BE, BUT UNDER 916, THEY ARE FACED WITH THE SAME SITUATION THAT WE ARE. BEFORE THEY CAN HOSPITALIZE A DEFENDANT, THEY MUST DETERMINE THAT HE IS DANGEROUS TO HIMSELF OR OTHERS. THE LEGISLATURE SPECIFICALLY STATED THAT HOSPITALIZATION SHOULD BE A LAST RESORT, WHEN THERE ARE NO LESS RESTRICTIVE, ALTERNATIVE TERMS AVAILABLE.

SO WHAT IS THE JUDGE'S AUTHORITY, UNDER THE RULE, TO SPECIFY WHERE THE TREATMENT SHOULD TAKE PLACE? DOES THE JUDGE HAVE ANY AUTHORITY?

THE JUDGE CAN SAY THE TREATMENT SHALL TAKE PLACE AT A CUSTODIAL FACILITY, WITHIN THE DEPARTMENT OF CORRECTIONS. A BUT THAT IS NOT GIVING ANY AUTHORITY. THAT IS WHERE THE DEFENDANT IS.

THAT IS GIVING AUTHORITY FOR THE TREATMENT.

BUT IF THIS WAS A PROCEEDING PRETRIAL, THE COURT WOULD HAVE THE AUTHORITY, UNDER THE 3.212. CORRECT?

THEY WOULD, TO SENTENCE --

TO DESIGNATE WHERE THE PRISONER WAS TO BE COMMITTED, TO BE, SO THAT THE PRISONER WOULD -- COMPETENCE COULD BE TREATED.

I THINK, YES, BUT UNDER 3.212, THE COURT WOULD MAKE A GENERAL STATEMENT THAT HE IS TO BE COMMITTED TO THE DEPARTMENT OF CHILDREN AND FAMILY SERVICES AND NOT TO A SPECIFIC FACILITY, AND, AGAIN, FOR HOSPITALIZATION PURSES, THEY WOULD HAVE TO MEET THE CRITERIA OF THE STATUTE, UNDER 916.

YOUR TIME IS UP. THANK YOU VERY MUCH, COUNSEL, FOR YOUR ASSISTANCE.