INTERNATIONAL SCIENTIFIC CONFERENCE:
"Modern tendencies of Criminal Law Science"
ARTICLE PRESENTED TO THE CONFERENCE

JUDICIAL CONSIDERATIONS WHEN ADDRESSING FORENSIC MENTAL HEALTH ISSUES

Mark Speiser
Federal Judge of Florida State (USA)

Generally speaking, mental health issues have been a societal dilemma that has been lingering for decades, but largely ignored. Most importantly and equally embarrassing, the State of Florida has ranked 49th-50th out of the 50 states in the United States in per capita mental health funding by our legislature.

Mental Illness is the predominant mental health issue in the United States. The very essence of mental illness is generally a very daunting problem that over the last two decades has evolved into a routine, reoccurring and challenging issue that criminal trial courts must address and focus upon with considerable detail and attention.

The failure of state legislatures to allocate sufficient financial resources to enable and empower agencies under the executive branch of government to treat and attend to the plight of this segment of our population has in large measure contributed to a dramatic increase in the number of untreated mentally challenged individuals becoming entangled in the web of the criminal justice system. One noteworthy judicial response to this phenomenon has been the creation and proliferation of a new era of specialty or problem solving courts known as mental health courts. They evolved and were formulated to mirror the approach of drug courts in dealing with individuals with unique untreated issues that were behavioral or addictive, but certainly not inherently criminal. The fundamental objective and mission of mental health courts is to identify, treat and reintegrate into society individuals, not necessarily predisposed to engage in criminal activity, whose largely ignored and unaddressed mental illnesses have evolved into severe psychotic conditions that lead them to commit relatively low grade type of criminal activity and finally jail.

This article will not be concentrating on the development, operation and successes of mental health courts in the United States but rather how the criminal justice system proceeds and processes mentally ill individuals who do not qualify for mental health court and arguably are incompetent to proceed to trial. The basic focus of this article is how to proceed with the disposition and resolution of felony criminal charges in Florida involving defendants asserting that their mental illness precludes them from proceeding to trial due to their incompetency.

Mental Health issues that surface in most criminal courtrooms generally fall into one of two categories: the defense of insanity which focuses on an accused's state of mind at the time a criminal act occurred, and incompetency to pro-

ceed based upon mental illness or intellectual disability. Although premised on a different theory, insanity is an affirmative defense to criminal charges as is self-defense and entrapment. The defense of insanity contemplates that a defendant's state of mind and mental health disability prevented him from knowing whether his conduct at the time the crime occurred was right or wrong. The defense of insanity requires the defendant to concede that (1) a crime occurred and (2) that the defendant committed the crime but due to his mental state he could not contemplate that his action was illegal. Since this defense is infrequently utilized, the issue of incompetency to proceed to trial will be the centerpiece of this article.

Incompetency to proceed to trial is generally premised upon either mental illness or intellectual disability. If successfully established by defense counsel, the defendant will be precluded from proceeding to trial on the pending criminal charges until and unless his competency is restored. The following six factors must be initially considered and weighed by the psychologist appointed to evaluate the defendant, and subsequently by the Court, in determining whether a defendant is competent to proceed.

1. Appreciate the legal charges,
2. Appreciate the possible criminal penalties for the offenses the Defendant is charged with,
3. Appreciate and understand the adversarial nature of the legal process
4. Disclose pertinent information to the criminal defense attorney
5. Manifest appropriate courtroom behavior and demeanor
6. Testify relevantly

Research, unfortunately, demonstrates that individuals with untreated mental illnesses are more likely to be arrested, receive a serious sentence, and engage in fights with other inmates, correction officers, or court personnel, or commit significantly more prison infractions. (1)

Chapter 916 of the Florida Statutes sets forth the relevant governing law applicable to forensic defendants, that is, individuals with pending criminal cases who assert they are mentally ill or intellectually disabled or who are relying on the defense of insanity. The pertinent Florida Rules of Criminal Procedure applicable to either incompetency proceedings or not guilty by reason of insanity are Rules 3.210-3.219. Chapter 916 cited as "The Forensic Client Services Act" was enacted by the Florida Legislature and the relevant Florida Rules of Criminal Procedure were adopted by the Florida Supreme Court to provide guidance in the implementation of Chapter 916.

In Florida two separate state agencies under the executive branch are responsible for training or treating forensic clients deemed to be incompetent to proceed. Agency for Person with Disabilities ("A.P.D.") trains those eligible persons who are judicially determined to be intellectually disabled, specifically, those individuals with significantly sub-average intelligence quotients ("IQ"), that is, a score below 70, coupled with deficits in adaptive behavior that manifest themselves before the age of 18 and can reasonably be expected to continue indefinitely. (2) As with the defense of insanity, since the number of cases involving defendants who are intellectually disabled are significantly fewer compared to cases with defendants who are incompetent due to mental illness, the court process involving this population will likewise not be the focus of that article.

The Department of Children and Family Services ("DCF") is statutorily mandated to treat those forensic clients determined to be either incompetent to proceed to trial due to mental illness or not guilty by reason of insanity. (3.) DCF operates four (4) secure forensic hospitals in Florida for individuals requiring forensic commitment. DCF also administers three (3) secure civil hospitals that provide long term mental health treatment for persons who do not have any pending criminal prosecution but are judicially determined to meet the criteria for a civil commitment under Section 394.467 due to their significant and persistent mental health issues. For this discussion, a defendant is deemed to be incompetent if during any material stage of a criminal prosecution, that individual by court order is determined to be

unable to proceed to trial due to the absence of the mental competence required and necessary for a just resolution of the issues to be considered. (4)

Generally speaking and especially in the context of a criminal case, it is essential to understand that not every mental disorder is diagnosed as a mental illness. For example, traumatic brain injury is a physical infliction, with neurological consequences, but it is not regarded as a psychological impairment. Likewise, not every person who is mentally ill is necessarily incompetent. Through the use of psychotropic medication regimens coupled with a variety of therapeutic treatment alternatives employed by psychiatrists, psychologists, community mental health centers and their case management staffs, a significant percentage of society's mental health population, both within and outside of the criminal justice systems are fortunately, very stable, well adjusted, functional and not psychotic despite their mental illness. (5)

In the majority of States in the United States, if a defendant is judicially determined to be incompetent to proceed on any felony charge due to mental illness, the only available course of treatment is at a state forensic hospital. Florida is one of the few states where a trial judge has several placement alternatives. If the defendant is determined not to be a danger to himself or others or at risk of self-neglect, or if the defendant is deemed dangerous or at risk of self-neglect but does not have a reasonable likelihood of being restored to competency while at the state forensic hospital, and there exist less restrictive community alternatives to address the needs of the defendant, then the trial court must order that defendant to be treated in the community, either in a residential or outpatient program, pursuant to a conditional release plan. (6) Notably however, although it is significantly less costly for the State of Florida to treat a defendant in a community based program compared to the financial outlay incurred to commit a defendant to the state forensic hospital, the rate of successful restoration to competency is much higher and more expedient. (7) On an annual basis nearly 75% of the defendants committed to a state forensic hospital are returned to court with a recommendation that they have been restored to competency compared to only 26% for those defendants treated in community based programs. In large measure this is attributable to a higher staffing ratio of hospital staff professionals assigned to treat a defendant, and a greater assurance that the defendant is actually taking the prescribed psychotropic medication either orally or by injection while confined in a forensic hospital setting. In reality the true difference maker in enhancing the likelihood of successful restoration to competency is the psychotropic medication. When a defendant is treated in the community, there is no assurance or verification process as to whether the prescribed medication regimen is being adhered to since normally no community professional is present to verify that the defendant is ingesting on a daily basis the medication provided to them by their psychiatrist or community mental health center.

The issue of whether a defendant is competent to proceed to trial can be raised at any material stage of the criminal process either by defense counsel, the prosecutor or by the Court on its own initiative. (8) In the overwhelming instances, a request to have the defendant evaluated for competency is initiated by defense counsel. The motion requesting a court ordered evaluation must be in writing, certified that it is made in good faith and set forth specific observations and conversations with the defendant that would support defense counsel's position. (9)

If there is a reasonable probability based upon defense counsel's motion that the defendant is incompetent, the trial Court must designate and appoint an expert(s), normally a licensed forensic psychologist to conduct an evaluation of the defendant's competency. (10) The trial court is obligated to compensate the evaluator from its judicial budget pursuant to Section 916.115(2). Both the evaluation(s) and the competency hearing must be completed within twenty (20) days from the date the appointment(s) is ordered. (11) The trial judge may select no more than three (3) experts as needed to conduct the evaluation. (12) All reports generated by court ordered evalua-

tors become public records. Both the prosecutor and defense counsel have the right to be present during any court ordered expert evaluation. (13) Defense counsel has the right to retain and pay for their own expert to conduct a confidential evaluation of their own client without prior court approval and such reports remain confidential unless and until defense counsel chooses to call as a witness at a competency hearing the author of such report.(14) In that circumstance, defense counsel's confidential expert's report must be provided to the prosecutor and court prior to that expert testifying. Under no circumstances may the prosecutor ever conduct a confidential competency evaluation of a defendant. (15)

Even if a defendant had previously been judicially determined to be incompetent and thereafter restored to competency, the trial court may have to frequently and repeatedly readdress the defendant's competency status if there is a purported downward spiral in the defendant's mental status. (16) This scenario frequently occurs and is attributable to fluctuations in a defendant's mental health status, which oftentimes is a by-product of noncompliance with the prescribed psychotropic medication regimen.

The United States Supreme Court together with the relevant Florida Statute and Rules of Criminal Procedure require that the six (6) components (previously identified in this article) of determining whether a defendant is competent must be addressed by every evaluator conducting a competency evaluation as well as every trial court judge in their analysis and determination of whether a defendant is competent to proceed to trial. (17)

A delay in compliance with the time parameter within which a competency hearing must be set and conducted can have consequences. For example, any evaluations conducted more than six (6) months prior to the competency hearing date are deemed to be stale and may not be considered by the Court. (18)

The primary objective of psychologists conducting competency evaluations is to assist the Court in determining if the accused has a mental illness, and if so, diagnose that illness and opine whether due to that condition, the defendant is incompetents to proceed. The evaluator's report must also address whether the defendant meets the requirements for commitment to a forensic hospital or if not, if there a suitable alternative for treatment in the community under a conditional release plan, and identify, the community resources and options that are available and appropriate. The final and equally important component the evaluator's report must address is the likelihood that the defendant will under the recommend treatment plan attain competency within the foreseeable future. (19)

No information contained in the evaluator's report or adduced from the evaluator's testimony during the competency hearing, obtained either from the defendant or other outside sources, (such as correction officers who might have daily contact with a defendant in custody, the medical provider in the jail or the accused's family members), may be used as evidence against the defendant at a subsequent trial in the event the defendant is determined to be competent by the Court. The only exception to this prohibition is if the defendant initiates the use of this information in any other proceedings for any other purpose. (20)

In most competency hearings, the evaluating psychologists are the sole witnesses. This however does not preclude the prosecutor and/or defense counsel from calling other witnesses who might aid the Court in reaching the right decision such as corrections officers in the jail, family members, probation officers, or the alleged victim of the crime. These individuals may very well be a position to offer equally compelling testimony from a lay perspective to support or refute the contention that the defendant is incompetent. Anyone with relevant and timely information as well as any material physical evidence can be subpoenaed by the State or defense counsel and utilized at the hearing. (21)

Once a defendant is judicially determined to be incompetent, certain circumstances may necessitate a judge to choose a third available option for treatment of an incompetent defendant other than commitment to a forensic hospital or

placement on a community based conditional release plan. For example as oftentimes occurs, the accused may not meet the requirement for a forensic commitment due to the unlikelihood that the defendant can be restored to competency, but due to the nature and seriousness of the defendant's pending charge or prior criminal background (such as murder or sexual battery), there may not be any available community placement options or resources willing to accept and treat the defendant. Under Rule 3.212(c)(2) of the Florida Rules of Criminal Procedure the judge is empowered to retain the defendant in the county jail and require that services such as competency restoration training, therapy, and psychotropic medication management be provided in the custodial facility. While in the local jail if the defendant psychologically decompensates to the point he becomes severely and persistently psychotic or places himself at risk of serious self-neglect, a statutory process is in place, assuming the defendant would still not meet the requirements for commitment to a forensic hospital, for the Court to initiate a civil commitment of the defendant to a civil hospital operated by DCF pursuant to Section 394.463 and 394.467.

If a defendant refuses to be evaluated for competency or thereby thwarts the process by preventing the psychologist from successfully completing an evaluation, the Court must nevertheless, proceed to a competency hearing even in the absence of such evidence and base its decision on its own observations of defendant's behavior, lay witnesses and/or review of any letters of handwritten pleadings filed by the defendant. Experts' reports are merely advisory. (22) If the defendant is not in custody and the Court determines the defendant is not likely to appear or has not appeared for a prior scheduled evaluation, the Court has the authority to order the defendant's into custody until a determination of the defendant's competency has been achieved. Rule 3.210(b)(3) Florida Rules of Criminal Procedure.

The level of proof required from the prosecutor to establish that a defendant is incompetent is by "clear and convincing evidence" (23) Once a Court determines a defendant to be competent or restored to competency, the Court shall enter an order confirming that fact. Numerous appellate decisions in Florida have set aside defendants' guilty pleas as well as jury guilty verdicts as a result of the failure of the trial judge to enter a written order finding the defendant competent prior to accepting a guilty plea or proceeding to trial. (24) This oversight and neglect by trial judges has unfortunately repeatedly occurred and must be avoided as it results in an incurrence of unnecessary judicial expenditures and court resources.

Once a defendant is determined by the Court to be incompetent, that defendant is presumed to remain incompetent until judicially adjudicated to be competent following a hearing or legally accepted stipulation to that effect and the entry of a written order. (25) This is critical!!

Oftentimes, commentators and prosecutors mistakenly conclude that a forensic hospital report indicating that a defendant has been restored to competency and is ready to be returned to court for prosecution means that the defendant is therefore legally competent! NOT TRUE!! An evaluator's report, whether court ordered, confidentially prepared by defense counsel's retained expert, or staff psychologist at a forensic hospital is, simply stated, merely that evaluator's opinion. Only following a competency hearing or a properly accepted stipulation finding the defendant competent and entry of an order determining the defendant to be competent will competency legally be deemed to have been determined.

It is essential to emphasize that a judge must exercise precaution when the court accepts a stipulation in lieu of conducting a hearing to determine a defendant's competency. There must be a clear record of specific detailed findings that a factual basis exists for the Court to accept that stipulation. In Daugherty V. State, 96 So. 3d 984 (5th DCA 2012) defense counsel indicated to the Court that"his client was ready to proceed to trial", after his client was returned from the state forensic hospital to the county jail, based upon the hospital's written report that the defendant was now competent, and further confirmed by

two court ordered psychologists who evaluated the defendant upon his return to the jail. Following defense counsel's statement, the trial judge stated". very good, schedule the case on the trial docket." Following trial and the defendant's conviction, he appealed, claiming he did not receive a proper and adequate competency hearing and no written order adjudicating competency was ever entered. The requirement of the court to enter a written order mandated by Rule 3.212(b) of the Florida Rules of Criminal Procedures has been addressed. The focus of this appellate decision is its mandate that a full, adequate and complete competency hearing must be conducted by the trial judge. From a judicial perspective, a stipulated agreement to the defendant's competency is a preferred resolution than a competency hearing which can be protracted and time consuming. Nevertheless the Daugherty decision and a legion of subsequent cases upholding that decision established the framework within which stipulations to competency would be legally acceptable and likewise assure that a defendant's constitutional rights were protected. (26) At the outset a defendant can never himself stipulate to his own competency nor can this ever serve as a basis for finding the defendant competent. Additionally, a defendant can never waive his right to a competency hearing especially if at the time of the purported stipulation the defendant had already been declared incompetent. Furthermore, despite the prosecutor and defense counsel stipulating to the defendant's competency, without an independent detailed court finding of competency such a stipulation will be viewed by an appellate court as a legal nullity. Essentially, it is imperative and necessary that the trial judge read into the court record the relevant parts of the competency reports that substantiate the evaluator's opinion that the defendant is competent.

DCF, as the administrator of the four (4) forensic hospitals to which incompetent defendants may be committed, has standing to appeal a commitment order, if in its opinion, it was improperly entered. For example, in DCF v. Bronson and State (27), DCF successfully convinced the appellate court to set aside the trial judge's commitment order since the defendant's incompetence was due to chronic brain injury which Section 916.106(13) contemplates is excluded from the definition of mental illness.

Horton v. State (28) addressed Section 916.13(1)(c) and Rule 3.212(c)(3)(B) of the Florida Rules of Criminal Procedure which both require the trial court to specify in its commitment order that based upon the expert's reports that there is a substantial probability that the mental illness causing the defendant's incompetence will respond to treatment and the defendant will regain competency in the reasonably foreseeable future. In this case two (2) experts testified defendant would unlikely be restored and the third expert testified the defendant "might" be restored. The appellate court reversed the trial court, holding that a finding by one psychologist that a defendant "might" be restored to competency fails to satisfy the Section 916.13(1)(c)"clear and convincing standard" that there be a substantial probability defendant will regain competency.

In Graham v. Jenne (29) the trial court committed a "death mute" defendant to a forensic hospital. DCF successfully convinced the appellate court to revise this order since none of the evaluators testified the defendant was mentally ill, dangerous or had a potential to be restored to competency. Essentially, the trial judge committed the defendant to DCF out of frustration, due to his inability to identify an available suitable community program that could meet the relatively unique needs of this defendant. The appellate decision chastised the trial judge indicating there is no statutory authority to utilize forensic hospitals as an escape valve or a dumping ground for persons who clearly do not meet all the criteria that are a prerequisite for forensic commitment. Neither deafness nor an inability to verbally communicate has ever been diagnosed as a mental illness.

In DCF v Ramos and State (30) the appellate court sent an unambiguous message to trial judges that forensic hospitals were never created to warehouse defendants whose only issue is the uniqueness of their non-mental health

issues. None of the court appointed evaluators utilized in Ramos concluded the defendant was incompetent due to mental illness; on the contrary they only identified educational deficiencies. Without any legal basis, the trial judge nevertheless committed the defendant to DCF for "restoration training". The appellate court in its reversal of the lower court held that the trial judge departed from the essential requirement of Section 916.13(1)(a).

Until July 1, 2016, Section 916.145 and Rule 3.213(a)(1) provided that after the passage of five (5) years from the date a written order was entered determining a defendant charged with a felony to be incompetent due to mental illness, if the defendant continues to remain incompetent and there is no substantial likelihood the defendant will become mentally competent to stand trial in the foreseeable future, the court shall dismiss the charges without prejudice to the State to refile the charges should the defendant be declared competent to proceed in the future.(31) The only basis for a court to deny a motion to dismiss is if it can provide an evidentiary basis to support its opinion that the defendant will become competent in the foreseeable future and the time frame within which this will occur. To be eligible for a dismissal of the charges under Section 916.145, defense counsel must demonstrate the defendant has been incompetent for five (5) continuous uninterrupted years. (32)

Effective July 1, 2016, Section 916.145 was amended to rectify the disparity between the existing statute that requires a non-restorable incompetent defendant to be under court supervision for five years and numerous reported commentaries from highly reputable, nationally known psychologists that if restoration to competency can be attained, it will normally occur within a period not to exceed eighteen (18) months from the date of determination of incompetency. Thus, the revised version of Section 916.145 authorizes the dismissal without prejudice to refile the charges of any non-violent felony if a defendant has not been restored to competency for a period of three (3) continuous, uninterrupted years from the date of the order determining incompetency. The five (5) year period before charges can be dismissed remains in effect for all defendants charged with a violent felony.

Over the last several decades mental health issues have evolved into a prominent feature of the criminal justice process both in Florida and throughout the United States. The number of individuals with untreated, significant and severe mental illnesses that are arrested and thereby become a statistic in the criminal justice system is on the rise. This is a product of a community mental health system that is fragmented, underfunded and operating with significantly dwindling budgets.

Trial court judges have in effect become first responders, charged with the responsibility of establishing diversion programs, such as mental health courts, where therapeutic jurisprudence in tandem with available community providers with their limited resources, can address the needs of mentally ill defendants, not otherwise predisposed to commit crimes, who lack an extensive criminal history, and are charged with nonviolent felonies. In most instances this segment of the mentally ill population unfortunately get arrested because they are not being provided with psychotropic medication and community treatment services.

The remaining larger group of mentally ill defendants ineligible for diversion from prosecution through a mental health court or an alternative structured program has been the focal point of this article. Trial court judges must be keenly aware of the Florida Statutes, Florida Rules of Criminal Procedure and Florida Appellate decisions relevant to issues of mental health, competency and placement. Equally compelling is the necessity that trial courts must recognize those defendants seeking to fraudulently and intentionally abuse the established competency procedure by feigning and malingering a nonexistent mental illness or exaggerating the extent of an existing mental illness when they are otherwise competent to proceed, in order to avoid having to stand in front of the alter of justice.

The entire process of identifying whether a defendant is mentally ill, determining whether

due to the mental illness the defendant is incompetent, undertaking steps necessary to restore the defendant to competency in the community or at a forensic hospital, and conducting a hearing or entering an order on a stipulated factually based agreement if appropriate, that the defendant has been restored to competency must be correctly complied with to assure defendants that their constitutional rights are adhered to and not compromised. Trial courts are charged with this very meaningful and immense responsibility. Their failure to effectuate their legal responsibilities would be construed as an abdication of their official duties as the arbiter of the law.

FOOTNOTES:

1. Massaro, J. (2004)"Working with people with mental illness involved in the criminal justice system: what mental health service providers need to know" (2nd Ed.), Delmar, N.Y.; technical assistance and policy center for jail diversions, p.3
2. 916.106(1),(15); 393.063(32)
3. 916.106(7). DCF is only responsible for handling defendants incompetent to proceed due to mental illness who are committed to DCF by a Circuit Court Judge pursuant to section 916.13(13) either because they are a danger to themselves or others or at risk of self-neglect. A forensic commitment to DCF also requires the trial judge to determine that all available less restrictive community treatment alternatives are unsuitable and that there is a substantial probability that the defendant will regain competency while at the forensic hospital in the reasonably foreseeable future. DCF is also responsible for treating pursuant to Section 916.15(2) any felony defendants found not guilty by reason of insanity who are unsuitable for treatment in the community due to their dangerousness or self-neglect issues. The number of not guilty by reason of insanity cases pale by comparison to the number of cases where defendants assert they are incompetent to proceed due to mental illness and therefore were not the subject of this article. Unlike defendants committed to DCF who are incompetent due to mental illness, defendants who are found not guilty by reason of insanity and committed to DCF can be held at the forensic hospital potentially forever or until a judge determines they would no longer pose a danger to the community if they were released back into society. In contrast incompetent defendants who are committed to DCF due to mental illness are entitled to be released and have their charges dismissed without prejudice after three (3) or five (5) years depending upon whether their crime is violent or nonviolent.
4. 916.106(11)
5. A prominent concern in the criminal justice system is a trend especially, among incarcerated inmates to feign symptoms or exaggerate the extent of their mental illness hoping that by doing so, they will be judicially determined to be incompetent, and thereby avoid trial and possibly be released into the community on a conditional release plan when they otherwise might not be released from custody. This"malingering syndrome" diagnosed by experienced evaluators more frequently occurs in evaluations of defendants charged with violent crimes and offenders who are habitual offenders facing significant periods of incarceration if deemed competent and subsequently convicted.

6. 916.17 and Rule 3.212(d). Florida Rules of Criminal Procedure
7. Simply stated, the higher quality of skilled and resourceful personnel staffing forensic hospitals, the lower ratio of treatment professionals to committed incompetent defendants, and the greater certainty that these defendants are actually taking their prescribed psychotropic mediation while a hospital resident are the factors contributing to this result.
8. Rule 3.210(a)(1),b(2) Florida Rules of Criminal Procedure; see Rodriguez V. State, 112 So. 3d 618 (3rd DCA, 2013):
   Court has affirmative duty, independent of counsel, to patrol for and identify any signs of a defendant's potential incompetency. Failure to act accordingly or hold a competency hearing will result in a reversal in any subsequent guilty plea or conviction. See also: Bracero V. State, 10 So. 3d 666 (2nd DCA, 2009)
9. Rule 3.210(b)(1)(2), Florida Rules of Criminal Procedure
10. 916.115(1)(a),(b)
11. Rule 3.210(b), Florida Rules of Criminal Procedure; Lee V. State, 145 So. 3d 953 (5th DCA, 2014)
12. 916.115(1); Tita V. State, 42 So. 3d 838 (4th DCA, 2010), Ross V. State, 386 So. 2d 1191(FLA.1980)
13. Sanfeliz V. State, 58 So. 3d 960 (5th DCA, 2011) However, state has no right to be present at a confidential evaluation conducted by expert retained by defense counsel
14. State V. Rogers, 955 So. 2d 1213 (4th DCA, 2007)
15. State V. Zapetis 629 So. 2d 861 (4th DCA, 1993)
16. Aviles Rosario V. State, 152 So. 3d 851 (4th DCA, 2014)
17. Dusky V. United States, 362 U.S. 402 (1960); 916.12(3); Rule 3.211(2) Florida Rules of Criminal Procedures
18. Washington V. State, 162 So. 3d 284 (4th DCA, 2015)
19. 916.12(4)(d);Rule 3.211(b)(4). As previously indicated there must be a strong likelihood that defendant is restorable to competency before a court can commit defendant to a forensic hospital. An evaluator's opinion that defendant"might" be restored fails to satisfy the statutory requirement. Horton v. Judd, 80 So. 3d 439 (2nd DCA, 2012), DCF v. State and C.Z., 40 FLA.L Weekly D2105, (3rd DCA, 2015)
20. Rule 3.211(d)(1)(2) Florida Rules of Criminal Procedure; Caraballo V. State, 39 So. 3d 1234 (FLA. 2010)
21. Rule 3.212(a) Florida Rules of Criminal Procedure
    Once an incompetency order is entered, no trial or violation of probation hearing can be conducted until and unless defendant is restored to competency. Rule 3.210(a) Florida Rules of Criminal Procedure.
    Furthermore a defendant's constitutional and statutory right to a speedy trial is tolled once a defendant is adjudicated incompetent.
22. Muhammad V. State, 494 So. 2d 969, 973 (FLA.1966); Sampson V. State, 83 So. 3d 209 (2nd DCA, 2011)
23. 916.13(1)
24. Rule 3.212(b), Florida Rules of Criminal Procedure;
    Mason V. State 71 So. 3d 229 (1st DCA, 2011)
    Ortiz V. State, 55 So. 3d 724 (5th DCA, 2011)
    Childs V. State, 44 So. 3d 216 (2nd DCA, 2010)
    Blackmon V. State, 23 So. 3d 1239 (4th DCA, 2009)
    Flowers V. State, 143 So. 3d 459 (1st DCA, 2014)
    Carroll V. State, 157 So. 3d 385 (2nd DCA, 2015)
    Ross V. State, 155 So. 3d 1259 (1st DCA, 2015)

25. Macaluso V. State 12 So. 3d 914 (4th DCA, 2009)
26. Williams V. State, 169 So.3d 221 (2nd DCA, 2015)
    Hunter V. State, 174 So. 3d 1011 (1st DCA, 2015)
    Belizaire V. State 188 So. 3D 933 (1st DCA, 2016)
    Lewis V. State, 190 So. 3d 208 (1st. DCA, 2016)
    Zern V. State, 191 So. 3d 962 (1st DCA, 2016)
    Blaxton V. State, 188 So. 3d 48 (1st DCA, 2016)
    Shakes V. State, 185 So. 3d 679 (1st DCA, 2016)
    Presley V. State, No. 4D15-683, 2016 WL 3534068, at *1(4th DCA, June 29, 2016)
    Bylock V. State, 196 So. 3d 513 (2nd DCA, 2016)
27. 79 So. 3d 199 (5th DCA, 2012)
28. 80 So. 3d 439 (2nd DCA, 2012); See also A.E. V. State, 83 So. 3d 1000 (3rd DCA, 2012) decided on identical fact pattern where court reached same result
29. 837 So. 2d 554 (4th DCA, 2003)
30. 82 So. 3d 1121 (2nd DCA, 2012); See also DCF v. Davis and State, 114 So. 3d 983 (5th DCA, 2012) In the Davis case DCF successfully challenged a forensic commitment order since none of the court evaluators' reports indicated defendant had a mental illness nor any psychosis, but merely a diagnosis of"age-immaturity" and"information deficits". These are antisocial issues, not mental health issues. The definition of mental illness contained in 916.106(13) specifically excludes these type of disabilities.
31. If a defendant is incompetent due to an intellectual disability, Section 916.303(1) and Rule 3.213(a)(2) of the Florida Rules of Criminal Procedure allow the dismissal of a pending felony charge without prejudice by the trial judge within a reasonable time after determination of incompetency, but not to exceed a period of two years from the date the incompetency order was entered. A defendant incompetent due to intellectual disability is entitled to a dismissal merely by the filing of a motion and entry of an order by the court. To dismiss a charge pending against an incompetent mentally ill defendant a motion and a hearing before the court is required.
32. Downing v. State, 617 So. 2d 864 (1st DCA, 1993)
    Clark V. State, 455 So. 2d 1112 (3rd DCA, 1984)