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IN THE SUPREME COURT OF FLORIDA

MICHAEL LAWRENCE WOODBURY,

Appellant, CASE NO.: SC19-8
L.T. No.: 472018CF000164A

vs.

STATE OF FLORIDA,

Appellee.

_____/

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MOTION FOR REHEARING

Appellant, MICHAEL LAWRENCE WOODBURY, through undersigned counsel, moves this Court for a rehearing pursuant to Florida Rules of Appellate Procedure 9.330 of this Court's written opinion rendered on April 15, 2021 affirming Woodbury's conviction of first-degree murder and sentence of death. *Woodbury v. State*, SC19-8, 2021 WL 1418851 (Fla. Apr. 15, 2021).

In its recent decision affirming his conviction and death sentence, Woodbury respectfully submits this Court overlooked or misapprehended the proper legal analysis for a crucial aspect of one issue: Point I. This Court failed to analyze the source of law on which that claim was founded, and this omission or misapprehension of law

was critical to this Court's decision. As to a second claim, Woodbury seeks clarification of facts included in the analysis due to the omission or misapprehension of pertinent facts.

ARGUMENT

"A motion for rehearing shall state with particularity the points of law or fact that, in the opinion of the movant, the court has overlooked or misapprehended in its . . . decision." Fla. R. App. P. 9.330(a)(2)(A) (2021).

1. *This Court overlooked or misapprehended critical points of law and truly important facts in its decision that the trial court did not abuse its discretion in granting self-representation (Point I)*

Woodbury seeks to clarify misperceptions of facts and arguments on the issue of the trial court's granting of Woodbury's request to proceed pro se.

In its opinion, this Court concluded that "nothing in the record" shows that "the court was required to find that Woodbury suffered from severe mental illness to the point of incompetency." *Woodbury*, 2021 WL 1418851 at *10.

In support of that conclusion, this Court reasoned that Woodbury's behavior during the proceedings refuted "any claim that

he was not competent to conduct the proceedings on his own." *Woodbury*, 2021 WL 1418851 at * 9.

However, this Court overlooked or misapprehended that the appropriate analysis concerns not Woodbury's behavior but rather the trial court's failure to follow procedural requirements prior to granting self-representation.

In its analysis, this Court mischaracterizes Woodbury's argument as a substantive due process argument:

> Woodbury argues that even if he was competent to stand trial, the trial court knew he had a severe mental illness that rendered him incompetent to represent himself, and that the trial court therefore erred in granting his request to proceed pro se.

Woodbury, 2021 WL 1418851 at *7.

But Woodbury did not raise a substantive due process argument in which he alleged the record showed that he was incompetent to represent himself.

Instead, Woodbury contended reversible error occurred when the trial court failed to conduct a sufficient inquiry into his severe mental illness and make a determination, as required by Florida Rule of Criminal Procedure 3.111(d)(3), that he did not suffer from severe

mental illness to the point where he was not competent to conduct trial proceedings by himself prior to granting self-representation.

This argument arises from a denial of procedural due process because the trial court failed to assess his pro se competency in light of his severe mental illness.

In actuality, Woodbury never argued that the trial court *knew* that he suffered from a severe mental illness to the point of being incompetent to conduct the proceedings without counsel. Rather, the argument was that trial court's failure to follow the procedure in rule 3.111(d)(3) made this determination impossible from the record. Without the proper inquiry, facts essential to an informed decision on pro se competency are missing from the record.

In a case cited by Woodbury in his Initial Brief (p.34), this Court in *Hernandez-Alberto v. State*, 126 So. 3d 193 (Fla. 2013), noted that the amendment of rule 3.111(d)(3), which was based on the U.S. Supreme Court holding in *Indiana v. Edwards*, required another step prior to granting self-representation:

> Based on the decision in *Edwards*, this Court amended rule 3.111(d)(3) to provide that the court must also make a determination that the defendant "does not suffer from severe mental illness to the point where the defendant is not competent to conduct trial proceedings by himself" in

> order to grant a defendant's request for self-representation.

Thus, the trial court has to make the determination *prior* to granting self-representation. This Court does not address whether the trial court followed this procedural requirement.

Also, this Court does not analyze what a proper inquiry would entail for a trial court to make the required determination, specifically whether it can be done without a competency evaluation. The opinion is also unclear as to whether or not this Court determined Woodbury has a severe mental illness and does not, in light of the lack of precedent, offer a definition of severe mental illness.

Thus, Woodbury's main assertion that his significant history and current treatment for a major mental illness required the trial court to determine his pro se competency prior to granting self-representation is unaddressed in the opinion.

Furthermore, this Court's focus on Woodbury's behavior to determine competency is contrary to the guidance offered by the U.S. Supreme Court.

As the Supreme Court indicated in *Pate*, demeanor is not dispositive. *See Pate v. Robinson*, 383 U.S. 375, 378 (1966)

(defendant's apparently competent demeanor could not be relied upon to dispense with hearing on competence in view of history of mental illness).

In *Indiana v. Edwards*, 554 U.S. 164 (2008), the Supreme Court made important observations about mental illness including that the relevant literature established that "mental illness itself is not a unitary concept," as it "interferes with an individual's functioning at different times in different ways." Various "common symptoms of severe mental illness" (e.g. "disorganized thinking, deficits in sustaining attention and concentration, impaired expression, and anxiety") could "impair the defendant's ability to play the significantly expanded role required for self-representation even if he can play the lesser role of represented defendant." *Id.* at 176.

Therefore, mental illness is more than expressive deficits. Behavior is one factor but not dispositive with regard to competency. In the opinion, this Court discounted the evidence in Dr. Sesta's report that Woodbury "had a fluctuating attention span." But this is the exact type of symptom the *Edwards* Court indicated could impair the ability to self-represent.

With regard to Dr. Sesta's report, this Court omitted several key facts in the opinion. This Court mentioned that: "Dr. Sesta opined that Woodbury was experiencing an active manic episode during the examination, had a fluctuating attention span, made some inappropriate comments, and was undermedicated." *Woodbury*, 2021 WL 1418851 at *10. This omits the truly important facts that Dr. Sesta opined that Woodbury's "thought process presented as abnormal" and noted abnormalities in his mood, affect and behavior. (R 588-89; Initial Brief p. 43-44). Dr. Sesta characterized Woodbury's mental state as "decompensated" and cautioned the court to consider it at the time of trial. (R 587; Initial Brief 44-45).

While this Court characterizes "potential disordered thinking" as a "possible symptom," Dr. Sesta's report illustrates that it was not a mere possibility but that Woodbury did present with an abnormal thought process.

With all the above in mind, Dr. Sesta's report provided ample evidence of an unstable mental state which was sufficient to question Woodbury's pro se competency, a competency evaluation was merited and a determination of competency was required prior to continued self-representation.

In addition to the correction of the legal analysis applied, Woodbury seeks the correction of the following overlooked or misperceived arguments and facts.

This Court' opined that Woodbury "cites no authority—and we are aware of none—where a bipolar disorder diagnosis, without more, established that a defendant suffered from severe mental illness to the point of being incompetent to conduct trial proceedings without assistance." *Woodbury*, 2021 WL 1418851 at *9.

As an initial matter, this Court has left out essential facts from its analysis. Woodbury did not simply have a bipolar diagnosis. Instead, he has a chronic and recent diagnosis of a major mental illness which has continued decades into his adulthood; he was prescribed psychotropic medication; and had a history of psychiatric hospitalizations. Also, the trial court was aware that there were thousands of pages of medical records detailing his lengthy history of psychiatric illness and that Dr. Sesta's report evidenced an unstable mental condition.

Given the lack of precedent on this issue, Woodbury cited *Visage v. State*, 664 So. 2d 1101 (Fla. 1st DCA 1995), a case which preceded the amendment to the rule in which the denial of self-

representation to a defendant with bipolar disorder was upheld. (Initial Brief p.46). Because it predated the rule, the higher standard for pro se competency was not applied and it employed only the competency to waive the right. Thus, if a similarly situated defendant could be denied self-representation under the lower standard it follows that Woodbury could be denied under the higher standard.

To conclude, if the appropriate procedural analysis, including all the essential facts, is applied it is clear that the trial court abused its discretion in not sufficiently inquiring into Woodbury's pro se competency prior to granting self-representation and, most importantly, the record is devoid of the required determination by the trial court that Woodbury did not suffer from a severe mental illness to the point of being incompetent to conduct the proceedings without counsel.

2. *This Court overlooked or misapprehended essential facts in its determination that there was not a reasonable ground to believe Woodbury was not mentally competent to stand trial (Point II)*

Woodbury seeks to clarify misperceptions of facts in relation to three comments made by this Court in its analysis and conclusion that the trial court did not have a reasonable ground to believe Woodbury was not mentally competent to stand trial.

First, this Court opined that: "At no time did the trial court, Woodbury's standby counsel, or the attorneys for the State express any concerns about Woodbury's competency." *Woodbury*, 2021 WL 1418851 at *6.

While this comment is accurate, this Court overlooks that the trial court specifically ordered standby counsel to "do nothing" and that the only obligation was to watch the trial and be prepared to step in if Woodbury asked for counsel's appointment. (T 1454-55). Thus, standby counsel's lack of action should not be factored into the analysis.

Likewise, this Court should omit from it analysis that "[t]he court went so far as to call Woodbury's behavior better than all other pro se defendants the court had seen, combined." *Woodbury*, 2021 WL 1418851 at *6. This comment is unpersuasive as it overlooks that the trial court, by its own admission, has only presided over "one or two other cases where somebody represented themselves and certainly not in such a serious case." (T 990-91; Initial Brief p. 31).

And lastly, this Court opines that Dr. Sesta's report "never suggested that Woodbury's behavior during the examination indicated an inability to understand the charges or consult with

counsel." *Woodbury*, 2021 WL 1418851 at *7. But this overlooks that Dr. Sesta did caution the court to consider Woodbury's "decompensated mental state" at the time of trial. As he was not ordered to conduct a competency assessment, he could not specifically give an opinion because that testing was not ordered by the court.

Dr. Sesta's cautioning to the trial court to consider the decompensated mental state, of a defendant with a major mental illness, at the time of trial is an essential fact as this comment alone would seem to provide a reasonable ground to question competency. But this fact is omitted from this Court's opinion. As stated in the preceding section, Woodbury's behavior alone was insufficient to dispel this reasonable ground.

If the above overlooked or misapprehended facts are properly considered, Woodbury's death sentence should be reversed and this case should be remanded for a new trial provided he is found competent to proceed.

CONCLUSION

In light of the clarifications in his arguments in the above stated issues, Woodbury respectfully requests this Honorable Court to

withdraw its opinion, grant a rehearing to re-examine its analysis of the issues of whether the trial court abused its discretion in granting Woodbury's request to proceed pro se and not ordering sua sponte a competency evaluation (Points I and II), and issue a new opinion reversing Woodbury's sentence of death and reversing for a new trial.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this motion has been furnished to Rhonda Giger, Assistant Attorney General, 1515 N. Flagler Dr., Suite 900, West Palm Beach, FL 33401 by e-service at CrimAppWPB@MyFloridaLegal.com; and electronically filed with this court on the 30th day of April, 2021.

Respectfully submitted,

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