

>> ALL RISE.
HEAR YE, HEAR YE, HEAR YE, THE
SUPREME COURT OF FLORIDA IS
NOW IN SESSION.
ALL WHO HAVE CAUSE TO PLEA,
DRAW NEAR, PETITION.
YOU SHALL BE HEARD.
GOD SAVE THESE UNITED STATES,
THE GREAT STATE OF FLORIDA,
THIS HONORABLE COURT.
>> THE SUPREME COURT OF
FLORIDA.
PLEASE BE SEATED.
>> WELCOME TO THE FLORIDA
SUPREME COURT.
THE FIRST CASE FOR THE DAY IS
HUGGINS VERSUS STATE OF
FLORIDA.
YOU MAY PROCEED.
>> THANK YOU, YOUR HONOR.
MAY IT PLEASE THE COURT, I'M
DAVID GEMMER REPRESENTING JOHN
HUGGINS IN THIS APPEAL FROM A
POSTCONVICTION EVIDENTIARY
HEARING.
MR. †HUGGINS WAS FOUND
INCOMPETENT THREE MONTHS AFTER
HE FILED THIS 3.851 MOTION IN
2006 AND HE REMAINED
INCOMPETENT PURSUANT TO THE
UNANIMOUS OPINION OF THE THREE
EXPERT PANEL APPOINTED BY THE
COURT UNTIL A HEARING IN
OCTOBER†OF 2009, WHERE HE WAS
FOUND COMPETENT ON THE WORD OF
A SINGLE PSYCHOLOGIST FROM THE
FLORIDA STATE HOSPITAL WITHOUT
CONSULTATION FROM THE TWO
SURVIVING EXPERTS.
>> SO IS THERE A IS THERE A
PROCEDURE THAT SHOULD BE
FOLLOWED STATUTORILY OR
OTHERWISE WHEN ONE IS FOUND
INCOMPETENT AND BEFORE THEY
CAN BE FOUND COMPETENT AGAIN?
DO YOU HAVE TO DO DOES THE
COURT HAVE TO APPOINT OTHER
EXPERTS TO LOOK AT HIM AND
HAVE A HEARING?
WHAT SHOULD HAPPEN?

>> IT'S LAID OUT FAIRLY WELL IN 3.851G OF THE RULE, WHERE IT SAYS MENTALLY INCOMPETENT DEFENDANTS SHALL NOT BE PROCEEDED AGAINST IF THERE ARE FACTUAL MATTERS AT ISSUE, THE DEVELOPMENT OF RESOLUTION OF WHICH REQUIRE THE PRISONER'S INPUT.

JUDICIAL DETERMINATION OF THE INCOMPETENCY IS REQUIRED IF THE COURT FINDS THAT THERE ARE REASONABLE GROUNDS TO BELIEVE THAT A DEATH SENTENCE PRISONER IS INCOMPETENT TO PROCEED.

>> I GUESS WHAT I'M ASKING YOU IS DID THE COURT HAVE TO DO FIND HIM INCOMPETENT IN A CERTAIN WAY?

WERE THERE A CERTAIN NUMBER OF EXPERTS THAT HAD TO BE APPOINTED OR WAS IT FINE THAT HE LISTENED TO THE TESTIMONY OF ONE EXPERT?

>> WELL, YOU KNOW, WE'RE MAINTAINING THAT IT WAS NOT FINE.

>> BUT DO YOU HAVE ANY STATUTORY OR RULE AUTHORITY THAT SAYS THAT HE HAD TO DO IT A DIFFERENT WAY?

>> IN PART I GUESS WE COULD RELY ON THE FACT THAT IF HE FINDS A REASONABLE GROUNDS TO BELIEVE HE'S INCOMPETENT, THAT HE'S SUPPOSED TO APPOINT A PANEL OF NO FEWER THAN TWO NO MORE THAN THREE EXPERTS.

>> IF HE'S FOUND INCOMPETENT.

>> PLUS HIS OWN PRACTICE THROUGHOUT THAT THREEYEAR PERIOD WAS EVERY TIME ADCF EXPERT RECORDED HE WAS COMPETENT, THE JUDGE ORDERED REEXAMINATION BY HIS PANEL. WE MOVE THAT THAT REEXAMINATION OCCUR ONCE AGAIN AND ALSO TO GET ACCESS TO THE STATE HOSPITAL RECORDS.

>> LET ME ASK YOU THIS ON THAT

POINT.

WHEN I'M READING THE RECORD,
ON SEPTEMBER 18, DCF ALERTED
THE COURT THAT THEY FELT THAT
HE WAS NOT COMPETENT.

>> YES.

>> NOW, YOUR CLIENT ON THE 9TH
OF OCTOBER, 2009, FILED AN
EMERGENCY MOTION FOR
COMPETENCY EVALUATION.

>> YES.

>> NOW, THIS IS WHERE IT GETS
A LITTLE CONFUSING FOR ME.
WHAT DID THE COURT DO IN
RELATION?

WAS THERE AN EVIDENTIARY
HEARING BASED ON THAT MOTION?
OR WAS THERE AN EVIDENTIARY
HEARING ON THE TOTAL ISSUE OF
COMPETENCY?

>> THAT MOTION FOR EMERGENCY
REEXAMINATION WAS TAKEN UP AT
THE BEGINNING OF THE
COMPETENCY HEARING ON OCTOBER
15.

>> AND IT WAS DENIED.

>> IT WAS DENIED AND
IMMEDIATELY WENT INTO THE

>> SO I THINK AND JUST
GOING ON WHAT JUSTICE QUINCE
WAS TALKING ABOUT, MY
UNDERSTANDING IS IF SOMEONE IS
DECLARED TO BE INCOMPETENT,
PERSON REMAINS INCOMPETENT
UNTIL THERE'S A JUDICIAL
FINDING THAT THE PERSON'S
COMPETENT AGAIN TO PROCEED.
AM I CORRECT?

>> YES.

>> AND WHAT I'M SEEING HERE IS
APPARENTLY THERE WAS A
COMPETENCY HEARING AND THIS IS
WHERE MY WHERE I'M
CONFUSED.

IN THIS COMPETENCY HEARING,
APPARENTLY THE JUDGE MADE A
DECISION ON THE QUESTION OF
THE POSTCONVICTION ISSUES
BEFORE HE RENDERED A DECISION
ON THE QUESTION OF COMPETENCY.

AM I CORRECT?

THAT'S WHERE I'M A LITTLE
CONFUSED.

>> WHAT DO YOU MEAN HE MADE A
DECISION ON THE POSTCONVICTION
ISSUE?

>> WHAT I'M READING IN MY
NOTES, APPARENTLY THERE WAS AN
EVIDENTIARY HEARING AND
SOMEWHERE ALONG THE LINE YOUR
CLIENT REFUSED TO PARTICIPATE
IN THE EVALUATIONS, AND THE
JUDGE WENT AHEAD AND PROCEEDED
WITH THE ISSUES INVOLVING THE
CLAIMS.

AM I CONFUSED?

AM I INCORRECT?

>> THAT HAPPENED AFTER THE
2009 FINDING OF COMPETENCY.
AND WE ATTACHED THAT IN AN
APPEAL THAT WE BROUGHT UP TO
THIS COURT, WHICH WAS
DISMISSED AS PREMATURE.

AND WE BELIEVE THERE WAS NO
COMPETENT, SUBSTANTIAL
EVIDENCE TO SUPPORT THE 2009
FINDING OF COMPETENCY.

BASED IN LARGE PART BECAUSE
THE FLORIDA STATE HOSPITAL
DOCTOR SAID THAT HE BASED HIS
FINDING OF COMPETENCY BY
DISCOUNTING THE LEVEL OF
MENTAL ILLNESS BASED ON
MALINGERING.

BUT MALINGERING WAS THE
TEST WAS THE GOLD STANDARD FOR
DETERMINING MALINGERING AND
HIS SUPERIORS TOLD HIM NOT TO
ADMINISTER THAT.

>> MAYBE YOU CAN CLEAR UP MY
CONFUSION BY ANSWERING THIS
QUESTION.

>> YES.

>> WAS A DETERMINATION MADE ON
THE MERITS OF THIS ISSUE
BEFORE US BY THE TRIAL COURT,
THAT ANYTIME WHILE YOUR CLIENT
WAS DEEMED TO BE INCOMPETENT?
A JUDICIAL FINDING HAS NOT
BEEN MADE YET THAT HE WAS

COMPETENT.

>> NOT AFTER THE JULY, 2010 HEARING.

AT THE JULY, 2010 HEARING THE JUDGE FOUND THERE WERE REASONABLE GROUNDS TO BELIEVE A DEATH PRISONER WAS INCOMPETENT TO PROCEED AND HE ORDERED AN EVALUATION AND OUTLINED ALL THE SUB G CRITERIA THAT THEY WERE TO ADDRESS.

>> I GUESS CAN YOU JUST GO BACK TO I'M STILL NOT SURE YOU ANSWERED JUSTICE QUINCE'S QUESTION WHICH WAS WHEN BEFORE THE EVIDENTIARY HEARING, WHEN THE JUDGE MADE THE DECISION THAT HE WAS COMPETENT AND YOU COMPLAIN ABOUT NOT HAVING THE ALL THE RECORDS YOU NEEDED IN ORDER TO YOU KNOW, SO THERE WAS THAT OTHER ISSUE AS TO WHETHER YOU HAD WHAT YOU NEEDED TO BE ABLE TO PROPERLY EXAMINE THE ONE EXPERT. BUT DOES THE RULE REQUIRE THE SAME THE SAME PROCEDURES FOR FINDING SOMEONE WHO'S BEEN DECLARED INCOMPETENT TO BE COMPETENT AS WHEN A DETERMINATION IS BEING MADE THE OTHER WAY, THAT THEY'RE COMPETENT, BUT NOW SOMEONE IS SAYING THEY'RE INCOMPETENT AND THAT'S WHEN THE EXPERTS GET APPOINTED.

DOES THE RULE SPEAK TO THE PROCEDURES FOR GOING FROM HE'S INCOMPETENT TO A JUDGE DECLARING THAT HE IS NOW COMPETENT?

BECAUSE YOU'RE SAYING IT WAS HE ERRED IN RELYING ON JUST ONE EXPERT, BUT THIS IS THE GUY THAT HAS OBSERVED HIM FOR A MONTH.

SO WHAT IS THE WHAT DO YOU SAY ABOUT THAT PROCEDURE?

IS IT IN VIOLATION OF THE RULES?
OR DO THE RULES JUST NOT SPEAK TO THAT CIRCUMSTANCE?
>> WELL, THE STANDARD IS COMPETENT, SUBSTANTIAL EVIDENCE TO SUPPORT FINDING COMPETENCY.
>> SO YOU'RE SAYING THE RULE DOESN'T APPLY GOING FROM INCOMPETENT TO COMPETENT.
>> THERE IS NO RULE THAT SAYS YOU HAVE TO APPOINT THREE EXPERTS TO DETERMINE IF HE'S COMPETENT, CORRECT?
>> I BELIEVE SO.
>> WE'VE BEEN TRYING TO GET THIS OUT OF YOU FOR OKAY.
>> UNDER
[G]
THERE IS NO PROVISION.
THE JUDGE ESTABLISHED A PATTERN OF EVERY TIME ORDERING A REEVALUATION.
>> THAT'S DIFFERENT.
ARE YOU RAISING AS A SEPARATE ISSUE THAT YOU WERE PREJUDICED BECAUSE YOU COULDN'T YOU DIDN'T HAVE ACCESS TO ALL THE RECORDS AT THE TIME THAT THE DECISION WAS MADE THAT HE WAS DECLARED COMPETENT?
>> YES.
WE WERE PREJUDICED BY A LACK OF RECORDS, ESPECIALLY THE RESULTS OF THE ONE PSYCHOLOGICAL TEST THAT DR. KAPENSKI ADMINISTERED, WHICH WAS NOT DESIGNED TO FIND MALINGERING.
AND OUR EXPERT IN JULY†OF THE NEXT YEAR TESTIFIED
>> BUT IF WE REVIEW WHAT HAPPENED AFTER THE EVIDENTIARY HEARING, LET'S JUST SAY THE JUDGE SHOULD HAVE ORDERED THE COMPETENCY ONCE YOU MADE A RENEWED MOTION THAT HE WAS NOT COMPETENT AND SHOULD HAVE DONE THAT HEARING BEFORE THE

EVIDENTIARY HEARING, BUT YOU LOOK AT WHAT HAPPENED AT THE EVIDENTIARY AFTER THE EVIDENTIARY HEARING CLOSE IN TIME.

HE FINDS HIM THAT HE IS STILL COMPETENT.

ISN'T ANY PROCEDURAL PROBLEM WITH WHEN THE HEARING WAS HELD CURED BY IT BEING HELD CLOSE IN TIME TO THE EVIDENTIARY HEARING?

>> AFTER THE EVIDENTIARY HEARING IN AUGUST†OF 2010, THERE HAS NEVER BEEN A COMPETENCY HEARING.

THE JUDGE THE REPORTS FROM THE TWO COURT PANEL EXPERTS WHO WERE APPOINTED IN JULY†DID NOT ARRIVE, WERE NOT FILED WITH THE COURT UNTIL AFTER THE EVIDENTIARY HEARING IN AUGUST. AND THOSE WERE AVAILABLE

>> BUT DOESN'T AT THAT TIME YOU HAVE A JUDGE WHO'S OBSERVED THIS DEFENDANT THROUGHOUT, HAS BEEN HAS DECLARED HIM INCOMPETENT TO PROCEED, THEN OBSERVES HIM AND HIS Demeanor DURING THE EVIDENTIARY HEARING, THAT THERE IS AND I'M STILL NOT I THOUGHT THAT HE DID THEN REAPPOINT THREE EXPERTS WHO EXAMINED HIM.

THAT DIDN'T HAPPEN?

>> NO.

THE OUTRAGE HERE IS THAT IN JULY† HE APPOINTED TWO EXPERTS.

HE REFUSED TO ADD OUR EXPERT TO THE PANEL TO REPLACE THE DECREASED DOCTOR.

HE ORDERED THEM TO EVALUATE AND TO REPORT THE WEEK AFTER THE HEARING.

AND SO HE SET UP A SITUATION WHERE WE WENT INTO THAT HEARING WITH AN OPEN QUESTION OF WHETHER HE WAS INCOMPETENT.

WE HAD A GOOD FAITH BELIEF HE WAS INCOMPETENT.

THE COURT HAD LEFT THAT UNRESOLVED DELIBERATELY SO BY SETTING THE DEADLINES FOR REPORTS UNTIL AFTERWARDS. IN FACT, THE REPORTS THAT CAME IN, DR. †MCCLAIREEN FOUND HIM INCOMPETENT, UNABLE TO COOPERATE WITH COUNSEL.

DR. †DANSINGER WROTE IN HIS REPORT THAT BECAUSE OF THE CONFLICT BETWEEN A FINDING OF NO MALINGERING OF OUR EXPERT BASED ON THE GOLD STANDARD FOR MALINGERING VERSUS DR. KAPENSKI'S DETERMINATION BASED ON A FEW INTERVIEWS WITH OUR CLIENTS OVER LESS THAN A MONTH PERIOD IN 2009, THAT HE WAS UNABLE TO DECIDE WHICH WAS PROPER, WHICH RESULT WAS CORRECT.

AND SO HE COULD NOT OPINE AT THAT POINT ON THE PRESENT COMPETENCE OF OUR CLIENT. HOWEVER, HE DID NOT WITHDRAW HIS PRIOR FINDINGS OF INCOMPETENCE OVER THE PRIOR THREE YEARS.

AND OUR EXPERT, OF COURSE, WAS CONTINUOUSLY MAINTAINING THAT HE WAS INCOMPETENT.

AND DR. †KAPESKI ONE MONTH AFTER THIS HEARING

>> JUST ONE OTHER QUESTION ABOUT THE PROCEDURAL HISTORY. WAS THERE SOME ASSERTION THAT YOU MADE THAT THE TRIAL JUDGE TOOK OUR DISMISSAL OF THE APPEAL OF THE NONFINAL ORDER AS BEING A DECISION ON THE MERITS?

>> YES.

HE STATED THAT DURING THE HEARING.

I CITE THE CITATION TO THE POINT IN THE HEARING IS IN THE BRIEF, WHICH IS TOTALLY INCORRECT BECAUSE IT WAS

DISMISSED AS PREMATURE WITHOUT PREJUDICE SO THERE WAS NO RES JUDICATA AS TO THE LEGITIMACY OF THE 2009 FINDING OF COMPETENCE.

THE POINT IS WAS HE PRESENTLY COMPETENT IN AUGUST OF 2010.

>> AUGUST† WAIT A MINUTE. THE HEARING, THE EVIDENTIARY HEARING, TOOK PLACE TOOK PLACE IN JULY?

>> IT TOOK PLACE IN AUGUST†OF 2010.

>> OKAY.

HE GOT OUT OF THERE WAS SOME KIND OF COMPETENCY DETERMINATION BEFORE AUGUST, WASN'T THERE?

>> ONE YEAR BEFORE.

>> IT WAS BASED ON ONE EXPERT. IT WAS DONE BEFORE THE AUGUST EVIDENTIARY HEARING.

>> CORRECT.

>> OKAY.

AND THEN AFTER THE AUGUST EVIDENTIARY HEARING, THERE WAS ANOTHER COMPETENCY DETERMINATION.

>> ABSOLUTELY NOT.

NEVER.

>> BUT I THOUGHT THAT WAS A PART OF THE WHOLE ISSUE HERE, WAS THAT THERE WAS A COMPETENCY DETERMINATION AFTER THE HEARING AND YOU CONTEND THAT THAT HEARING SHOULD HAVE TAKEN PLACE BEFORE THE

>> NO.

THERE'S NEVER BEEN A COMPETENCY HEARING AFTER THE JULY†ORDER FINDING A REASONABLE GROUND TO BELIEVE THAT HE WAS INCOMPETENT AND REQUIRING EMPLOYMENT AND REPORTS OF THE EXPERTS. THERE WAS AN ATTEMPT I BELIEVE EARLY THE FOLLOWING YEAR, AFTER THE NOTICE OF APPEAL HAD BEEN FILED WITH THIS COURT

PURSUANT TO THE DEADLINES, THE JUDGE ISSUED AN ORDER VERY QUICKLY AND WE WERE REQUIRED TO APPEAL.

AND WHEN THE JUDGE TRIED TO SET THAT HEARING, WE ADVISED THE COURT THAT JURISDICTION HAD BEEN LOST AT THAT POINT AND THE STATE AGREED WITH THAT POSITION.

>> ANOTHER AN ANCILLARY OR MAYBE IMPORTANT QUESTION IS THE JUDGE MADE A DETERMINATION THAT, AS YOU ASSERTED, THAT MR.†HUGGINS WASN'T ABLE TO CONSULT WITH YOU IN A MEANINGFUL WAY.

HE MADE A DETERMINATION AS TO THE ISSUES THAT WERE RAISED THAT, WELL, FIRST OF ALL, THAT HE HAD SWORN TO THE ALLEGATIONS IN THE MOTION, SO HE HAD ADOPTED THEM, AND THAT THE ISSUES RAISED DID NOT REQUIRE THE SAME LEVEL OF I GUESS CONSULTATION BECAUSE OF WHAT WAS RAISED.

NOW, YOU KNOW, WE'VE GOT TO MAKE A DETERMINATION.

WE HAVE A COLD RECORD, AS TO WHETHER WHAT MR.†HUGGINS IS DOING IS DELAYING WHAT MAY BE INEVITABLE FOR HIM, WHICH IS THE EXECUTION OF HIS DEATH SENTENCE.

AND SO WHAT DO WE HOW DO WE GO ABOUT THAT?

IF WE DECIDE THAT PROCEDURALLY THERE ISN'T AN ERROR THAT AFFECTS SUBSTANTIAL RIGHTS, THAT WE ARE TO DEFER TO THE TRIAL JUDGE, WHO WAS IN THE BEST POSSIBLE POSITION, AND WE

HOW DO WE MAKE A DETERMINATION ON A COLD RECORD THAT JUDGE PERRY WAS JUST WRONG IN FINDING THAT HE BECAME THAT HE WAS COMPETENT?

>> THE JULY ORDER, JULY, 2010
ORDER REQUIRING ANOTHER ROUND
OF EVALUATIONS, INHERENTLY
FOUND THAT THERE WERE ISSUES
REQUIRING HIS INPUT.
AND THEN AT THE END OF JULY THE
SAID, OKAY, I'M GOING TO TELL
YOU WHAT ISSUES ARE GOING TO
BE EXAMINED, ARE GOING TO BE
ADDRESSED IN THE AUGUST
HEARING.
I'LL GIVE IT TO YOU TOMORROW
TODAY OR MONDAY.
AND THEN HE DELAYED TWO WEEKS.
WE DIDN'T GET IT FOR TWO
WEEKS.
WE GOT IT SEVEN DAYS BEFORE
THE HEARING.
HE SAID EVERYTHING'S OPEN.
WHEN YOU LOOK AT HIS ORDER,
THOUGH, THERE ARE NUMEROUS
EXAMPLES EVEN IN THERE WHERE
HE FINDS INADEQUATE PROOF
BECAUSE OF FAILURE TO HAVE
INPUT FROM MR. HUGGINS.
PAGE 12 OF HIS ORDER, NO
INDICATION MR. HUGGINS TOLD
TRIAL COUNSEL ABOUT STATEMENT
TO THE JAIL GUARD.
PUT MR. HUGGINS ON.
WESLEY DISCUSSION.
WESLEY'S A DEFENSE ATTORNEY.
>> WAS MR. HUGGINS CALLED IN
THE EVIDENTIARY HEARING?
>> WE COULDN'T.
HE WAS INCOMPETENT.
>> WELL
>> AND THE QUESTION WAS STILL
OPEN.
IT WAS UNRESOLVED.
IF THE JUDGE HAD RULED AND HAD
A SPECIFIC COMPETENCY HEARING
AND RULING, THEN WE WOULD HAVE
AT LEAST
>> SO YOU WANT THE RIGHT TO
HAVE MR. HUGGINS TESTIFY?
I MEAN, IF WE ON THE ISSUES
THAT YOU FELT THAT HE COULDN'T
TESTIFY TO AT THAT TIME?
>> EITHER TESTIFY TO OR ADVISE

US HOW TO PURSUE THE DIRECT OR
CROSSEXAMINATION OF WITNESSES
TO BRING OUT THOSE FACTS
WITHOUT THE NECESSITY OF
ACTUALLY PUTTING HIM ON.
BUT HE WAS INCAPABLE OF
ADVISING US OF ANYTHING ALONG
THOSE LINES BECAUSE ALL HE DID
AT EVERY TIME THAT WE
CONSULTED WITH HIM DURING THE
EVIDENTIARY HEARING WAS TO
COMPLAIN TO US THAT WE WERE
NOT PUTTING ON HIS DELUSIONAL
CLAIMS.

AND WE MADE THAT AS APPARENT
TO THE COURT AS WE COULD.
AND MR. HUGGINS HIMSELF
DEMONSTRATED IT AT THE VERY
BEGINNING OF THE HEARING WHEN
HE INTRODUCED DOCUMENTS THAT
WERE THAT EXPRESSED AND
SHOWED THE DELUSIONAL BELIEFS
THAT HE HAD ABOUT WHY HE WAS
BEING PROSECUTED.

SO BUT WESLEY AND HUGGINS
JOINTLY DECIDED NOT TO
QUESTION HIS SON JONATHAN.
THAT'S WHAT THE COURT FOUND,
BUT WE DON'T HAVE ANY INPUT
FROM HUGGINS.

WESLEY SAID THE DECISION WAS
MADE TO FOCUS ON A PARTICULAR
DEFENDANT.

WE DON'T KNOW ANYTHING ABOUT
THE INTERACTION BETWEEN WESLEY
AND HUGGINS AS TO WHO TO TRY
TO POINT THE FINGER TO AS THE
THIRD PERSON, NO INDICATION HE
TOLD HUGGINS TO TESTIFY, PAGE
29.

WE DON'T KNOW.

I COULDN'T RELY ON MY CLIENT.
IF HE DID TELL ME, I COULDN'T
RELY ON IT.

>> THERE'S A DIFFERENCE
BETWEEN A CLIENT THAT IS BEING
OBSTRUCTIVE TO INTERFERE WITH
THE POSTCONVICTION
PROCEEDINGS, WHICH WE SEE NOT
WHETHER IT'S FREQUENT, BUT

THERE ARE CLIENTS THAT THEY MAKE THE DECISION THAT'S THE BEST WAY THAT THEY ARE GOING TO TAKE THE CASE AND DRAG IT OUT.

AND SO YOU AGREE I MEAN, YOU KNOW THAT.

I'M NOT SAYING I'M NOT QUESTIONING YOUR GOOD FAITH, BUT WE SO THAT'S MY CONCERN HERE.

>> THE WAY TO RESOLVE THAT IS TO HOLD THE COMPETENCY HEARING.

HE COULD HAVE SET THE DEADLINE FOR THE REPORT TO THE FRIDAY BEFORE THE HEARING BEGAN.

HE COULD HAVE HAD THE COMPETENCY HEARING ON THE MONDAY MORNING OF THE HEARING. THERE NEVER WAS THAT COMPETENCY HEARING.

WE NEVER HAD A CHANCE TO BUILD OUR RECORD, TO DIRECT OR CROSSEXAMINE THE STATE'S WELL, THE COURT'S EXPERTS OR TO PRESENT THE TESTIMONY OF OUR OWN EXPERT.

SO THE WAY YOU DEAL PROPERLY WITH ALLEGEDLY OBSTRUCTIVE CLIENT IS YOU GO AHEAD AND HAVE THE HEARING, FIND HIM COMPETENT AND FIND THAT HE'S MALINGERING, BEING OBSTRUCTIVE, AND THEN YOU'VE RESOLVED THAT QUESTION.

RIGHT NOW AT THE TIME WE WENT IN, WE HAD AN UNRESOLVED QUESTION.

WE WEREN'T ABLE TO CALL HIM BECAUSE THE JUDGE REPEATEDLY COMPLAINED THAT IF THE ATTORNEY PRIOR ATTORNEY, WHO ACTUALLY ATTAINED THE VERIFICATION, IF HE OBTAINED THAT VERIFICATION BELIEVING THE CLIENT TO BE INCOMPETENT THAT WAS ACTUAL BAR DISCIPLINE PROBLEM.

>> YOU'RE IN YOUR REBUTTAL

TIME.

>> THANK YOU.

I'M AVAILABLE TO ANSWER ANY MORE QUESTIONS, BUT THE ESSENTIAL FACT HERE IS THERE WAS NEVER A AFTER FINDING THAT THERE WAS REASONABLE GROUNDS TO BELIEVE HE WAS INCOMPETENT IN JULY†OF 2010, THERE HAS NEVER BEEN A RULING ON THAT ON THAT AFTER THAT.

FOUR EXPERTS ALL PROVIDED INFORMATION TO THE COURT THAT THEY WERE UNABLE TO DETERMINE WHETHER HE WAS COMPETENT AT THE TIME OF THE AUGUST, 2010 HEARING.

TWO OF THEM FOUND THAT HE WAS INCOMPETENT AT THAT TIME.

THE OTHER TWO ONE WITHDREW OR SAYS I CAN'T VOUCH FOR HIS COMPETENCE NOW, A YEAR LATER, AND DANSINGER ESSENTIALLY THE SAME THING, COULDN'T MAKE A DECISION BETWEEN THE TWO THEORIES OF MALINGERING.

THANK YOU.

>> MAY IT PLEASE THE COURT, LISAMARIE LERNER WITH THE ATTORNEY GENERAL'S OFFICE FOR THE STATE.

I WANTED TO CLARIFY A COUPLE THINGS.

ONE THING THAT WAS MISSING FROM MY COLLEAGUE'S RECITATION OF THE EVENTS IS MR.†HUGGINS AND HIS ACTIONS OR REFUSAL TO ACT.

MR.†HUGGINS HAS CONSISTENTLY REFUSED TO COOPERATE WITH MENTAL HEALTH PEOPLE TRYING TO GIVE HIM TREATMENT, AND HE REFUSED TO MEET WITH THE COURTPPOINTED EXPERTS.

>> BUT THERE WAS JUST UP UNTIL FOR A PERIOD OF TIME THERE WERE EXPERTS WHO THE COURT FOUND TO BE CREDIBLE

THAT DID FIND HIM TO BE
INCOMPETENT.

>> YES.

IN

>> SO ARE YOU SAYING THAT
THOSE FINDINGS WERE REALLY
THAT MR. †HUGGINS PUT ONE OVER
ON THEM, THAT HE REALLY WAS
NEVER INCOMPETENT?

>> THERE WERE THREE EXPERTS,
DR. †DANSINGER, MCCLAIREEN AND
DE.

AND DR. †DANSINGER IS A
PSYCHIATRIST AND DR.
MCCLAIREEN IS A PSYCHOLOGIST.
BOTH OF THOSE SAID MR. †HUGGINS
PRESENTED DELUSIONAL THINKING,
BUT THEY COULD NOT RULE OUT
MALINGERING AND THE BEST WAY
TO ADDRESS IT WOULD BE TO PUT
HIM IN A FORENSIC MENTAL
HEALTH SETTING WHERE HE COULD
BE OBSERVED LONG TERM.

THOSE WERE THEIR REPORTS IN
2006 AND 2007.

>> AND SO HE WAS FOR 2006,
2007, 2008 HE WAS UNDER
OBSERVATION?

>> IN 2007 HE WAS AT THE
DEPARTMENT OF CORRECTIONS AND
THE DEPARTMENT OF CHILDREN AND
FAMILIES ATTEMPTED TO TREAT
HIM.

MR. †HUGGINS REFUSED TREATMENT.

>> BUT DURING THAT PERIOD OF
TIME HE WAS BEING OBSERVED.
I GUESS THERE WAS NOTHING
ABOUT WHAT HAD HAPPENED SINCE
OBVIOUSLY THESE ARE COSTLY
TREATMENTS THAT COST THE STATE
A GREAT DEAL OF MONEY WHEN
SOMEBODY IS INCOMPETENT.

ARE YOU SAYING THAT WHEN HE
SAID HE REFUSED TREATMENT, HE
REFUSED MEDICATION.

>> NO.

HE REFUSED COUNSELING.

>> SO AND THAT JUST THE
DEPARTMENT OF CHILDREN AND
FAMILIES WHEN SOMEONE REFUSES

COUNSELING OR MEDICATION JUST SAYS, OKAY, WE'RE JUST GOING TO ASSUME HE'S INCOMPETENT AND THROW UP THEIR HANDS?

>> NO.

WHAT HAPPENED WAS THE PSYCHIATRIST AND PSYCHOLOGIST FOR THE DEPARTMENT OF CHILDREN AND FAMILIES DETERMINED HE DID NOT NEED PSYCHOTROPIC MEDICATION.

>> OKAY.

>> THEY MADE THAT DETERMINATION.

>> BUT DID THEY ALSO MAKE A DETERMINATION THAT HE WAS HE REMAINED INCOMPETENT?

>> NO.

THEY KEPT COMING BACK TO THE COURT SAYING HE WAS MALINGERING AND THAT HE WAS COMPETENT.

AND THE COURT HAD HEARINGS IN 2006, 2007.

HE WAS NEVER IN A FORENSIC SETTING AT THAT POINT.

HE WAS STILL IN THE DEPARTMENT OF CORRECTIONS.

AND ESSENTIALLY HE DID NOT GET ANY TREATMENT, EITHER BECAUSE HE WASN'T ADMINISTERED IT OR HE OBJECTED TO IT, UNTIL 2009, WHEN THE DEPARTMENT OF CHILDREN AND FAMILY AGREED TO TAKE HIM OVER INTO THE FLORIDA STATE HOSPITAL.

SO HE WAS OUT OF THE DEPARTMENT OF CORRECTIONS.

IN JUNE OF 2009 HE WAS IN A FORENSIC MENTAL HEALTH SETTING.

>> THAT TOOK THREE YEARS TO GET HIM INTO A FORENSIC SETTING?

>> YES.

AND HE WAS THERE FOR THREE MONTHS, LATE JUNE, JULY, AUGUST AND SEPTEMBER.

WHEN HE WAS IN THAT SETTING, HE HAD A TREATMENT TEAM,

INCLUDING A PSYCHIATRIST, A
PSYCHOLOGIST, A MENTAL HEALTH
WORKER, A MENTAL SOCIAL WORKER
AND A R.N., WHO MET WITH HIM
EVERY DAY FOR THOSE THREE
MONTHS HE WAS THERE.

AND THE PSYCHIATRIST AND THE
PSYCHOLOGIST SEPARATELY HAD
MULTIPLE INTERVIEWS WITH HIM.

>> WHEN YOU SAY THEN HE WASN'T
COOPERATIVE, THAT SOUNDS LIKE
A FAIRLY COOPERATIVE PERIOD IN
WHAT MR.†HUGGINS WAS DOING.

>> WELL, THEY WERE MEETING
WITH HIM.

THEY OFFERED HIM COUNSELING
AND TREATMENT FOR ANY MENTAL
HEALTH ISSUES.

IN ADDITION TO OBSERVING HIM
AND

>> BUT IF HE'S GENUINELY
DELUSIONAL, YES, I'D LIKE SOME
COUNSELING ON SOME OF THE
PROBLEMS IN MY LIFE, LIKE
UNDER A DEATH SENTENCE.

I MEAN, THE IDEA OF COUNSELING
SOMEBODY THAT'S INCOMPETENT
BUT DURING THAT TIME THEY
OBSERVED HIM AND THAT'S WHEN
DR.†KAPETSKI DETERMINED THAT
HE WAS IN FACT MALINGERING.

IS THAT CORRECT?

>> YES.

IN ADDITION TO A PSYCHIATRIST,
WHO WAS ALSO TREATING HIM.
IT WASN'T JUST ONE DOCTOR.
IT WAS AN ENTIRE TREATMENT
TEAM.

>> BUT WHEN THE JUDGE MADE THE
FINDING THAT HE WAS NOW
COMPETENT BASED ON THE
DOCTOR'S REPORT

>> NO.

I'M SORRY.

THEY HAD A FULL HEARING.

>> BUT THEY'RE COMPLAINING
THAT THEY DIDN'T HAVE AT THAT
TIME ACCESS TO ALL THE RECORDS
FROM THAT THREE OR FOURMONTH
PERIOD OF TIME TO BE ABLE TO

CROSSEXAMINE, AND THAT SINCE THE BIGGEST ISSUE WAS WHETHER HE WAS MALINGERING, THAT THEY DIDN'T HAVE THE ABILITY TO TEST THAT BY HAVING A WHAT MR.†GEMMER IS SAYING THE GOLD STANDARD MALINGERING TEST. SO THERE'S AN ISSUE.

I GUESS MY CONCERN IS I DON'T DOUBT THAT THE DOCTORS THAT THEN OBSERVED HIM MADE THIS DETERMINATION, BUT WHETHER IT IS WAS ABLE TO BE TESTED TO ADEQUATELY CROSSEXAMINE.

DID THEY HAVE ACCESS?

WERE THEY PROVIDED ALL THE RECORDS AT THAT TIME?

>> THEY DID NOT ASK FOR THE RECORDS UNTIL TWO DAYS BEFORE THE COMPETENCY HEARING.

>> THIS IS THE HEARING WHERE, AGAIN, THE RULE DOESN'T REALLY GIVE SPEAK TO HOW YOU GO FROM INCOMPETENCY TO COMPETENCY, RIGHT?

>> THE RULE SAYS THAT ONCE THEY GET A REPORT FROM THE TREATING FACILITY THAT HE IS COMPETENT, THE COURT HAS TO HOLD A HEARING WITHIN 30 DAYS TO DETERMINE.

BUT IT DOESN'T SAY YOU NEED THREE, YOU NEED TWO.

BUT ESSENTIALLY THEY

>> BUT IT MAKES SENSE.

THE PERSON WHO'S NOW BEEN INCOMPETENT FOR ALL THESE YEARS HAS ACCESS TO ALL THE REPORTS THAT THE DOCTOR WHO IS RELYING ON HIS OBSERVATIONS HAS MADE.

I MEAN, IT SEEMS LIKE THAT'S BASIC FAIRNESS.

>> WASN'T THERE AN ORDER DATED APRIL†15, 2010 THAT INDICATED THAT THEY HAD ALL THE RECORDS AND ONE OF THE REASONS THEY COULDN'T GET THEY WANTED THERE WAS A PUBLIC RECORD REQUEST AND THEY SAID IT

WASN'T PUBLIC BECAUSE IT WAS
PERTAINING TO HIS MENTAL STATE
AND THEN RELEASED FROM HUGGINS
AND THEY FOUND THE OLD RELEASE
AND THEY IN FACT DID HAVE ALL
THE MEDICAL RECORDS?

>> THEY GOT THOSE AFTER THE
COMPETENCY HEARING.

BUT WHAT I WANT TO POINT OUT
IS THE COURT AND COUNSEL GOT
NOTIFICATION FROM THE STATE
HOSPITAL ROUGHLY
MIDSEPTEMBER.

I THINK IT'S SEPTEMBER†18.

I COULD BE WRONG.

THAT HE WAS NOW COMPETENT.
SO THE COURT HAD TO HOLD A
HEARING.

BETWEEN MIDSEPTEMBER†AND
OCTOBER†13, TWO DAYS BEFORE
THE HEARING WAS SCHEDULED, THE
DEFENSE DIDN'T DO ANYTHING.

IN FACT, AT THE COMPETENCY
HEARING JUDGE PERRY
SPECIFICALLY ASKED THE
DEFENSE, WELL, DID YOU GIVE
THIS REPORT TO DR.†DANSINGER
AND DR.†MCCLAIREEN?

NO.

THEY DIDN'T TALK TO EITHER OF
THOSE DOCTORS.

THEY DID NOT GIVE THEM THE
REPORT.

AND THEY DID NOT SEEK TO GET
ANOTHER DOCTOR APPOINTED IN
TIME TO CHALLENGE THE
COMPETENCY HEARING.

SO, YOU KNOW, I DON'T KNOW
WHAT WAS GOING ON WITH THE
DEFENSE, BUT IT'S A PATTERN IN
THIS CASE THAT THE DEFENSE
ACTS DAYS BEFORE HEARINGS OR
WEEKS IN THE CASE OF THE
EVIDENTIARY HEARING.

I DON'T KNOW WHY THAT IS.

I ALSO KNOW THAT MR.†HUGGINS
WHEN HE WAS IN THE STATE
HOSPITAL REFUSED TESTING.

IT'S NOT THAT THE STATE
HOSPITAL DIDN'T WANT TO GIVE

HIM THE GOLD STANDARD TEST.
HUGGINS REFUSED FURTHER
TESTING.

IN FACT, TO EVEN GET THE ONE
TEST IT TOOK THEM WEEKS TO GET
HIM TO AGREE TO THAT, BECAUSE
HE CONSISTENTLY HAD REFUSED.

AFTER HE DID THAT TEST, HE
REFUSED ADDITIONAL TESTING.
AND IT WAS NOT UNTIL THE STATE
HOSPITAL BOARD, TREATMENT
BOARD, HAD SUBMITTED THEIR
REPORT THAT HUGGINS, AGAIN AT
THE LAST MINUTE, SAYS, OH,
YEAH, I'LL DO TESTING.

BUT THE REPORT HAD ALREADY
BEEN WRITTEN AND HE'D BEEN
THERE TWO AND A HALF MONTHS.
AGAIN, THIS IS A PATTERN THAT
MR. †HUGGINS DOES.

HE WAITS UNTIL IT IS TOO LATE
AND THEN HE SAYS, OH, EVERYONE
IS, YOU KNOW, DEPRIVING ME OF
MY RIGHTS.

BUT HE IS THE ONE WHO IS
OBSTRUCTIONIST IN THIS.
AND SO

>> LET ME SEE IF I CAN MAKE
YOU CLARIFY EXACTLY WHERE WE
ARE WITH ALL OF THIS TESTING,
EVERYTHING.

WHAT HAPPENED PRIOR TO THE
EVIDENTIARY HEARING?

AT WHAT POINT PRIOR TO THE
EVIDENTIARY HEARING WAS MR.
HUGGINS DECLARED COMPETENT?

>> MR. †HUGGINS WAS DECLARED
COMPETENT IN OCTOBER, 2009.
>> 2009.

>> 2009.
>> A YEAR ALMOST A YEAR
LATER, IN AUGUST †OF 2010, IS
WHEN THE EVIDENTIARY HEARING
TOOK PLACE.

>> THAT'S CORRECT.
AND THE

>> AND OKAY.
BUT IT SEEMS TO ME THAT
SOMETIME IN 2010 THE TRIAL
JUDGE APPOINTED SOME OTHER

EXPERTS?

>> YES.

>> AND WHAT WAS THE IMPETUS FOR DOING THAT?

I MEAN, IF WE ALREADY HAVE A COMPETENCY DETERMINATION FROM OCTOBER, 2009, WHAT MADE THE TRIAL JUDGE DECIDE TO APPOINT SOME EXPERTS BEFORE THE EVIDENTIARY HEARING?

>> THE DEFENSE AFTER THE OCTOBER, 2009 COMPETENCY DETERMINATION GOT A DR. CARPENTER AND HAD DR. CARPENTER SEE MR.†HUGGINS IN NOVEMBER, 2009.

IN NOVEMBER, 2009 DR. CARPENTER WROTE A REPORT SAYING HE THOUGHT MR.†HUGGINS WAS INCOMPETENT BECAUSE HE WAS DELUSIONAL.

THE DEFENSE DIDN'T MENTION THIS FROM OCTOBER† NOVEMBER, 2009, UNTIL THE FIRST OF JULY, 2010, WHEN IT FILED A MOTION FOR COMPETENCY PROCEEDINGS.

IT WAS BASED ON THEIR MOTION, WHICH WAS FILED JULY†1, ABOUT SIX WEEKS BEFORE THE EVIDENTIARY HEARING, TO REASSESS MR.†HUGGINS' COMPETENCY.

AND THAT WAS BASED ON A REPORT THAT WAS EIGHT MONTHS OLD AT THAT TIME, OR NINE.

ON NOVEMBER, 2009 REPORT.

>> SUBSEQUENT TO THE COMPETENCY DETERMINATION.

>> A MONTH LATER, YES.

>> AGAIN, BUT AT THAT POINT THE EVIDENTIARY HEARING HAD BEEN SET FOR AUGUST?

>> YES.

>> BUT THE JUDGE DETERMINED THERE WAS AT LEAST ENOUGH IN THE NEW MOTION FOR COMPETENCY TO APPOINT EXPERTS, BUT IS IT CORRECT THAT HE DIDN'T HAVE

THE EXPERT REPORTS DUE UNTIL
AFTER THE EVIDENTIARY HEARING
WAS HELD?

>> A COUPLE THINGS.

JUDGE PERRY HAD A HEARING ON
THIS MOTION, A FULL HEARING,
WHERE DR. CARPENTER CAME IN
AND TESTIFIED.

AND AT THAT HEARING JUDGE
PERRY SAID, WELL, BASED ON
WHAT HE COULD SEE

>> AND WHEN WAS THAT HEARING?

>> JULY, 2010.

>> SO AS SOON AS THE MOTION
WAS FILED, JUDGE PERRY HAD A
PRELIMINARY HEARING AND HEARD
FROM DR. CARPENTER?

>> YES.

>> OKAY.

>> AND JUDGE PERRY SAID MR.
HUGGINS IS STILL COMPETENT AND
HE WAS WONDERING, YOU KNOW,
WHY THIS REPORT WAS SO LATE,
BECAUSE IT WAS MADE IN THE
YEAR BEFORE.

AND SAID MR.†HUGGINS IS STILL
COMPETENT, BUT IN AN ABUNDANCE
OF CAUTION AND HE REPEATED
THIS THROUGHOUT THE HEARING
I WILL HAVE DR.†DANSINGER AND
MCCLAIREEN GO AND SEE HIM.
BUT, AGAIN, BETWEEN THAT DATE
IN JULY†AND THE EVIDENTIARY
HEARING, MR.†HUGGINS REFUSED
TO MEET WITH EITHER OF THE
DOCTORS.

THEY WENT UP TO THE DEPARTMENT
OF CORRECTIONS TO DEATH ROW TO
MEET HIM, AND HE REFUSED.

THE COURT

>> THIS IS AFTER THE JULY
HEARING.

>> YES.

>> HE REFUSED.

>> AFTER THE JULY, BEFORE THE
EVIDENTIARY HEARING.

THE COURT REPEATEDLY TRIED TO
GET MR.†HUGGINS TO SEE THE
DOCTORS.

HE REFUSED.

AT THE EVIDENTIARY HEARING, AT EVERY MORNING AND AFTERNOON WHEN THE COURT STARTED, JUDGE PERRY TALKED TO MR. †HUGGINS AND SAID, WILL YOU MEET WITH THE EXPERTS?

WILL YOU COOPERATE WITH THEM? AND MR. †HUGGINS WAS VERY ARTICULATE.

HE WAS ON POINT.

HE MAY HAVE BEEN PARANOID ABOUT, YOU KNOW, HIS ATTORNEYS OR WHATEVER.

BUT HE KNEW WHAT WAS GOING ON. AND JUDGE PERRY SPOKE WITH HIM EXTENSIVELY THROUGHOUT THAT EVIDENTIARY HEARING.

AND IT WAS MR. †HUGGINS WHO WAS OBSTRUCTING ANY COMPETENCY REVIEW.

AND JUDGE PERRY MADE OBSERVATIONS OR FINDINGS, IF YOU WILL, THAT HE WAS COMPETENT DURING THE EVIDENTIARY HEARING.

>> BUT THEN RIGHT AFTER BUT AT SOME POINT DID DANSINGER AND MCCLAIREEN SEE HIM?

>> NO.

AND THAT WAS A BIT MISLEADING BY MY COUNSEL HERE.

DANSINGER DID TRY AND SEE HIM, AGAIN, SEVERAL TIMES AFTER THE EVIDENTIARY HEARING BECAUSE JUDGE PERRY HAD A HEARING WITH MR. †HUGGINS AGAIN IN OCTOBER, 2010, AFTER THE EVIDENTIARY HEARING, SAYING, LOOK, THESE DOCTORS HAVE BEEN TRYING TO SEE YOU.

YOU HAVE TO SEE THEM.

IF YOU DON'T SEE THEM, I'M GOING TO PUT YOU BACK IN THE STATE HOSPITAL WHERE YOU'RE GOING TO BE OBSERVED 24 HOURS A DAY AGAIN BY THE GUARDS AND THE TREATMENT TEAM.

AND HUGGINS SAID, OKAY, IF THAT'S THE SITUATION, I'LL MEET WITH THE DOCTORS.

THE DOCTORS THEN GO BACK UP TO MEET HIM, AND HE REFUSES TO SEDAN SEE†DANSINGER.

HE SEES DR.†MCCLAIREEN, DESPITE WHAT MR.†GEMMER SAID, SAID THE TESTING WAS INVALID AND WAS CONSISTENT WITH MALINGERING.

AND DR.†MCCLAIREEN FOUND THAT MR.†HUGGINS WAS MALINGERING, HE WAS DECEPTIVE ON HIS CURRENT TESTING AND HE WAS EXAGGERATING HIS MENTAL DEFICIENCIES AND HE SHOULD BE ADJUDICATED COMPETENT.

AND THIS WAS IN OCTOBER, 2010. BUT, AGAIN, HUGGINS REFUSED TO MEET WITH DANSINGER.

>> BUT AT SOME POINT A HEARING WAS HELD, EVEN THOUGH IT WAS AFTER THE EVIDENTIARY HEARING.

>> THERE WAS NO COMPETENCY HEARING.

>> SO THEY'RE CORRECT

>> THERE WAS A HEARING WHERE JUDGE PERRY WAS ADDRESSING MR. HUGGINS ABOUT SEEING THE DOCTORS.

BUT THERE WAS NO COMPETENCY HEARING AFTER THAT.

>> SO THERE WAS NEVER AN ORDER ON THAT MOTION?

OR WAS THERE?

>> NO.

>> THE MOTION THAT WAS FILED IN JULY, THERE WAS NEVER AN ORDER ENTERED ON THAT MOTION.

>> THAT IS CORRECT.

>> AND IS THERE SOME CONCERN THAT THE JUDGE INTERPRETED THIS COURT'S DISMISSAL OF THE PETITION FILED HERE AS BEING A RULING ON THE MERITS?

>> I DON'T THINK THAT HAS ANY BEARING ON ANYTHING BECAUSE THE CASE LAW IS CLEAR.

MR.†HUGGINS WAS DECLARED COMPETENT IN 2009, AND HE REMAINS COMPETENT UNTIL THERE

IS A FINDING OF INCOMPETENCY.
THERE'S NEVER BEEN A FINDING
OF INCOMPETENCY.

ALSO, MR. †HUGGINS

>> RIGHT.

BUT IF THERE IS YOU CAN'T
I MEAN, IN THE ABSTRACT,
THOUGH, THERE'S A PROBLEM WITH
THAT BECAUSE IF THE JUDGE
APPOINTS THE EXPERTS AND THEN
LEAVES THE MOTION AND NEVER
RESOLVES IT, THERE'S NOT A
FINDING OF INCOMPETENCY, BUT
WE WOULDN'T CONDONE THAT.
BUT THAT DOESN'T APPEAR TO BE
WHAT HAPPENED HERE.

>> THAT'S CORRECT.

>> DO YOU AGREE?

>> YES.

>> THAT WOULD BE THE GENERAL
RULE.

IF THEY FOLLOW THE RULE BUT
THEY HAVE HAD THE HEARING,
THERE WAS NEVER A DECLARATION
OF INCOMPETENCY EVEN IF THREE
EXPERTS SAID HE WAS
INCOMPETENT.

>> YES, BUT HE DEEMED
COMPETENT BECAUSE OF THE
HEARING IN 2009.

AND ALSO MR. †HUGGINS COULD
HAVE REQUESTED THIS COURT
RELINQUISH JURISDICTION TO
HAVE THE COMPETENCY HEARING.
THEY HAD A REPORT OF ONE
EXPERT AND THE

>> WELL, I UNDERSTAND THAT
ONE, BECAUSE WE SAID WE WERE
NOT WE'RE GOING TO ADDRESS
IT AFTER, SO WHY WOULD
WHERE WOULD WE WOULD
WHERE WOULD WE HAVE
RELINQUISHED?

>> WELL, DEFENSE COULD HAVE
ASKED THIS COURT RELINQUISH
JURISDICTION FOR THE TRIAL
COURT, THE POSTCONVICTION
COURT TO HOLD THE COMPETENCY
HEARING.

>> I THOUGHT THAT'S WHAT THEY TRIED TO DO WHEN THEY FILED THE MOTION, THE WRIT HERE.

>> NO.

THAT WAS 2009.

I'M TALKING ABOUT 2010.

BUT TO GET TO THE HEART OF THE MOTION, BECAUSE I ONLY HAVE A MINUTE, IF THIS COURT GOES IN AND LOOKS AT THE EVIDENTIARY HEARING ITSELF AND ALL THE INDIVIDUAL CLAIMS, MOST OF THE CLAIMS WERE NOT PROVED BECAUSE NO WITNESS WAS CALLED AND THE DEFENSE DID NOT PUT ANY EVIDENCE ON AT THE EVIDENTIARY HEARING.

FOR EXAMPLE, PRESTON, KRAHNFELLED, ANGEL HUGGINS, JONATHAN HUGGINS, MANFIELD, SMITH, GORE, ALL OF THESE CLAIMS THEY DIDN'T PUT ON ANY EVIDENCE.

AND IT'S NOT BECAUSE MR. HUGGINS WASN'T TALKING TO THEM.

THEY DIDN'T CALL THE WITNESSES, AND THEY DID NOT ADDRESS THE CLAIMS IN THEIR 38.51 MOTION.

AND MR. WESTLY, THE DEFENSE COUNSEL, ADDRESSED THE OTHER CLAIMS SUFFICIENTLY.

AND SO JUDGE PERRY WAS CORRECT WHEN HE DETERMINED THAT MR. HUGGINS' INPUT WAS NOT NECESSARY TO ADJUDICATE THE POSTCONVICTION MOTION, AND HE DETAILED THAT QUITE EXPRESSLY IN HIS ORDER DENYING RELIEF ON ALL THESE INDIVIDUAL CLAIMS. AND EVEN IF THERE IS AND THE STATE DOES NOT BELIEVE IT IS, BUT EVEN IF THERE IS SOME CLOUD OF WHETHER OR NOT MR. HUGGINS WAS COMPETENT AT THE HEARING, JUDGE PERRY WAS CORRECT INSOFAR AS HIS INPUT WAS NOT NECESSARY TO DETERMINE THESE CLAIMS.

THE FOCUS ON THE INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS, FOR EXAMPLE, HOW HE CROSSEXAMINES OR QUESTIONS CERTAIN WITNESSES, THAT'S ATTORNEY STRATEGY AND ATTORNEY SKILL.

THAT HAS NOTHING TO DO WITH MR. HUGGINS AND WHETHER OR NOT THEY ASKED A QUESTION PROPERLY OR IMPEACHED A WITNESS A CERTAIN WAY.

THAT GOES TO THE ATTORNEY STRATEGY.

THE ATTORNEY WAS PRESENT AT THE HEARING AND TESTIFIED, AND JUDGE PERRY CORRECTLY FOUND THAT THERE WAS NO MERIT TO ANY OF THE CLAIMS.

AND THE STATE RESPECTFULLY ASKS YOU TO AFFIRM.

>> REBUTTAL?

>> MAY IT PLEASE THE COURT, THE REPORT THAT THE STATE QUOTED FROM DR.

MCCLAIREEN IS NOT A PART OF THIS RECORD.

IT WAS NEVER MADE A PART OF THIS RECORD.

IT WAS SUBMITTED OVER THE FENCE, SO TO SPEAK, IN EARLY 2011.

AND BECAUSE JURISDICTION HAD ALREADY BEEN TRANSFERRED TO THIS COURT, THERE WAS NO ACTION THAT COULD POSSIBLY BE TAKEN ON THAT AT THAT TIME. THE STATE WAS FREE TO ASK FOR A REMAND, RELINQUISHMENT OF JURISDICTION.

>> BUT WAS THAT EXCUSE ME. WAS THAT REPORT SUBMITTED TO JUDGE PERRY?

>> IN 2011, YES.

IN 2011.

I'M NOT SURE.

I DON'T HAVE IT BECAUSE IT'S NOT PART OF MY RECORD.

>> BUT IS IT A FACT THAT YOUR CLIENT WOULD NOT EXCUSE ME. IS IT A FACT THAT YOUR CLIENT WOULD NOT MEET WITH DR. DANSINGER?

>> PRIOR TO THE HEARING, HE PRIOR TO THE EVIDENTIARY HEARING HE DECLINED TO MEET WITH THE TWO EXPERTS. HOWEVER, IN THE REPORT FILED BY DR. †MCCLAIREEN ON AUGUST 30, 2010, AT 880 IN THE RECORD, IN THE RECORD, MR. HUGGINS IS REGARDED AS HAVING A QUESTIONABLE ABILITY TO WORK WITH HIS ATTORNEYS AT THIS POINT.

DR. †MCCLAIREEN HAD HAD SEVERAL EXPOSURES TO HIM, HAD ALL THE RECORDS, HAD ALL THE RECORDS FROM THE FLORIDA STATE HOSPITAL TO REVIEW, HAD ALL THE INFORMATION IN FRONT OF HIM, THE PAI AND THE SIRS, AND BASED ON ALL OF THAT INFORMATION HE WAS ABLE TO RENDER THIS OPINION WITHOUT FURTHER CONSULTATION.

>> BUT IN I GUESS JANUARY, 2008, DIDN'T MCCLAIREEN SAID HE WAS COMPETENT BUT HE WOULD BENEFIT FROM MEDICATION?

>> IN JANUARY?

SEVERAL TIMES.

EVERY TIME THE EXPERTS CAME BACK, THEY SAID NOT JUST TREATMENT.

HE NEEDS MEDS.

HE WAS NEVER TREATED BECAUSE EVERY TIME I WENT TO DCF THEY SAID HE DOESN'T NEED TREATMENT, HE'S COMPETENT.

>> BUT THEN SOME DOCTOR SAID THAT THEY WERE CONFUSED AS TO WHETHER OR NOT NOT CONFUSED, CONFLICTED AS TO WHETHER OR NOT MEDICATION WOULD HELP, WOULD BE HELPFUL OR WOULDN'T BE HELPFUL?

>> THE DCF AND DOC DOCTORS
BOTH SAID THAT, YES.
>> OKAY.
>> AND THEY SAID HE'S
COMPETENT.
THEREFORE, THERE'S NO CAUSE TO
ADMINISTER DRUGS.
HE WAS IN A FORENSIC SETTING
BEFORE THE 2006, 2008, 2009
PERIOD BECAUSE HE WAS IN THE
FORENSIC WING OF UCI PRISON
AND OBSERVED BY THEM AND THE
DOC MADE A REPORT ON THAT
WHERE THEY SAID HE'S
COMPETENT.
THE JUDGE AGAIN FOUND HIM
>> THE CRITICAL TIME HERE IS
THAT IN THIS HEARING IN 2010,
WHEN IT'S YOUR POSITION THAT
THAT HEARING THE
EVIDENTIARY HEARING SHOULD NOT
HAVE TAKEN PLACE WITHOUT THE
JUDGE MAKING A DETERMINATION
OF COMPETENCY.
IS THAT CORRECT?
>> YES.
>> THAT'S KIND OF THE CRITICAL
TIME PERIOD HERE.
>> THAT'S THE WAY YOU DEAL
WITH
>> I UNDERSTAND THAT.
BUT ISN'T IT A CRITICAL FACT
THAT THE EXPERTS THAT THE
JUDGE IN AN ABUNDANCE OF
CAUTION HAD DIRECTED TO
EXAMINE THE DEFENDANT COULD
NOT SEE HIM BECAUSE HE WOULD
NOT COOPERATE?
IS THAT CORRECT?
>> THE JUDGE WAS AWARE OF THAT
AT THE BEGINNING OF THE
HEARING.
>> BUT THAT'S THE OVERARCHING
REALITY HERE.
WE HAVE A DEFENDANT WHO IS
UNWILLING TO COOPERATE AND
EVEN TALK WITH THESE EXPERTS
PRIOR TO THE EVIDENTIARY
HEARING.
>> BUT THE CASE LAW DOESN'T

REQUIRE THAT NECESSARILY AND PROFESSIONAL ETHICS DON'T REQUIRE THAT THEY NECESSARILY MEET WITH THE CLIENT. THEY'RE ALLOWED TO RENDER AN OPINION, AS DR.†MCCLAIREEN DID IN THE REPORT OF 830, 2010, THE WEEK AFTER THE HEARING, THAT HE WAS COMPETENT OR INCOMPETENT. HE WAS ABLE TO OPINE ON THAT BASED ON ALL THE RECORDS. >> WHERE DOES HE SAY HE'S INCOMPETENT? >> AT PAGE 880 OF THE RECORD. MR.†HUGGINS IS REGARDED AS HAVING A QUESTIONABLE ABILITY TO WORK WITH HIS ATTORNEYS AT THIS POINT. >> WELL, HE'S GOT A QUESTIONABLE ABILITY TO WORK WITH ANYBODY. >> BECAUSE HE'S INCOMPETENT. >> BUT THAT'S ONE EXPLANATION. THERE ARE OTHER EXPLANATIONS FOR THAT. THAT TERMINOLOGY IS NOT A CONCLUSION THAT HE'S INCOMPETENT. THAT'S YOUR GLOSS ON IT, BUT HE DOESN'T SAY HE'S INCOMPETENT. >> IF YOU READ THE ENTIRE REPORT, I THINK YOU'LL FIND THAT IT ALSO SUPPORTS A FINDING OF INCOMPETENCY. UNLIKE THIS REPORT THAT WAS NEVER MADE PART OF THE RECORD, FEBRUARY†24 OF 2011 WAS WHEN IT WAS FILED, AND WHO CARES WHETHER HE'S COMPETENT IN FEBRUARY†OF 2011? WHAT'S IMPORTANT, WAS HE COMPETENT MONTHS EARLIER, MANY MONTHS EARLIER. THE CASE FROM THIS COURT SAYS A NINEMONTH RULING OF COMPETENCY IS STALE, IT'S USELESS, WHEN THERE'S A SUBSTANTIAL COMPETENT EVIDENCE

THAT HE'S INCOMPETENT AT THE TIME OF THE TRIAL. AND JUST AS IN LANE AND IN LANE THEY SAID AND THREE EXPERTS COULD NOT TESTIFY THAT HE WAS COMPETENT AT THE TIME OF TRIAL.

>> BUT IS THERE ANY REASON IS THERE ANY REASON THAT YOU'VE GOT AN EXPERT OR THE DEFENSE HAD AN EXPERT IN NOVEMBER, IT SEEMS, OF 2009, YET IT WASN'T PRESENTED TO THE COURT UNTIL JULY?

>> YES.

I THINK IT'S IN MY MOTION TO CORRECT ERRORS AFTER THE JULY 15 HEARING.

THE ORDER THAT CAME AFTER THAT CONTAINED NUMEROUS ERRORS. WE DID NOT EVEN THOUGH THE REPORT WAS DATED SEPTEMBER†18 FROM KAPETSKI, WE DID NOT RECEIVE AN ORDER ORDERING THE HEARING UNTIL OCTOBER†2, WHICH WOULD JUST BE 13 DAYS BEFORE THE HEARING HE ISSUES THE ORDER SETTING THE HEARING.

>> I THINK WE'RE TALKING ABOUT DIFFERENT THINGS.

YOU HAD AN EXPERT WHO SAID HE WAS INCOMPETENT.

YOU PRESENTED THAT TO THE TRIAL JUDGE IN JULY, RIGHT?

>> YES.

>> BUT YOU GOT THAT REPORT IN NOVEMBER.

>> MY EXPERT NEEDED TO SEE THE RECORDS, ESPECIALLY THE PAI RESULT ALSO.

ALL WE HAD WAS A VERBAL REPORT FROM KAPETSKI IN THE WRITING. NOVEMBER†13 OF 2009 WE MADE THE REQUEST TO DCF FOR THE FLORIDA STATE HOSPITAL RECORDS.

WE DID NOT RECEIVE PARTICULARLY PAI, WE DID NOT RECEIVE A FULL RECORD UNTIL APRIL†2 OF 2010.

AND AT THAT POINT OUR EXPERT
WAS OUT OF COUNTRY.
AND SO HE WAS NOT ABLE TO
REVIEW IT FOR ANOTHER WEEK.
HOWEVER, EVEN IN LANE AND ALL
THE CASES CITED IN HERE, FOUR,
SIX, EIGHT WEEKS IS PLENTY OF
TIME TO RAISE A QUESTION OF
COMPETENCY BEFORE A HEARING.
YOU CAN RAISE IT THE DAY OF
THE HEARING IF THERE'S AND
SO WE DID NOT HAVE A COMPLETE
SET OF RECORDS TO WORK WITH
UNTIL WELL INTO 2010.
AND THAT'S THE REASON.
AND THE JUDGE KEPT
COMPLAINING, IT'S THE NINTH
HOUR.
WELL, IT'S THE NINTH HOUR.
IT'S NOT 11:59.
HE HAD PLENTY OF TIME TO
RESOLVE IT.
AND THE WAY TO RESOLVE IT WAS
HAVE THE HEARING, CALL HIS
BLUFF, SAY, FINE, YOU WON'T
SEE THE GUYS, I'LL OBSERVE
YOU, YOU'RE COMPETENT, WE'LL
HAVE THE HEARING.
INSTEAD HE LEFT IT OPEN.
YOU'RE COMPETENT TO REFUSE TO
WAIVE ON THE PENALTY PHASE OR
THERE'S A QUESTION OF
COMPETENCY SO YOU CAN'T
DISCHARGE YOUR ATTORNEYS.
>> YOU ARE WELL BEYOND YOUR
TIME ANY OTHER QUESTIONS FROM
THE BENCH?
OKAY.
THANK YOU.
>> I JUST FIND IT
OBJECTIONABLE THAT THIS BE
REFERRED WHEN IT'S NOT
>> THANK YOU FOR YOUR
ARGUMENTS.