

**IN THE SUPREME COURT OF FLORIDA**

**FLORIDA DEPARTMENT OF  
CORRECTIONS,**

**Petitioner,**

vs.

**Case No. SC08-1022**

**JOHN STEVEN HUGGINS,**

**Respondent.**

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**RESPONDENT'S RESPONSE TO  
SECOND AMENDED PETITION  
FOR REVIEW OF A NON-FINAL ORDER  
IN A DEATH PENALTY POST-CONVICTION PROCEEDING**

The Respondent, John Steven Huggins, by undersigned counsel, hereby Responds to the Petition filed pursuant to Florida Rule of Appellate Procedure 9.142(b).

**INTRODUCTION**

The circuit court has been thwarted at every turn in its attempts to treat Mr. Huggins for his severe mental illness. Mr. Huggins is legally incompetent and hospitalization and psychiatric medication are the only treatment which might restore him to competency. The state agencies which the trial court has ordered to treat Mr. Huggins, the Department of Children and Families (“DCF”), and the Department of Corrections (“DOC”), have refused to diagnose and treat Mr. Huggins for incompetency.

The circuit court has found that the Department of Children and Families is unable to treat any incompetent death row inmate. The only other agency available under the Rules, the Department of Corrections, says it cannot and will not treat any incompetent death row inmate. The DOC says this is because the statutes only require the DOC to treat disorders which affect the ability of the inmate to function in prison. The DOC also claims there are ethical prohibitions against treatment.

The parties know that Mr. Huggins requires hospitalization and medication if there is any chance to restore him to competency. Florida Rule of Criminal Procedure 3.851(g)(9)(B) requires court experts who find a capital post-conviction inmate to be incompetent to “report on . . . the treatment or treatments appropriate for the mental illness . . . .” The experts in this case unanimously and compellingly reported that only hospitalization and medication might help. But the refusals of the only agencies available to treat Mr. Huggins render Rule 3.851(g)(9)(B) a hollow provision, nullified by the failure of the agencies to meet their obligations.

Even if the agencies accepted their responsibility to attempt to restore competency, they insists that their own personnel would evaluate and treat without regard to the evaluations or treatment recommendations required by Rule 3.851(g). The “unique circumstance of restoring a capital defendant to competency in order

to enable a post-conviction motion to proceed,” *Florida Department of Corrections v. Watts*, 800 So.2d 225, 231 (Fla. 2001), does not appear to have any provision made to allow a circuit court to secure the treatment deemed necessary by the court’s experts.

## **FACTS**

### **Diagnosed Psychotic and Incompetent**

The Capital Collateral Regional Counsel, Middle Region (“CCRC”) filed a Motion to Vacate Judgment of Conviction and Sentence on behalf of Mr. Huggins June 5, 2006. When it became apparent that Mr. Huggins was unable to assist or participate any further in the post-conviction proceedings because of profound delusional beliefs about how and why he was prosecuted and convicted, CCRC counsel filed a Certified Motion for Competency Determination. Respondent’s Appendix 1.<sup>1</sup> The grounds for believing Mr. Huggins was incompetent to proceed included:

[I]n recent meetings with Mr. Huggins he has exhibited highly erratic behavior in the form of delusional thinking which has interfered significantly with collateral counsel's ability to represent him properly at the evidentiary hearing stage in this case.

B) Mr. Huggins has stated his son's life is in jeopardy from the mob if collateral counsel talks to Mr. Huggins' son. He has stated he was

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<sup>1</sup> Petitioner’s Appendix will be cited as “Pet. App. \_\_\_” and Respondent’s Appendix as “Resp. App. \_\_\_.” The appendices are also distinguishable because the DOC has used letters to designate appendix items, and Respondent is using numbers.

set up in this case by a combination of the Dixie Land Mafia and the Jewish Mafia, wherein the former Prime Minister of Israel Benjamin Netanyahu had a personal hand in this conspiracy against him. He has articulated a “circle of hate” involved in this conspiracy which includes Senator Bill Nelson, Mr. Huggin's former wife Angel Huggins and Disney World<sup>2</sup> representatives. Mr. Huggins has stated messages are being sent to him through numbers which correspond to the date of his first wife's death and his subsequent marriage to Angel Huggins. Mr.

Huggins has shown collateral counsel and his investigator newspaper articles wherein these messages have been sent. He has professed to viewing Angel Huggins, painted black to hide her identity, on the Jimmy Kimmel television show. He has also professed to seeing Faye Blades on a recent episode of General Hospital.

C) Mr. Huggins has stated his desires that Investigator Carlos Rodriguez talk to members of the mob, let them know what information he has which will apply enough pressure on authorities to release him. He has also professed to know who conducted the Oklahoma City Bombing which does not conform to those individuals who were captured and prosecuted. He has indicated that Circuit Judge Belvin Perry is aware of the conspiracy against him and is being influenced in this case by the various conspirators against Mr. Huggins.

D) In the opinion of the undersigned Collateral Counsel, Mr. Huggin's mental state has severely deteriorated thus creating reasonable grounds to believe he is incompetent.

Motion for Competency Determination, Resp. App. 1 at 4-5. A mental health expert's opinion letter accompanying the Motion found Mr. Huggins suffered from a long-term, chronic psychosis with paranoid delusions rendering incompetent to proceed in post-conviction proceedings. *Id.*

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<sup>2</sup> The victim in the case was an employee of a Disney World contractor and her body was found on Disney property.

Judge Belvin Perry appointed three<sup>3</sup> court experts to evaluate Mr. Huggins. Pet. App. A. Those experts unanimously agreed that Mr. Huggins was incompetent to proceed and required hospitalization and psychiatric medication to attempt to restore him to competency. They diagnosed Mr. Huggins as being actively psychotic, with a history of serious mental illness dating back well before the homicide in this case. They confirmed the paranoid delusions such as the ones enumerated in the Motion for Competency. They found that Mr. Huggins had a factual understanding of his circumstances, but that the mental illness prevented Mr. Huggins from being able to consult with counsel or entertain a rational understanding of the post-conviction proceedings. Report of Dr. Jeffrey Danziger, October 26, 2006, Resp. App. 2; Report of Dr. Henry Dee, November 13, 2006, Resp. App. 3; Report of Dr. Harry McClaren, November 17, 2006, Resp. App. 4 at 5-6.

The state conceded treatment was necessary. State's Motion for Order for Commitment, Treatment, and Periodic Report, November 20, 2006. Resp. App. 5. The circuit court ordered Mr. Huggins to be treated by the DCF, but to be retained in custody by the DOC, moved from death row ("P Dorm") to "the Transitional Care Unit ["S Dorm] located at Union Correctional Institution or another

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<sup>3</sup> The DOC Petition erroneously asserts only two experts were appointed. Pet. at 5.

appropriate facility.” Order Adjudging Defendant Incompetent to Proceed and Commitment, November 27, 2006, Pet. App. B at 4.<sup>4</sup>

### **Department of Children and Families Fails to Treat**

The DCF failed to contact Mr. Huggins until February 14, 2007, when Dr. Joe Thornton, supervising psychiatrist at North Florida Evaluation and Treatment Center (“NFETC”) located in Gainesville, and Dr. Myron Bilak, a staff psychologist, interviewed Mr. Huggins. As a result of that single meeting, DCF counsel wrote solely to the Assistant State Attorney that Mr. Huggins did not require medication or restoration to competency. DCF further advised the State Attorney’s Office that Mr. Huggins should be moved from TCU back to death row, P Dorm, where “NFETC staff will begin competency training . . . comprised of the normal competency modules used for the residents of NFETC . . . .”<sup>5</sup>

Correspondence from ASA and DCF, February 2007, Resp. App. 6 at 2.

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<sup>4</sup> The DOC Appendix omits the three attachments to the order, the three court-expert evaluations. The evaluations are provided in the appendices provided in this Response.

<sup>5</sup> Counsel for Mr. Huggins was present at the February 14, 2007, session. It was apparent in conversation with the NFETC staff that they were unfamiliar with Florida Rule of Criminal Procedure 3.851 and post-conviction competency issues. Counsel advised them of Rule 3.851. Mr. Huggins remained at TCU in isolation from other inmates for almost a year without treatment. When he asked for treatment by DOC personnel, he was told DOC personnel would not treat him because DCF was the only agency authorized to treat him.

Defense counsel first learned of the DCF report when the State Attorney's Office transmitted the DCF letter to Judge Perry and to all the parties.<sup>6</sup> The Assistant State Attorney advised he had no objection to returning Mr. Huggins to P Dorm, and that the commitment order provided sufficient authority. Apprised of NFETC staff's intention to deny Mr. Huggins necessary medication and to use the inappropriate and useless "normal competency modules used for the residents of NFETC," to "train" Mr. Huggins, CCRC counsel filed an Objection to Course of Treatment, March 5, 2007. Resp. App. 7. Excerpts from the "competency modules" are provided in Appendix Resp. App. 17. The modules do not address post-conviction issues and elicit inculpatory information protected by attorney-client privilege.

Judge Perry denied CCRC's objection to treatment and ordered DCF to begin treating Mr. Huggins, finding that he had received no treatment from his November 2006 commitment through the day of the hearing on CCRC's objection, June 6, 2007. Order Re: Objection to Course of Treatment, June 15, 2007, Resp.

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<sup>6</sup> At the January 25, 2008, hearing, it became clear that the DCF had provided additional materials to the State but not to CCRC. The State was in possession of notes and a diagnostic report from Dr. Bilak made as a result of the February 14, 2006, evaluation which had never been supplied to the defendant or his counsel. CCRC counsel noticed the State providing NFETC personnel with materials while Dr. Thornton testified and demanded to see them. Transcript of January 25, 2008 Hearing, Resp. App. 14 at 120 and 124. The Bilak report was among the papers in the possession of the State at the hearing.

App. 8 at 2. The order failed to expressly order Mr. Huggins be returned to death row from the TCU ward.

After CCRC counsel determined that Mr. Huggins wanted to return to death row, counsel e-mailed DOC counsel confirming the mutual understanding that the June 15, 2007, Order inherently authorized the return to P Dorm. Correspondence from CCRC to DOC and all parties, June 22, 2007, Resp. App. 9.

Despite communications from the State and counsel for Mr. Huggins agreeing that the DOC was authorized to transfer Mr. Huggins back to death row, Mr. Huggins remained confined to the TCU unit, contravening the treatment plan NFETC personnel claimed was necessary.

A month after the hearing, NFETC staffers Dr. Bilak and Chuck Blessington authored a letter to the court. NFETC Correspondence, July 17, 2007, Resp. App. 10. They indicated they met with Mr. Huggins in the TCU three times after the June court order. Although they said they attempted to provide treatment, the letter shows they only conducted reevaluations for competency: June 13, 2007 – “Attempts at engaging Mr. Huggins in answering specific questions related to his competency were unsuccessful . . . .” *Id.* at 1-2; June 20, 2007 – After discussing a delusional belief that details of the June 13 session had been published in USA Today, “Mr. Blessington then began directing him into areas that would help us assess his current level of competency.” *Id.* at 2; June 28, 2007 – “Our focus for

this visit was to present him with a questionnaire that he would fill out himself that contained simple true false answers, that upon completion would provide us insight into his level of competency.” *Id.* at 3.

The letter related a number of examples of Mr. Huggins’ delusional behavior. Mr. Huggins noted that a guard remained outside with the door ajar, “implying that he was intentionally eavesdropping and likely passing on information to someone.” Mr. Huggins “started . . . talking about wanting to ‘get the government to do the right thing’, and ‘to tell the truth.’” Mr. Huggins claimed USA Today reported the content of the June 13 session. He also claimed the book *The Last Juror* was about him. He indicated that his beliefs about the book and newspaper articles were among the reasons his attorneys believed him to be incompetent. He believed the arrest of Jesse Jackson in Chicago in a gun protest after the June 20 session was connected to the June 28 session in some way, and told NFETC staff to send the true/false questionnaire to Jesse. The NFETC staff did not find the delusions and lack of cooperation were malingering, but suggested that if it continued upon being returned to death row, they would conclude he was malingering. Further, they said medication was not appropriate.

At an August 15, 2007, status hearing, Judge Perry ordered Mr. Huggins returned to death row and that DCF continue its “treatment.” Order Returning

Defendant to Death Row, Children and Families to Continue Providing Services, August 15, 2007, Pet. App. C.

Further sessions ensued, summarized by Dr. Thornton in Report from the Department of Children and Families, October 8, 2007, Pet. App. D. Dr. Thornton indicated Mr. Huggins was sporadically uncooperative. He noted Mr. Huggins' delusional behavior in a single sentence and dismissed it as malingering, not incompetence, for which no treatment was required:

From the types of odd statements that I have observed from prisoner Huggins on other occasions and on the reports I have read, I conclude that **these abnormalities could be under the willful control of the prisoner. I cannot absolutely rule out any type of past diagnosis** nor subtle cognitive disorder, **but no symptoms or behaviors are currently present that are amenable to interventions** from this provider.

*Id.* at 3 (emphasis added).

This letter prompted a round of re-evaluations. Order for Competency Re-Evaluation, October 17, 2007, Pet. App. C. Although the order instructed Dr. Thornton to provide the court with an evaluation, Dr. Thornton provided nothing beyond the October 8, 2007, report. Transcript of Status Hearing, January 25, 2008, Resp. App. 14 at 92. The three re-evaluations unanimously indicated hospitalization and medication remained the only hope for competency. The psychotic illness had not improved, and may have actually deteriorated. Report of Dr. Jeffrey Danziger, November 7, 2007, Resp. App. 11; Report of Dr. Henry Dee,

December 7, 2007, Resp. App. 12; Report of Dr. Harry McClaren, December 6, 2007, Resp. App. 13.

**The trial court deems DCF treatment futile, turns to DOC**

The trial court conducted a hearing January 25, 2008. Transcript of Status Hearing, January 25, 2008, Resp. App. 14. Dr. Dee testified that Mr. Huggins had suggested that one of the other experts, Dr. Danziger, was part of a far-reaching conspiracy to kill him. *Id.* at 28. Once the delusions had been formed, they were resistant to change. Anti-psychotic medication was the only treatment that might be effective. *Id.* at 32. Dr. Dee said Mr. Huggins did not need the treatment proposed by NFETC. The pharmacological treatment necessary to attempt to restore competence “was the very thing that wasn’t done.” *Id.* at 33. The only hope for restoring competency required treatment with medications. *Id.* at 35. Malingering was unlikely – Mr. Huggins demonstrated intense delusions, grandiosity and persecutory ideas when Dr. Dee evaluated him before the 2001 trial. *Id.* at 36.

Dr. McClaren testified that Mr. Huggins’ refusal to take tests during Dr. McClaren’s reevaluation was not evidence of malingering, but, rather, “a combination of being suspicious, evasive, and perhaps narcissistic.” *Id.* at 44. Mr. Huggins had delusional or paranoid ideas about “a wide range of conspiracy involving 9/11, Bill Nelson, the Disney Corporation, ABC Network, and ex-prime

minister of Israel and the mafia,” which have persisted for at least several years. *Id.* at 45. These delusions would interfere with working with his attorneys and would likely be expressed in any testimony he gave. *Id.* Mr. Huggins “absolutely” would benefit from psychotropic drugs for his psychosis. *Id.* at 46. He believed there was only a small possibility that Mr. Huggins was exaggerating his delusional beliefs. *Id.* at 49.

Dr. Danziger testified that Mr. Huggins threatened him and stormed out of the interview room in the 2007 re-evaluation. However, Dr. Danziger spoke with the other court experts and agreed that Mr. Huggins continued to be psychotic. He spoke to Mr. Huggins’ attorneys and found that the psychotic behavior indicated a continuing incompetence to work with them. *Id.* at 60-61. He also spoke with corrections officers who saw Mr. Huggins regularly who thought Mr. Huggins was a “bug” and who were surprised that Mr. Huggins even agreed to come speak with Dr. Danziger. *Id.* at 62-63. As did Dr. McClaren, Dr. Danziger found that Mr. Huggins presented an unacceptable risk of violence to others, requiring involuntary commitment and treatment. *Id.* at 67. He believed that “by virtue of his paranoia, his beliefs in conspiracies, distrust of others,” Mr. Huggins was unable to cooperate with his attorneys or mental health professionals. *Id.*

Contrary to the court experts’ unanimous diagnosis of continued psychosis requiring hospitalization and medication, DCF psychiatrist Dr. Thornton said Mr.

Huggins was malingering. He minimized the delusions. For instance, he said “it’s not outside the norm to have a notion that the death penalty is a conspiracy” because “there are many people in our culture who believe that the death penalty is a conspiracy by the elite to oppress the poor.” *Id.* at 85.<sup>7</sup> To justify his refusal to administer drugs because Mr. Huggins was not a danger to others, Dr. Thornton minimized the intimidating confrontation Dr. Danziger reported. Dr. Thornton claimed that Dr. Danziger did not act as if he was in imminent danger.<sup>8</sup> He claimed that death row inmates generally don’t make threats, they just attack. *Id.* at 88-89.

Dr. Thornton testified that his first task was to evaluate whether Mr. Huggins was incompetent. Because he never found Mr. Huggins to be incompetent, he never devised a treatment plan. However, he claimed that the

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<sup>7</sup> This may be the first time that a state expert has testified that belief that the death penalty is an elitist conspiracy to oppress the poor is normal.

<sup>8</sup>

The defendant replied, “I know you are here to kill me.” I explained to the defendant that I was certainly not there to kill him and the defendant replied, “I know why you were sent here to kill me. I’m going to beat you like you’ve never been beaten before. Go back and tell your master.”

At that point the defendant stood up as if to leave. Investigator Hough asked the defendant to please calm down and sit down and speak with me. The defendant, however, began to repeatedly kick the door. At that point the corrections officers took the defendant back to his cell. Report of Dr. Jeffrey Danziger, Resp. App. 11 at 5. The interview had been video taped and provided to Dr. Thornton.

evaluation was “treatment” because “Assessments are a form of treatment.” *Id.* at 92-93.

Dr. Thornton admitted that he did not see Mr. Huggins between August and October 2007 when he filed his report with the court. He relied on the encounters of Dr. Bilak and Mr. Blessington. He was “very concerned” his absence might diminish his diagnosis, but his concern ended when he saw the experts’ reports and the video with Dr. Danziger. “I don’t think we disagreed on what we observed. We disagree on the interpretation and course of action.” *Id.* at 95.

Dr. Thornton testified that he reviewed the reports of all three court experts before the first meeting with Mr. Huggins on February 14, 2007. *Id.* at 97. This is directly contradicted by Dr. Bilak’s report. Report of Dr. Bilak, February 14, 2006, Resp. App. 15 at 1 (the report undisclosed to defense counsel until the January 2008 hearing). Dr. Bilak noted that only the reports of Dr.’s Danziger and McClaren were reviewed, confirmed by a summary of only the reports by Dr.’s Danziger and McClaren. Dr. Thornton did not recall that Dr. Dee’s report had been attached to the court order of commitment to DCF of November 2006. Resp. App. 14 at 121.

Dr. Thornton testified that “our clinical hypothesis was that he could be malingering at that time.” Resp. App. 14 at 98. However, Dr. Bilak reported that

**Mr. Huggins does manifest a delusional belief system that is only apparent and only appears to make rational sense to him. Attempts at questioning him about this only lead to more**

**tangential associations and other delusions that do not appear connected.**

**In light of his lack of cooperation with psychological testing during this assessment, as well as previous attempts by Dr. McClaren, one can make present the hypothesis that Mr. Huggins is possibly exaggerating his symptoms for secondary gain. His interactions with his examiner however indicate that he does have the capacity to attain competency . . . .**

Resp. App. 15 at 2 (emphasis added). Confronted with this, Dr. Thornton was forced to agree that Mr. Huggins was delusional but might be exaggerating. Resp. App. 14 at 123. Of course, Dr. Thornton's position was that Mr. Huggins was competent, while Dr. Bilak's conclusion that Mr. Huggins had "the capacity to attain competency" presumes him to be incompetent.

NFETC personnel persisted in acting on the basis that Mr. Huggins was not suffering from any mental illness. Resp. App. 14 at 105. Judge Perry elicited from Dr. Thornton the opinion that Mr. Huggins was competent, that there is a good possibility that Mr. Huggins has never been incompetent, and that he suffers from no major mental disorders. Resp. App. 14 at 111-113.

Dr. Thornton's efforts were ill-informed and inadequate. He said restoring a post-conviction capital defendant to competency is different from what they normally do:

So we reviewed the legislation or the law with our hospital attorney and developed a questionnaire to assess, does a person have some understanding of these areas [of post-conviction proceedings] or can address the areas about working with an attorney, what their role is, how the court proceeds.

Transcript of January 25, 2008 hearing, Resp. App. 14 at 79-80 (emphasis added).<sup>9</sup>

The questionnaire was obviously developed after the initial treatment plan was prepared. Dr. Thornton related his staff's initial effort:

[Addressing the first treatment plan proposed in February 2007, Resp. App. 6] Again, Your Honor, at the time, um, **it's our first time with this type of restoration.** So we thought, well, let's begin at the beginning. So we would just go through the standard module that we do at NFETC and that's where Mr. Blessington came in. And so that was our initial status. It's just, let's establish the easy part of the competency and then we'll go through the collateral.

Resp. App. 14 at 98-99 (emphasis added).

THE COURT: You said earlier that this case was one of the first cases or **you were not adept or equipped to deal with defendants who had been declared incompetent in post-conviction proceedings who had been sentenced to death?**

THE WITNESS: **That's correct. This is our first time.**

THE COURT: Okay. Did you have a particular protocol for these individuals or did you have to adapt and produce a protocol for these type of individuals?

THE WITNESS: Um, we had to produce one and in large part ... due to His Honor's urging in a phone conference in May or June, we put it in writing and we came up with something – Dr. Bilak just – we went and consulted with an attorney and Dr. Bilak made a questionnaire, true/false, about 26 items.

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<sup>9</sup> As discussed earlier in this response, at the February 14, 2007, initial meeting with Mr. Huggins, Dr. Thornton appeared to have no knowledge of Rule 3.851 or the issues relevant to competency to proceed on a motion filed under the Rule.

Resp. App. 14 at 100-101.<sup>10</sup>

THE WITNESS: [NFETC personnel met after the June 2007 hearing to reevaluate treatment plans.] It was to become more focused on the specifics of the capital collateral proceedings and try to get through the initial questionnaire to again determine where we could be most helpful.

THE COURT: So you were still dealing with an initial questionnaire back in June of 2007?

THE WITNESS: Yes, Your Honor.

Resp. App. 14 at 106.

Dr. Thornton and the NFETC staff were unqualified.

THE COURT: . . . . Now, **is the Department of Children and Family Services set up to deal with the restoration of individuals who have been sentenced to die and restore them to competency in post-conviction relief proceedings?**

THE WITNESS: **We've never done that, Your Honor, so we're not set up to do it.**

Resp. App. 14 at 113 (emphasis added).

Judge Perry found in the resulting Order:

FINDINGS OF FACT

11. . . . **Dr. Thornton testified that the Department of Children and Families is not set up to restore individuals sentenced to death in post-conviction proceedings . . . .**

CONCLUSIONS OF LAW

. . . .

6. **The treatment appropriate to restore the Defendant to competency is not practicable by the Department of Children and Families** and is best provided by the Florida Department of Corrections.

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<sup>10</sup> Dr. Thornton testified that the questionnaire was submitted with a report, but there is no record that a questionnaire has ever been made a part of the record.

Re: Incompetency to Proceed and Commitment to a Department of Corrections Treatment Facility, January 28, 2008 at 4-5 (“Order of January 28, 2008”), Pet. App. G (the DOC erroneously attributes a January 25 date).

DOC counsel told the court that, pursuant to a CCRC motion (Motion and Memorandum of Law: The Trial Court's Authority to Commit Defendant to Department of Corrections Mental Health Treatment Facility, Pet. App. F), the trial court could commit Mr. Huggins to the Department of Corrections' Mental Health Institution (“CMHI”) as was done in the case of *Florida Department of Corrections v. Watts*, 800 So.2d 225 (Fla. 2001). Commitment would allow the DOC “to get a better look at this and . . . report back to the Court . . . .” Resp. App. 14 at 138.

### **Department of Corrections Refuses to Treat**

After the January Order, Pet. App. G, the DOC transferred Mr. Huggins back to TCU. Three months later, the DOC wrote the court that they conducted weekly “mental health status evaluations,” and “clinical interviews” which failed to “indicate any significant impairment in his mental or adaptive functioning.” This was based on the observation by staff that “inmate Huggins knows why he is housed in the TCU; is able to discuss his case rationally; demonstrates an awareness of his environment; exhibits appropriate hygiene; and interacts with an array of staff in a manner that reflects appropriate mental and adaptive

functioning.” Correspondence of Dr. Carr to the Court, April 30, 2008, Resp. App. 16 at 1.

The factors observed by Dr. Carr were irrelevant to Mr. Huggins’ continuing inability to participate in his post-conviction proceedings. However, Dr. Carr addressed Mr. Huggins’ delusional disorder at the next hearing, May 2, 2008, explaining that persons suffering from delusional disorders often appear normal and functional:

And unless you start questioning the area wherein his delusions may lie, you will not be able to tell, from a typical interview, that this person is mentally ill.

Now, even if they have those delusions, they often function quite adequately in the community, or certainly in the Department of Corrections, without medication. And so when you go to assess somebody's competency with this type of disorder, it's almost like checking a wound by opening it up because if you go to ask him, well, how do you feel about the judge and how do you feel about, you know, the attorneys, where his paranoia is tied up in somehow, um, then, you know, it might start triggering those kinds of thoughts for him.

Transcript of Hearing on May 2, 2008, Pet. App. I at 12-13. Obviously, DOC personnel avoided Mr. Huggins’ “wound” for fear that “it might start triggering those kinds of [delusional or paranoid] thoughts for him.”

At the hearing, the DOC represented that:

1. **DOC staff is not qualified to do competency evaluations.** Dr. Carr, Pet. App. I at 7.

2. Dr. Carr never received a copy of the order until a week or two before the May 2, 2008, hearing. Dr. Carr, Pet. App. I at 7. (The court’s notice for the May 2 hearing issued April 22, 2008.),
3. **The mission of the DOC mental health staff is limited to mental disorders which affect the ability of the inmate to function within the prison system. *Id.* at 12.**
4. **The DOC refused to treat Mr. Huggins because “they don’t believe, based on their assessment of him, he needs the type of treatment the Court experts believe he needs just for regular mental health functioning, and so they haven’t administered any of that.”** Sharon Wells, DOC attorney, *Id.* at 14 (emphasis added).
5. Dr. Carr is qualified to do competency evaluations but he confines them to his private practice. Competency evaluations were “beyond the scope” of DOC capabilities. *Id.* at 31.

The trial court issued the Order now challenged by the DOC.

## ARGUMENT

### I

#### **THE FLORIDA DEPARTMENT OF CORRECTIONS IS AUTHORIZED AND FUNDED TO TREAT DEATH ROW INMATES TO RESTORE THEM TO COMPETENCY FOR POST- CONVICTION PROCEEDINGS.**

In *Florida Department of Corrections v. Watts*, 800 So.2d 225 (Fla. 2001), this Court found no bar to court-ordered commitment merely because the DOC had no statutory obligation to restore capital inmates to competency to participate in post-conviction proceedings. This Court also dismissed the DOC's objections that committing a death row inmate to the Corrections Mental Health Institution ("CMHI") tread on the DOC's exclusive authority.

We acknowledge the general proposition advanced by DOC that ordinarily the decision as to where to house an inmate is a decision outside of the authority of the trial court and properly within the authority of DOC. *Cf. Morrison*, 727 So.2d at 405; *Singletary v. Acosta*, 659 So.2d 449, 450 (Fla. 3d DCA 1995). However, having reviewed all of the statutes cited by DOC, specifically chapter 944 and chapter 945, **we are convinced that these statutes do not address the unique circumstance of restoring a capital defendant to competency in order to enable a post-conviction motion to proceed.** In fact, by their very terms, these statutes are inapplicable to the manner in which a trial court would address continued placement of a capital defendant who has been found incompetent to proceed with post-conviction proceedings.

**In the absence of a contrary statutory directive to DOC and in light of the affirmative responsibility placed on trial courts and this Court with respect to the death penalty, we conclude that the trial court in this case acted properly in following the dictates of the existing rules of criminal procedure and in directing that Watts remain at CMHI, where he could continue to receive the**

**necessary treatment aimed at restoring him to competency in order to allow the post-conviction process to proceed.** As we have acknowledged, “[W]e have a constitutional responsibility to ensure the death penalty is administered in a fair, consistent and reliable manner, as well as having an administrative responsibility to work to minimize the delays inherent in the post-conviction process.” *Arvelaez v. Butterworth*, 738 So.2d 326, 326-27 (Fla.1999). Further, as Chief Justice Wells stated in a concurring opinion in *Allen v. Butterworth*, 756 So.2d 52, 68 (Fla.2000):

The procedures of post-conviction in capital cases must be focused so that the defendant who should not be on death row is removed from that condition at as early a time as possible. That is the legitimate goal of post-conviction proceedings and the abiding reason that we must continue our efforts in removing unwarranted delay from the processing of these cases.

The very purpose of *Carter* was to set forth procedures that would ensure the “consideration of all viable collateral claims a death-row inmate may have,” which in turn would further “society's interest in the proper imposition of the death sentence while at the same time promoting the timely commencement and resolution of post-conviction proceedings.” *Carter*, 706 So.2d at 876-77. Yet, in this case, the post-conviction proceedings cannot commence, and most certainly cannot be resolved, until Watts is restored to competency. Thus, **it is in the interest of not only the defendant, but also the victim's family, the State, this Court, and society that a capital defendant found to be incompetent in post-conviction proceedings be treated in a manner to restore the defendant to competency as soon as possible.** As noted above, although the DOC asserts that the trial court exceeded its authority, **the Attorney General on behalf of the State has not challenged the propriety of the trial court's order.** In fact, at the hearing below, **the Assistant Attorney General argued that Watts should remain at CMHI because this facility was the best place to restore him to competency.**

*Watts*, 800 So.2d at 231-33 (footnotes deleted, emphasis added).

Compelling treatment by the DOC to restore death row inmate competency is not an alien concept to the DOC or the Legislature. The dissenting opinion in *Watts* noted that Section 922.07, Florida Statutes, expressly authorizes the Governor to commit inmates incompetent to be executed to a DOC mental health treatment facility. 800 So.2d at 235 (Harding, J. dissenting). While Justice Harding would have shifted the duty to commit incompetent post-conviction inmates to the executive branch, the *Watts* majority placed the duty squarely on the judiciary.

The *Watts* decision noted the 2001 amendment to Rule 3.851 (now subsection (g)) addressing post-conviction incompetence. The Rule favors the DOC for treatment: “to the extent practicable, any treatment shall take place at a custodial facility under the direct supervision of the Department of Corrections.” Rule 3.851(g)(13). The provision does not bifurcate custody and treatment. It appears that the provision was intended to exempt death row inmates from the provisions of Rule 3.212 which require commitment to a DCF facility when the DCF is designated to treat the inmate.

While the courts may have authority, as one option, to commit an inmate to be treated by the DCF while in DOC custody, the trial court in this case found that the DCF lacks the capability. The DCF’s inability to recognize incompetence and

treat Mr. Huggins' psychosis cannot be allowed to thwart the judiciary's obligation to honor and implement "the interest of not only the defendant, but also the victim's family, the State, this Court, and society that a capital defendant found to be incompetent in post-conviction proceedings be treated in a manner to restore the defendant to competency as soon as possible." *Watts*, 800 So.2d at 233.

The DOC argues that *Watts* cannot be read to require the DOC to treat because a DOC doctor in *Watts* testified that the DOC's limited treatment could coincidentally restore him to competency for post-conviction proceedings.

However, this Court only noted the fact of the testimony:

Although DOC's counsel stated that DOC had no statutory obligation to restore capital inmates in its custody to competency and that DOC generally treats mentally ill inmates to make them "compliant" and "capable of living in a general prison setting," Dr. Welch testified that *Watts* was being treated to the best of DOC's ability and that the current treatment plan "by happenstance ... would restore him to competency."

*Watts*, 800 So.2d at 229. However, the holding of this Court rejects the DOC attempt to limit its mission:

**In the absence of a contrary statutory directive to DOC and in light of the affirmative responsibility placed on trial courts and this Court with respect to the death penalty, we conclude that **the trial court in this case acted properly** in following the dictates of the existing rules of criminal procedure and in directing that *Watts* remain at CMHI, where he could continue **to receive the necessary treatment aimed at restoring him to competency in order to allow the post-conviction process to proceed.****

*Watts*, 800 So.2d at 232 (emphasis added).

Since *Watts*, there have been at least two Legislative attempts to create a “contrary statutory directive.” Both were premised on the fact that the DOC currently has a duty to treat and that it has been funded to do so.

In 2005, the Legislature tried to change the treating agency from the DOC to the DCF. House Bill 1831. The staff analysis expressly recognized the DOC’s existing obligation to treat and discussed how the proposed legislation was necessary to override *Watts*:

Watts Decision

In *Florida Dept. of Corrections v. Watts*, 800 So.2d 225 (Fla. 2001), the Florida Supreme Court was faced with an appeal from the Department of Corrections of an adverse lower court ruling regarding Tony Randall Watts, an inmate under sentence of death. . . . The Supreme Court affirmed the circuit court decision. **The majority opinion noted that it was affirming “in the absence of a contrary statutory directive”,<sup>7</sup> and the dissent called upon the Legislature to resolve the issue.**

<sup>7</sup> *Watts* at 232.

Effect of Bill

. . . .

Procedure Before the Courts

. . . .

**This bill provides, as to an inmate found incompetent to proceed in capital post-conviction proceedings by reason of mental illness ... that such inmate may be involuntarily committed to the Department of Children and Family Services. . . .**

Regardless of the commitment, **the Department of Corrections retains physical custody of the inmate**, and may, in its sole discretion, place the inmate in the corrections facility it determines is best equipped to treat or train the inmate and is best

suites to the security and custody needs of inmates sentenced to death. **Personnel from the Department of Children and Family Services . . . must provide treatment or training at the inmate's facility. Thus, this bill has the effect of superceding the portion of *Florida Dept. of Corrections v. Watts*, 800 So.2d 225 (Fla. 2001), that found a circuit court had the right to determine placement of a inmate in the custody of the department.**

....

**D. FISCAL COMMENTS:**

**This bill may shift medical treatment and costs from the Department of Corrections to the Department of Children and Family Services . . . . There should not be a net effect on General Revenue.**

House of Representatives Staff Analysis, HB 1831, Inmates under sentence of death (2005 Regular Session) at 6-8 (references to treatment for mentally retarded inmates omitted, emphasis added). The House bill and its Senate companion, Senate Bill 2576, died in committee on May 6, 2005.

Another effort was unsuccessfully mounted in this past 2008 legislative session, House Bill 7085. Pursuant to the bill, the DOC would remain charged with treating an incompetent capital defendant, but the DCF would be responsible for evaluating the inmate and preparing a treatment plan to be used by the DOC. The bill did not pass, dying in committee at the close of the session.

The Legislature believes it is already funding the DOC to pay for such treatment. Staff Analysis, HB 1831 (2005); HB 7085 (2008). Whether the DOC has chosen to spend those funds to meet its obligations has no bearing on whether the obligation exists.

## THE DOC'S SECOND AMENDED PETITION

**A. The DOC claim that it “has done its job – it has provided appropriate treatment for Mr. Huggins so that he may function appropriately in prison,” Pet. at 17, rings hollow.**

Mission accomplished? Reports of success are premature. The DOC has the additional obligation to treat incompetent death row inmates so they can participate in post-conviction proceedings, and that job remains unassumed.

**B. The DOC's claim that the real fault lies with Mr. Huggins demonstrates a remarkable lack of understanding of the issue. Pet. At 17.**

The DOC's attempt to blame Mr. Huggins for his incompetence ignores the fact that the three court experts unanimously and repeatedly agreed that the Mr. Huggins is incompetent and needs hospitalization and anti-psychotic medication. It also ignores that fact that Mr. Huggins is incompetent as a matter of law by the trial court's repeated findings of fact.

The DOC claims it is unqualified to evaluate or treat Mr. Huggins. By its own argument, therefore, it is unqualified to offer any opinion about how, why, or if Mr. Huggins is incompetent to proceed. The DOC bootstraps its self-imposed

ignorance to blame the incompetent, psychotic, mentally ill patient for his failure to cooperate in treatment not yet provided.

No treatment has ever been provided. The DCF admitted it never got past evaluating Mr. Huggins. The DOC report of April 30, 2008, indicates that its staff only provided “mental health status evaluations,” and “clinical interviews” which failed to “indicate any significant impairment in his mental or adaptive functioning.” Of course, the only competence the DOC evaluated was the ability to function in prison, a competence which has never been at issue in this case. The DOC admits the staff never offered treatment because they found none was required.

How can the DOC now claim that Mr. Huggins has refused treatment which was never, not once, offered to him? How can the DOC even think of blaming the patient for his failure to be healed when it is the mental health professionals charged with treating his disease who are to blame by their abject refusal to treat?

It is clear from the multiple evaluations by the neutral court experts that Mr. Huggins’ psychosis explains any difficulty. That is one of the reasons the psychoactive medications are needed – to alleviate the psychosis sufficiently to enable Mr. Huggins to participate in other treatments to restore him to competency.

Lack of cooperation is not per se an indicator of malingering and did not prevent a diagnosis from being obtained. Dr. Danziger testified that even if Mr. Huggins remained uncooperative after placement in a state psychiatric facility the staff would have the opportunity to observe 24/7 and “look for consistency or inconsistency in presentation.” Resp. App. 14 at 73.

There is no evidence Mr. Huggins will be uncooperative with treatment. Dr. Dee noted in his re-evaluation report that Mr. Huggins was prepared to cooperate in drug therapy. Resp. App. 12 at 4. Dr. Dee also noted that Mr. Huggins was aware that DCF discussions about the roles of the people in court, etc., were designed to restore factual competence, when he knew his problem was not with those matters, but with the psychiatric condition. *Id.* Mr. Huggins’ frustration with treatment he knows is misinformed, ineffective, and in outright defiance of the expert recommendations cannot be seen to be any indication that he would resist the appropriate treatment.

### **3. No Irreparable Harm**

The DOC argues it will be irreparably harmed. At least since *Florida Dept. of Corrections v. Watts*, 800 So.2d 225 (Fla. 2001), the DOC has been on notice of its obligation to restore capital defendants to competency to participate in post-conviction proceedings. The fact that the DOC has spent the years since *Watts*

ducking that responsibility does not excuse it from its failure to respond to this Court's mandate expressed in *Watts* and the Rules of Criminal Procedure.

Compounding the defiance is the fact that the Legislature is under the impression that it has been funding the DOC to provide this treatment. How can compliance with the mandate of this Court and the Legislature constitute irreparable harm?

#### **4. Separation of Powers not Violated**

Judge Perry's order was well-crafted to specifically avoid intruding into the DOC's area of discretion. He specified deadlines for the DOC to meet its obligations under the Rules of Criminal Procedure because of the DOC's refusal to honor the authority of the court pursuant to *Watts* and the Rules.

While the case law cited by the DOC prohibits judicial intrusion when the Legislature has assigned exclusive authority to an executive agency, *Watts* recognizes that Florida statutes "do not address the unique circumstance of restoring a capital defendant to competency in order to enable a post-conviction motion to proceed." 800 So.2d at 232. The authority of the trial court in *Watts* to dictate placement of the inmate derived from the "affirmative responsibility placed on trial courts and this Court with respect to the death penalty." *Id.* The courts must attempt to restore competency and have broad authority to do so, absent Legislative constraints.

**5. *Watts* Recognizes the Authority of the Courts to Ensure That Post-conviction Capital Defendants Are Competent During 3.851 Proceedings.**

The DOC attempts to avoid the mandate of *Watts* by arguing that it is distinguishable from the instant case. The DOC emphasizes that the trial court in *Watts* ordered existing treatment be continued, whereas the order in this case requires treatment to be initiated. That distinction does not appear to have been a concern of this Court when it found the trial court had authority to compel the DOC to administer treatment to restore competency. The fact that the DOC was already treating Mr. Watts for issues relating to the inmate's functionality in prison is irrelevant.

**The trial court's order in this case was aimed at restoring the defendant to competence in a timely and efficient manner so that the court could proceed with the resolution of the post-conviction proceedings.** The trial court's order is in conformity with the Rules of criminal procedure regarding commitment of a defendant for treatment for restoration of competency and with chapter 916 governing mentally ill defendants.FN13 We note that in this appeal, DOC does not challenge the constitutionality of Florida Rules of Criminal Procedure 3.210 through 3.212 or Rule 3.851(d)(13).

FN13. We distinguish *Acosta*, 659 So.2d at 450, which dealt solely with the issue of treatment and placement of a sentenced defendant in the prison system and **did not address the question of the scope of the trial court's authority with regard to the issue of restoring a defendant to competency for purposes of post-conviction relief.** We also distinguish *Morrison*, 727 So.2d at 405, which addressed a trial court's placement of a noncapital defendant, who was found to be incompetent to proceed pretrial, in a specific facility operated by the Department of Children and Families. In contrast to

this case, *Morrison* involved circumstances that explicitly were covered by chapter 916 of Florida Statutes.

*Watts*, 800 So.2d at 233 (emphasis added). Judge Perry did not order the DOC to house Mr. Huggins in a particular facility. However, under the authority of *Watts*, the judge would have had the authority to specify a treatment facility.

This Court in *Watts* specifically distinguished *Singletary v. Acosta*, 659 So.2d 449(Fla. 3d DCA 1995), a case recognizing that the courts are not usually empowered to regulate the treatment and placement of inmates:

While it may make non-binding recommendations, the trial court wholly lacks authority to regulate the treatment and placement of a sentenced defendant in the prison system. See Art. II, § 3, Fla.Const. (1968); *Brown v. State*, 427 So.2d 821 (Fla.2d DCA 1983); *Florida Dep't of Health & Rehabilitative Servs. v. Gross*, 421 So.2d 44 (Fla.3d DCA 1982); *State ex rel. Dep't of Health & Rehabilitative Servs. v. Sepe*, 291 So.2d 108 (Fla.3d DCA 1974).

*Acosta*, 659 So.2d at 450.

*Watts* found that the unique circumstance of restoring a capital defendant to competency empowered the courts to carry out their affirmative responsibility with respect to the death penalty. In rejecting the case law normally limiting the courts' authority to act regulate the treatment and placement of a sentenced defendant, this Court held:

We distinguish *Acosta*, 659 So.2d at 450, which dealt solely with the issue of treatment and placement of a sentenced defendant in the prison system and **did not address the question of the scope of the trial court's authority with regard to the issue of restoring a**

**defendant to competency for purposes of post-conviction relief.** We also distinguish *Morrison*, 727 So.2d at 405, which addressed a trial court's placement of a noncapital defendant, who was found to be incompetent to proceed pretrial, in a specific facility operated by the Department of Children and Families. In contrast to this case, ***Morrison* involved circumstances that explicitly were covered by chapter 916 of Florida Statutes.**

800 So.2d at 233.

*Acosta* is further distinguishable because the order “direct[ed] the Department of Corrections to place the defendant in a specific drug treatment center and to provide specified medical treatment and medication.” Judge Perry in this case swung wide of dictating location or specific treatment or medication.

#### **5A. The DOC’s Cases Are Inapplicable to the Unique Circumstance of Capital Post-Conviction Competence**

The DOC in the instant Petition relies on *State ex rel. Dep’t of Health & Rehabilitative Servs. v. Sepe*, 291 So.2d 108 (Fla.3d DCA 1974), Pet. At 22. *Acosta* cited *Sepe* for authority. Therefore, for the same reason *Acosta* is inapplicable, so too is *Sepe*. Similarly, the court in *Dep’t of Children and Family Services v. M.H.*, 830 so.2d 849 (Fla. 2<sup>nd</sup> DCA 2002), Pet. At 22, relied on *Acosta* to support a similar holding regarding the DCF, and is therefore distinguishable.

*Dep’t of Juvenile Justice v. C.M.* 704 So.2d 1123 (Fla. 4<sup>th</sup> DCA 1998), Pet. at 22, held that the courts could not compel the DJJ to pay a hospital bill incurred

by court-ordered treatment over DJJ objection. The propriety of the order for treatment was not directly addressed. The ground for excusing the DJJ from payment was because the DJJ proved in the trial court that it had not appropriated money to pay the bill. In this case, the DOC has not proven that there has been no money appropriated for this treatment. The Legislature believes it has appropriated the funds. Staff Analysis, HB 1831 (2005); HB 7085 (2008).

*Department of Corrections v. Harrison*, 896 So.2d 868 (Fla. 5<sup>th</sup> DCA 2005), and *Department of Corrections v. Grubbs*, 884 So.2d 1147 (Fla. 2<sup>nd</sup> DCA 2004) hold:

[T]he judicial branch may not interfere with the legislative branch by directing that funds be spent by an executive branch agency in a manner not authorized by statute, nor can it interfere with the agency's discretion in spending appropriated funds.

*Harrison*, 896 So.2d at 870 (summarizing and adopting holding in *Grubbs*). The order in this case does not direct that funds be spent. Funds will be spent, but they will be expended to carry out treatment the court has ordered “in conformity with the rules of criminal procedure regarding commitment of a defendant for treatment for restoration of competency and with chapter 916 . . . .” *Watts*, 800 So.2d at 233.

*Harrison* also suggests that if the defendant cannot pay for his own treatment, “and if there is no alternative source of funds . . . he may have recourse

to other avenues of relief by arguing denial of equal protection, due process and the like.” *Id.* If there is no funding or mechanism to provide treatment, then Mr. Huggins’ state and federal constitutional protections of equal protection and due process are jeopardized or violated.

**5C. (1) Judicial Authority to Commit Capital Post-Conviction inmates to the DOC for Treatment is not Limited to Continuation of DOC-Initiated Treatment. (2) The DOC has not Shown Mr. Huggins Cannot be Restored to Competency by DOC Treatment. (3) The DOC is not Excused From Treating By Section 916.13, Which, as the DOC Argued in *Watts*, is Limited to Treatment for Pretrial Defendants.**

The DOC argues that the trial court in *Watts* did not exceed its authority because Mr. Watts was already in a facility. However, in *Watts* the DOC conceded CMHI was the only appropriate treatment facility.

**This case does not involve an issue as to which mental health hospital Watts should be transferred. CMHI is the only mental health hospital available to inmates** within the DOC and CMHI is specifically recognized as a forensic facility under section 916.106(8). The trial court's order contemplated that Watts be returned to Union Correctional Institution, the facility selected by DOC, once “the Department of Corrections can show the Court that [Watts] is voluntarily taking his medication, is stable and can be returned to UCI.” Thus, we hold that the trial court has not usurped DOC's general authority of where to house inmates.

**Therefore, we conclude that the trial court did not act outside of its authority and, accordingly, we affirm the order under review.**

*Watts*, 800 So.2d at 233-34. The DOC argues here that *Watts* was about placement, not treatment. Yet the *Watts* decision is directed to the authority of the trial court to order treatment. Placement is only incidental to the authority to order treatment.

The DOC next argues that there is no evidence that DOC treatment would restore Mr. Huggins to competency. Certainly, the DCF's refusal to treat the psychosis and the DOC's desultory "mental health status evaluations," and "clinical interviews" have failed to restore Mr. Huggins to competency. If the DOC is saying the only treatment the DOC would provide would be to counsel Mr. Huggins to be compliant in the prison system, then the order is, indeed, futile. However, the reports and testimony of the court experts evidence that there is appropriate treatment which could restore competence. If the DOC were to accept the duty to restore competence, there is no evidence their own experts would not reach the same conclusion as the court experts, and treatment with a likelihood of success could be provided.

The Legislature has expressed its intent that mentally ill inmates in the custody of the Department receive be treated by the DOC in Section 945.41,

Florida Statutes:

It is the intent of the Legislature that mentally ill inmates in the custody of the Department of Corrections receive evaluation and appropriate treatment for their mental illness through a continuum of

services. . . . The Department of Corrections shall provide mental health services to inmates committed to it and may contract with any entities, persons, or agencies qualified to provide such services.

While the Department chooses to take a restrictive view and interpret Sections 945.40 *et seq.* as requiring that the mental illness pose an immediate, real, and present threat of substantial harm to the inmate's well-being or to the safety of others before treatment is provided, this does not appear to be the Legislative intent. This restrictive view also thumbs its nose at this Court and the lower court.

The DOC next argues it is excused from treating Mr. Huggins because Section 916.13 requires the DCF to treat incompetent defendants. However, the statement of legislative intent indicates it is directed only at pretrial defendants “for the treatment or training of defendants who have been charged with a felony and who have been found to be incompetent to proceed due to their mental illness . . . .” § 916.105(1). The DOC also flip flops from its position in *Watts*, where it had no trouble recognizing the limitation of Section 916.13:

**Florida Statute §916.13, however, only authorizes involuntary commitment to the Department of Children and Family Services for incompetent defendants.** No similar grant of legislative authority authorizes FDC to treat a sentenced individual for the purpose of restoring competency.

Initial Brief of the DOC in *Watts*, [www.wfsu.org/gavel2gavel/briefs/00-1591ini.pdf](http://www.wfsu.org/gavel2gavel/briefs/00-1591ini.pdf) at 8 (August 2000). No statute

assigns the exclusive duty to treat incompetent post-conviction defendant to the DCF.

## **6. The Order Does Not Micromanage the DOC**

The DOC's position in the May 2, 2008, hearing approached contempt of court and of this Court for its failure to accept the duty deemed valid in *Watts* and its failure to obey the January 28, 2008, order. The order before this Court merely sets out deadlines for the DOC to meet its duty, a consequence of the DOC's refusal to treat inmates to restore competency for post-conviction proceedings.

## **7. The Question of Statutory Authority was decided by *Watts*.**

The DOC argues that the statutory scheme prohibits the DOC from treating incompetent capital defendants because the statutes, sections 945.025(1) and 945.40 *et seq* authorize treatment only to "stabilize the inmate so the inmate may live within the institutional population." Pet. At 27. This Court rejected this argument in *Watts*:

having reviewed all of the statutes cited by DOC, specifically chapter 944 and **chapter 945**, we are convinced that **these statutes do not address the unique circumstance of restoring a capital defendant to competency in order to enable a post-conviction motion to proceed.** In fact, by their very terms, these statutes are inapplicable to the manner in which a trial court would address continued

placement of a capital defendant who has been found incompetent to proceed with post-conviction proceedings.

*Watts*, 800 So.2d at 231-32 (footnotes deleted, emphasis added). The DOC merely reargues *Watts* and offers no reason to revisit the decision.

### **8. The Order's Specific Directions Do Not Violate Separation of Powers.**

As argued above, *Watts*, in distinguishing *Acosta*, moots the DOC's reliance on *Sepe* at this stage of its argument. Judge Perry merely set out a schedule for the DOC to comply with the Rules requiring it to treat Mr. Huggins: (1) identify personnel qualified to provide the treatment; (2) consult with the court experts and with DCF to determine a course of treatment within 70 days; (3) submit a report within 120 days determining competency and, if incompetent, present a treatment plan; and (4) if Mr. Huggins regains competency, report it pursuant to the Rules. The Order cited to the appropriate Rules authorizing the scheduled acts.

What action in the Order does the DOC suggest would not be implemented if the DOC were to meet its obligation to treat Mr. Huggins? Just as the trial court in *Watts* ordered continued residence at CMHI, so too the schedule laid out by Judge Perry in this case is grounded squarely on the Rules and implicit in the authority to order treatment.

## **9. There is No Ethical Bar to the DOC Providing Treatment**

There is no evidence of an ethical bar to treatment. The ethical issue raised was when Dr. Danziger, asked if he would participate in supervising the drug treatment, testified “I would be a bit uncomfortable being in both a treatment role and a forensic role, that would be a potential conflict. . . . But the real answer is whatever His Honor asks me to do, I will be pleased to do.” Resp. App. 14 at 68. If there were an ethical bar, Dr. Danziger would have been obliged to indicate he would resist such an order.

Dr. Thornton raised no ethical objection when he appeared at the January 25, 2008, hearing and testified about his forensic evaluation of Mr. Huggins when he was also cast by Rule and Order in the role of treating psychiatrist.

The best the DOC can marshal are two statements of ethical considerations, neither of which forbids the treatment in this case. This is confirmed by a learned treatise which finds that a dual relationship can be ethically handled:

The above caveat that dual-role arrangements **should be avoided when possible** is an important one, however. In rural areas, where all mental health services may be provided by a small number of clinicians, some dual-role situations may have to be tolerated if services are going to be provided at all. **Dual-role situations may also arise in hospitals that provide treatment services to forensic clients (e.g., to restore competence to stand trial or care for persons adjudicated not guilty by reason of insanity)**, where members of a client's treatment team (to whom the individual may have disclosed dangerous propensities or sexual fantasies) may be

required to participate in, if not conduct, evaluations that are used to determine discharge readiness. **Similar role conflicts may arise in corrections settings, where clinicians who evaluate and/or treat inmates for therapeutic purposes may also be involved in evaluations that inform parole board decisions.**

In these settings, it may be difficult for mental health professionals to avoid dual-role status. **Individual clinicians' roles may be dictated by state law, administrative policy, and organizational structure.** Of course, **mental health professionals should alert facility administrators to ethical problems related to dual-role assignments and work with them to design services in a way that minimizes the risk.** Yet even when administrative policy is sufficiently enlightened and flexible to **develop a structure that maximally separates treatment from discharge evaluation duties,** concerns that discharge decisions be based on the most complete and relevant information dictate that some input from the therapist be made available to the ultimate decisionmaker. **In smaller forensic hospitals with limited staff resources, a handful of clinicians may handle all therapeutic and evaluation duties, and the treater—evaluator roles with individual patients may be inextricably related.**

Gary B. Melton, et al., *Psychological Evaluations for the Court, A Handbook for Mental Health Professionals* 93 (3d ed. 2007) (a majority of the authors teach in Florida universities and the book is used to train Florida forensic mental health professionals).

The DOC cautions that Mr. Huggins may come to reject all DOC treatment, foreclosing treatment for institutional issues. However, it is unlikely that any inmate will know or care which hand of the state he believes is slapping him around. To avoid that risk the DOC could contract an outside provider to treat for

competency, or, treat for competency on its own and, if it later proves to have interfered with other treatment, contract for treatment at that time.

### **10. The DOC is Physically and Fiscally Able to Treat or Provide Treatment by Outside Contractor**

There is no evidence the DOC does not have the funding to carry out its mission to treat incompetent post-conviction death row inmates. The Legislature believes it has been paying for these services. Staff Analysis, HB 1831 (2005); HB 7085 (2008).

The DOC's argument that Section 916.111, regarding DCF classes for providers treating pre-trial defendant, favors its position makes no sense. It argues that DOC personnel don't take the training to become a forensic expert, and therefore they are not equipped to treat incompetent capital inmates. Nothing prohibits DOC personnel from taking the training.

The DOC argues there is no showing that anyone can successfully treat Mr. Huggins because he refuses treatment. There has been no treatment for Mr. Huggins to refuse. Any failure to cooperate with the misguided efforts in derogation of the diagnosis and treatment protocols of the court experts has no bearing on the potential for successful treatment by the methods called for by the court experts.

## **11. An Order Shifting the Treatment Burden to Mr. Huggins is Inappropriate.**

The DOC attempts to blame Mr. Huggins for the failure to treat in this case because he has allegedly refused “reasonable treatment.” “Reasonable treatment” has never been offered. “Unreasonable treatment” has never been offered. The position of both the DOC and the DCF is that no treatment need be offered because Mr. Huggins is competent.

The DOC misses the point entirely in its argument to this Court, that both the DCF and the DOC deem Mr. Huggins “competent” without regard to the legal standard for post-conviction competency set out in Rule 3.851(g)(8)(A):

“[W]hether the prisoner has sufficient present ability to consult with counsel with a reasonable degree of rational understanding and whether the prisoner has a rational as well as factual understanding of the pending collateral proceedings.” The court experts, who have applied the correct standard, unanimously find Mr. Huggins to be incompetent because of a severe psychosis.

The DOC claims “There is no showing that Children and Families is unwilling to provide treatment.” By the testimony of the DCF psychiatrist, the DCF finds Mr. Huggins to be competent. Just as administering anti-psychotic drugs to a competent person is not treatment, so too the DCF’s attempts to conduct

a competency evaluation on a person it has determined to be competent does not qualify as treatment for incompetence.

The DCF is unwilling to provide treatment. This is because it has no concept of how the delusions they begrudgingly grant Mr. Huggins, combined with the other diagnosed psychotic symptoms it denies exist, render him incompetent to participate in a post-conviction proceeding. DCF staff did not even know about or understand post-conviction capital proceedings, evidenced by their belated consultation with their own attorney to develop 26 true/false questions. That questionnaire was not even part of treatment, it was some sort of evaluation for post-conviction competency. Resp. App. 14 at 100-101. The DCF is truly not “set up” to provide treatment in this context.

Mr. Huggins has not resisted treatment. Mr. Huggins is prepared to undergo the drug therapy the State denies him. Though the DOC frames the issue as one of ordering Mr. Huggins to acquiesce to treatment, the DOC is actually arguing for the court to give the DOC authority to force medications. That issue is not ripe and may never come to fruition.

## **12. The Trial Court Can Order the DOC to Treat Mr. Huggins.**

The order challenged in this proceeding directs the DOC to treat Mr. Huggins. The issues the DOC raises with *Sell v. United States*, 539 U.S. (2003), and *Singleton v. Norris*, 319 F.3d 1018 (8<sup>th</sup> Cir. 2003), are irrelevant to this proceeding. These two cases do not hold that a court can compel an inmate to cooperate. They address the situation of an inmate rendered uncooperative by his mental illness, and the orders contemplated are directed to the mental health care provider, not to the inmate. So, the DOC is incorrect when it says *Sell* “gives the trial court authority to order Mr. Huggins to undergo treatment.” Pet. At 37. Rather, *Sell* gives the trial court authority to order **the DOC** to **provide** treatment.

The entire question of involuntary medication is premature and probably will never need to be addressed, given Mr. Huggins’ expressed willingness to undergo the drug therapy the DOC refuses to provide.

**13. To Suggest that Mr. Huggins Should be Sanctioned in Any Manner whatsoever for His Failure to Regain Competence is an Outrage.**

The road the DOC recommends the trial court travel is the road to perdition. It beggars belief that a state agency would actually suggest that an inmate who has been judicially declared incompetent could waive his right to post-conviction review of his conviction and death sentence. At least the DOC has the decency to

back off to the extent of saying the question is premature. But it is not only premature, it is despicable.

This is wrong: “[T]his case can be put back upon the right track by (a) determining if Mr. Huggins is capable of voluntarily accepting or rejecting treatment and (b) by ordering treatment if the trial court finds his rebuff is voluntary.” Mr. Huggins has not rebuffed treatment because none has been offered. The trial court has been futilely trying to have someone treat him.

To date, there has been no evidence that Mr. Huggins has ever refused to cooperate. Any difficulties would be symptomatic of his diagnosed psychosis and incompetence. The DOC claims Mr. Huggins refused to cooperate with its “mental health status evaluations.” However, he cooperated with every “clinical interview” enumerated by Dr. Carr. Resp. App. 16 at 1. Dr. Carr indicated the DOC would continue to conduct the mental status examinations, which suggests that Mr. Huggins has cooperated to some extent. Regardless, his cooperation is not necessary, just as Dr. Danziger indicated that evaluations could be conducted regardless of an inmate’s cooperation. Any purported lack of cooperation did not mean Mr. Huggins was competent. For instance, Dr. McClaren found Mr. Huggins’ refusal to take some tests was symptomatic of his mental illness, not evidence of malingering.

## CONCLUSION

For the first time since *Watts*, a circuit court judge has called the DOC to task for its knowing, willful refusal to honor its mission, dictated by rule, recognized in *Watts*, imposed by statute and funded by the Legislature. This Court should reiterate its holding in *Watts* and make it abundantly clear to the DOC that it must treat Mr. Huggins and all similarly situated death row inmates to attempt to restore them to competency to participate in post-conviction proceedings when ordered to do so by the judiciary.

Judge Perry has been diligent and proactive in his efforts to provide for Mr. Huggin's treatment. If the DOC is not empowered to treat Mr. Huggins, then there remain no options available. The problem of obtaining appropriate mental health treatment for death row inmates is chronic. The DOC constantly and adamantly confines its scope of action to mental disorders which affect the ability of the inmate to function within the prison system. When the court experts recommend a course of treatment and the court agrees, there should be provision for the court to order treatment by one of the court experts if the DOC refuses to treat or disputes the diagnoses of the court experts. Counsel for Mr. Huggins invites the Court to fashion such a remedy, by Rule or mandate.

Death row inmates have a federal and state due process right to be competent to participate in their post-conviction proceedings. Post-conviction

proceedings are a critical step in ensuring that the State's death penalty is constitutionally applied. If the Florida judiciary is without authority to order effective treatment, then Florida will be forced to warehouse such inmates until they spontaneously recover or die. The guilty will go unpunished, the innocent will be wrongfully imprisoned without recourse.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Response has been furnished by mail to the parties designated below by mail October 3, 2008.

*David R. Gemmer*

David Gemmer

**CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief complies with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

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