

Supreme Court of Florida

No. SC21-7

IN RE: AMENDMENTS TO FLORIDA RULE OF CRIMINAL PROCEDURE 3.212.

August 26, 2021

PER CURIAM.

This matter is before the Court for consideration of proposed amendments to Florida Rule of Criminal Procedure 3.212. We have jurisdiction. *See* art. V, § 2(a), Fla. Const. The Florida Bar's Criminal Procedure Rules Committee (Committee) filed a report proposing amendments to rule 3.212 (Competence to Proceed: Hearing and Disposition). The Committee and the Court previously published the proposals for comment. The Committee received one comment but made no changes, and the Court received no comments.

We adopt the Committee's amendments with modification. Specifically, rule 3.212(d) (Release on Finding of Incompetence) is amended to specify that a criminal defendant who is not competent

to proceed and who cannot be restored to competency within the reasonably foreseeable future must be released from custody or the State must initiate civil commitment proceedings. The amendments are intended to comply with the United States Supreme Court's decision in *Jackson v. Indiana*, 406 U.S. 715 (1972), as applied by the Second District Court of Appeal in *Schofield v. Judd*, 268 So. 3d 890 (Fla. 2d DCA 2019).

Accordingly, we amend Florida Rule of Criminal Procedure 3.212 as reflected in the appendix to this opinion. New language is indicated by underscoring; deletions are indicated by struck-through type. The amendments to the rule shall become effective October 1, 2021, at 12:01 a.m.

It is so ordered.

CANADY, C.J., and POLSTON, LABARGA, LAWSON, MUÑIZ, COURIEL, and GROSSHANS, JJ., concur.

THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THESE AMENDMENTS.

Original Proceedings – Florida Rules of Criminal Procedure

Alan S. Apte, Chair, Orlando, Florida, Honorable Angela Cote Dempsey, Past Chair, Criminal Procedure Rules Committee, Tallahassee, Florida, Joshua E. Doyle, Executive Director, and Mikalla Andies Davis, Staff Liaison, The Florida Bar, Tallahassee, Florida,

for Petitioner

APPENDIX

RULE 3.212. COMPETENCE TO PROCEED: HEARING AND DISPOSITION

(a)-(c) [No Change]

(d) Release on Finding of Incompetence. If the court decides that a defendant is not mentally competent to proceed and there is a substantial probability that the defendant will gain competency to proceed in the foreseeable future, but does not meet the criteria for commitment, the defendant may be released on appropriate release conditions. The court may order that the defendant receive outpatient treatment at an appropriate local facility and that the defendant report for further evaluation at specified times during the release period as conditions of release. A report shall be filed with the court after each evaluation by the persons appointed by the court to make such evaluations, with copies to all parties. The procedure for determinations of the confidential status of reports is governed by Rule of General Practice and Judicial Administration 2.420. If a defendant is found to be mentally incompetent to proceed and there is no substantial probability that the defendant will gain competency to proceed in the foreseeable future, the defendant must be released, or the State must initiate civil commitment proceedings.

COMMITTEE NOTES

[No changes]