

NOT FINAL UNTIL TIME EXPIRES FOR REHEARING
AND, IF FILED, DETERMINED

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PINELLAS COUNTY

MITCHELL N. DOWNS,
Appellant,

v.

Appeal No. CRC 11-00007 APANO
UCN ~~522009MM006381XXXXNO~~

STATE OF FLORIDA,
Appellee.

Opinion filed _____.

Appeal from an Order Denying
Motion to Dismiss entered
by the Pinellas County Court,
County Judge Paul A. Levine

Jackson Hilliard, Esquire
Office of the Public Defender
Attorney for Appellee

Kristin Carpenter, Esquire
Office of the State Attorney
Attorney for Appellant

ORDER AND OPINION

PETERS, Judge.

THIS MATTER is before the Court on Mitchell N. Down's Petition for Writ of Common Law Certiorari seeking review of the trial court's order denying his motion to dismiss pending misdemeanor charges due to continued incompetency. This Court has

jurisdiction. *See* Art. V, §5(b), Fla. Const.; Fla. R. App. P. 9.030(c)(2). A petition for common law certiorari is appropriate to review the denial of a motion to dismiss filed pursuant to Fla. R. Crim. P. 3.213(a)(2). *See Vasquez v. State*, 496 So.2d 818, 819 - 820 (Fla. 1986).

Relevant Case History and Trial Court Proceedings

On April 2, 2009, Mr. Downs was charged by Misdemeanor Information with Voyeurism and with Loitering or Prowling. On October 8, 2009, an order was entered, *nunc pro tunc* to September 11, 2009, finding Mr. Downs “suffers from mental retardation and is currently incompetent to proceed.” On February 10, 2011, Mr. Downs moved the court to dismiss the charges without prejudice pursuant to Fl. R. Crim. P. 3.213(a)(2). On February 18, 2011, the court heard and orally denied the motion. On February 25, 2011, Mr. Downs filed his Petition for Writ of Common Law Certiorari. On March 3, 2011, the trial court entered a written order, *nunc pro tunc* to February 18, 2011, denying the motion. That order contained specific findings and concluded “the defendant’s Motion to Dismiss at this point in time is denied and is carried over to the defendant’s next competency status check on May 18, 2011. It is this court’s intention that on May 18, 2011, should the defendant continue to be incompetent, the misdemeanor charge will be dismissed.”

Florida Criminal Procedure Rule 3.213(a)(2)

Fla. R. Crim. P. 3.213(a)(2) requires that if the incompetency is due to retardation or autism, “the court shall dismiss the charges within a reasonable time after such determination, ... not to exceed 1 year for misdemeanor charges, unless the court specifies in its order the reasons for believing that the defendant will become competent

within the foreseeable future and specifies the time within which the defendant is expected to become competent.”

Conclusion

The trial court’s written order of March 3, 2011 fulfilled the requirements of Rule 3.213(a)(2) as to the hearing and court ruling of February 18, 2011. Therefore Mr. Downs’ present request for relief is denied. This denial is without prejudice for Mr. Downs’ to file a future Petition for Writ of Common Law Certiorari in these ongoing proceedings.

IT IS THEREFORE ORDERED that Mr. Downs’ request for relief contained in the present Petition for Writ of Common Law Certiorari is denied.

ORDERED at Clearwater, Florida this 26 day of April, 2011.

cc: Honorable Paul A. Levine
Office of the Public Defender
Office of the State Attorney