IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CRIMINAL): AC
CASE NO.: 502018AP000048AXXXMB
L.T. NO.: 502018MM003642AXXXMB

JOHN E. CARTER,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.
_____/

Opinion filed: July 1, 2020

Petition for Writ of Habeas Corpus and/or Writ of Prohibition from the County Court in and for Palm Beach County, Judge Marni Bryson.

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PER CURIAM.

Petitioner John E. Carter, an attorney facing criminal contempt charges below, filed the instant Emergency Petition for Writ of Habeas Corpus and/or Writ of Prohibition after being placed in custody by the trial court pending a mental health evaluation. Petitioner seeks (1) a writ of habeas corpus requiring his immediate release from custody, and (2) a writ of prohibition barring the Honorable Marni Bryson from presiding over the pending contempt proceedings below. Although Petitioner has long been released from custody, we grant his Petition for Writ of Habeas

Corpus and direct the lower tribunal to conduct a proper bond determination. For the reasons explained herein, we also grant the Petition for Writ of Prohibition and direct that all further proceedings in this matter take place before a different trial judge.

Background

The facts underlying this case began on March 23, 2018, when Petitioner appeared before Judge Bryson as an attorney representing his client on a motion to reinstate bond. Petitioner and his client had failed to appear at a prior hearing scheduled for November 13, 2017, leading the trial court to revoke bond and issue a capias that eventually resulted in the client's arrest. Petitioner alleged that he and his client failed to appear at the prior hearing because neither had received notice of the scheduled hearing. The court pointed out that the written notice of hearing appeared to be signed by counsel, but Petitioner maintained that the signature on the notice was not his, an assertion Judge Bryson called into question. A dispute between the two ensued, at the conclusion of which Judge Bryson appeared to orally recuse herself from Petitioner's client's case, only to then seemingly retract it:

PETITIONER:	Am I dismissed?
THE COURT:	Oh, yeah.
PETITIONER:	Thank you, Your Honor.
THE COURT:	You are dismissed.
PETITIONER:	Thank you.
THE COURT:	And don't come back here, honestly.
THE CLERK:	I think he needs a follow-up date, Your Honor.
THE COURT:	No, well, I'm recusing myself from his case because I really just can't -- I can't take you [Petitioner] seriously.

PETITIONER: I didn't -- I didn't hear what the --

THE COURT: There's something wrong with you.

PETITIONER: I didn't hear what the lady said.

THE COURT: We don't care. Bye.

THE CLERK: A follow-up date on your case.

PETITIONER: I'm sorry?

THE CLERK: You would need a follow-up date. But we're going to reset it. We'll mail you the notice.

THE COURT: Yeah.

PETITIONER: Okay.

THE COURT: Bye-bye.

PETITIONER: You just recused yourself, Your Honor?

THE COURT: If I want to, I will.

PETITIONER: I thought you just did?

THE COURT: Mr. Carter, get out of the courtroom, please.

A few days later, on March 26, 2018, Judge Bryson entered a "Rule to Show Cause" order requiring Petitioner to appear on March 28, 2018, to show cause as to why he should not be held in direct criminal contempt for his alleged misrepresentations to the court that he did not sign the notice of hearing. In response, Petitioner filed his first Motion to Disqualify, arguing that he would not receive a fair hearing because Judge Bryson had recused herself from his client's case based on the same facts for which she now sought to hold Petitioner in contempt. Petitioner further argued that the alleged misconduct could not be direct criminal contempt because a determination of the issues required additional evidence. Petitioner's Motion was denied, though his client's case was subsequently reassigned to another division based on Judge Bryson's recusal.

On March 28, 2018, Petitioner, now accompanied by counsel, appeared before the trial court for what would be his first contempt hearing. Over Petitioner's objections, the trial court played two videos. The first was a recording of the March 23, 2018 hearing. The second video was a recording of the inside of the courtroom before Judge Bryson took the bench on October 16, 2017, the day on which Petitioner's client's arraignment was scheduled. That video depicted Petitioner approaching the courtroom Clerk and then, with paperwork in hand, walking toward the back of the courtroom where Petitioner's client is seen waiting by the door. Upon reaching his client, the two of them can be seen exiting the courtroom together.[1] The trial court alleged the paperwork seen on the video in Petitioner's hand was the subject notice of hearing. Two exhibits of Petitioner's signature were then introduced, which the court asserted, taken together with the second video, demonstrated that Petitioner signed the notice of hearing on behalf of his client.

Because evidence was introduced, Petitioner again argued that his charge should be indirect, rather than direct, criminal contempt, for which a defendant is entitled to more notice, discovery, and the ability to present a defense. Judge Bryson overruled Petitioner's objections, found Petitioner in direct criminal contempt for the alleged misrepresentation about the signature, and adjudicated him guilty. Judge Bryson then sentenced Petitioner to thirty (30) days in the Palm Beach County Jail, denied his request for bond, and immediately remanded him into custody to begin serving his sentence.

Shortly following his remand into custody, Petitioner filed his first Emergency Petition for Writ of Habeas Corpus. Though initially filed at the Fourth District Court of Appeal, the Petition

[1] The videos introduced at the hearing were not included in the record presented to this Court, and thus the description of the second video provided here is based on statements made by the parties gleaned from the transcript of the March 28, 2018 hearing and the facts as alleged in Judge Bryson's March 29, 2018 Order to Show Cause.

was properly transferred to this Court soon thereafter. *See Carter v. State*, No. 2018AP000040AXXXMB. While the transfer of the Petition was processing, Judge Bryson entered a new Order to Show Cause in which she *sua sponte* vacated Petitioner's direct contempt adjudication and sentence and ordered Petitioner to appear in court again the following day, March 29, to show cause why he should not be held in *indirect* criminal contempt based on the same alleged misrepresentation about the signature. Although Judge Bryson had vacated Petitioner's direct contempt adjudication and sentence, she did not order Petitioner to be released; instead, she ordered that Petitioner was to be held "no bond" on this charge.

Upon receipt of the transferred Petition, this Court entered an Order for Petitioner's immediate release and directed the State to show cause as to why the Petition should not be granted. Meanwhile, Judge Bryson cancelled the arraignment she had scheduled for March 29 on the new indirect criminal contempt charge, and Petitioner filed a second Motion to Disqualify Judge Bryson.[2]

On April 19, 2018, this Court issued an Opinion granting Petitioner's March 28 Petition in part: we quashed Judge Bryson's order assessing costs and fines, but dismissed the Petition as moot as it related to the vacated adjudication and sentence orders. Although Petitioner had also raised issues pertaining to the pending indirect criminal contempt charge, we found that those issues were not properly before the Court, and thus declined to address them at that time. *Carter v. State*, No. 2018AP000040AXXXMB (Fla. 15th Cir. Ct. Apr. 19, 2018).

[2] Petitioner also filed a Motion to Dismiss in the lower court arguing that the new indirect contempt charge violates double jeopardy, an issue Petitioner also raises in his Reply Brief in the instant proceedings. As the trial court has not yet addressed that Motion, it would be improper for this Court to do so here.

On the morning of April 24, 2018, Judge Bryson entered an Order Denying Petitioner's second Motion to Disqualify and then held an arraignment and bond hearing on the indirect contempt charge. Initially, Judge Bryson ordered Petitioner to be released on his own recognizance. However, at the conclusion of the hearing, she ordered that Petitioner be remanded back into custody to receive a mental health evaluation, and that he then be released on his own recognizance thereafter. A pretrial hearing date was set for May 25, 2018, and Petitioner was taken back into PBSO custody. In the written order that followed, Judge Bryson did not make the mental health evaluation a condition of Petitioner's bond; rather, she cited to competency case law in support of her action, ostensibly ordering the evaluation pursuant to Florida Rule of Criminal Procedure 3.210.

Shortly following his remand into custody, Petitioner filed the instant Emergency Petition for Writ of Habeas Corpus and/or Writ of Prohibition, again seeking his immediate release, as well a writ of prohibition barring Judge Bryson from further presiding over the proceedings below. On April 25, 2018, this Court again entered an Order for Petitioner's immediate release and directed the State to show cause as to why the Petition should not be granted. This Court also ordered a stay of all further proceedings in the lower tribunal, specifically including the trial court's April 24, 2018 order (remanding Petitioner into custody for a metal health evaluation).

However, by the time this Court's Order was entered, Petitioner had already underwent the mental health evaluation and been released from custody. Thus, in the State's May 15, 2018 Response to the Petition, the State argues that Petitioner's request for a writ of habeas corpus is now moot. The State further argues that Petitioner's second Motion to Disqualify Judge Bryson was properly denied, and therefore his request for a writ of prohibition should be denied as well. We will discuss each of Petitioner's requested reliefs in turn.

Direct vs. Indirect Criminal Contempt

As a preliminary matter, because Petitioner's contempt charge remains pending and there appears to have been considerable confusion on this issue below, we briefly explain the difference between direct and indirect criminal contempt, because the distinction is essential and determinative of the procedural safeguards that must be followed on remand. Where all of the acts underlying the contemptuous conduct are committed in open court in the presence of the judge, the contempt is direct. *Plank v. State*, 190 So. 3d 594, 606 (Fla. 2016). But if the judge "must take testimony during a criminal contempt proceeding or rely on additional evidence not directly observed by the trial judge," the proceeding becomes one of indirect criminal contempt, and the procedural safeguards set forth in Florida Rule of Criminal Procedure 3.840 must be followed. *Id*. at 67; *see also Sandelier v. State*, 238 So. 3d 831, 835 (Fla. 4th DCA 2018) ("Indirect criminal contempt is a proceeding in which the individual is protected by the full panoply of due process rights."); *Pole v. State*, 198 So. 3d 961, 967 (Fla. 2d DCA 2016) ("[B]ecause of the summary nature of the procedures in direct criminal contempts, any doubt as to the category in which the act falls should be resolved in favor of the contemnor." (quoting *Fisher v. State*, 248 So. 2d 479, 488 (Fla. 1971) (alteration original))).

We are convinced that the misconduct alleged here would fall into that latter category of indirect criminal contempt because the trial court must rely on additional evidence to prove the misconduct alleged. This was made clear during Petitioner's first contempt hearing when the trial court introduced two videos—one depicting events from October 16, 2017, that took place prior to Judge Bryson taking the bench, and thus outside the court's presence—and two exhibits of Petitioner's signature in effort to establish the veracity of the charge. Although we note that the trial court *sua sponte* sought to correct the charge from *direct* to *indirect* criminal contempt, we

seek to ensure that on remand the proper procedure for *indirect* criminal contempt is followed. Proceeding under rule 3.840 is now also necessary given this Court's ruling *infra* on the Petition for Writ of Prohibition. *See E.T. v. State*, 587 So. 2d 615, 616 (Fla. 1st DCA 1991) ("It is well established that summary adjudication for direct contempt is not permitted where the alleged conduct took place, not in the presence of the judge, but at an earlier time and before a different trial judge."). We now turn to Petitioner's requested relief.

Petition for Writ of Habeas Corpus

The purpose of habeas corpus is to test the legality of a restraint upon liberty. *Sneed v. Mayo*, 69 So. 2d 653, 654 (Fla. 1954). A trial court's failure to follow procedures for contempt proceedings merits the issuance of a writ of habeas corpus, requiring immediate release from custody. *Maher v. Junior*, 198 So. 3d 949, 950 (Fla. 3d DCA 2016) (citing *Durant v. Boone*, 509 So. 2d 1275 (Fla. 1st DCA 1987)). While habeas corpus exists to protect against the unlawful restraint of an individual's liberty, here, Petitioner has long been released from custody and such restraint no longer exists. Further, because the lower court's order called for Petitioner's immediate release following the mental health evaluation, and that evaluation has already taken place, there is no immediate threat that Petitioner will be taken back into custody once this Court lifts its stay of the proceedings below. Therefore, to the extent Petitioner seeks release from custody, we dismiss the Petition as moot.

That mootness notwithstanding, we review the trial court's April 24, 2018 order due to significant errors apparent on the record and Petitioner's still pending contempt charge. *See Blalock v. Rice*, 707 So. 2d 738, 739 (Fla. 2d DCA 1997) (reviewing ruling despite mootness of petition due to concerns stemming from significant errors on the record and the scheduling of another contempt hearing with additional errors); *see also Conley v. Cannon*, 708 So. 2d 306, 307

(Fla. 2d DCA 1998) (release of confined contemnor does not "necessarily mitigate the consequences which can follow a trial court's studied indifference to procedural due process"). Specifically, we find the trial court failed to follow established procedures and make the necessary findings that would authorize the court to remand Petitioner into custody for a compulsory mental health evaluation. We arrive at this conclusion noting the authority under which the trial court was acting below is unclear.

First, by citing to cases such as *Brockman v. State*, 852 So. 2d 330 (Fla. 2d DCA 2003), and *Carrion v. State*, 859 So. 2d 563 (Fla. 5th DCA 2003), both of which deal with competency issues, the trial court ostensibly ordered Petitioner's mental health evaluation under Florida Rule of Criminal Procedure 3.210. But "[c]ompetency requires strict adherence to the Florida Rules of Criminal Procedure." *Hernandez v. State*, 246 So. 3d 443, 444 (Fla. 4th DCA 2018). Under rule 3.210, if the court "has reasonable ground to believe that the defendant is not mentally competent to proceed, the court shall immediately enter its order setting a time for a hearing to determine the defendant's mental condition." Fla. R. Crim. P. 3.210(b); *see also Brockman*, 852 So. 2d at 331 (reversing for failure to hold required competency hearing); *Carrion*, 859 So. 2d at 565 (holding that trial court has no discretion to hold hearing once it finds that there are reasonable grounds to believe defendant is not mentally competent).

In *Carrion*, the trial judge entered a written order invoking rule 3.210 when he was presented with reasonable grounds to question the mental competency of the defendant. 859 So. 2d at 564. While the trial court's order initially appointed experts to evaluate the defendant's competence, when the court learned that the defendant had returned to school, the court concluded, without ever holding a competency hearing, that if the defendant was well enough to attend school, he was competent enough to stand trial. *Id*. Granting the defendant's petition for writ of certiorari,

the Fifth District Court of Appeal held that once the trial judge had come to the conclusion that reasonable grounds existed to question the defendant's competence, "he was required by the rule to follow the prescribed procedure and to hold a competency hearing." *Id*.

Here, we find the trial court failed to follow the procedures prescribed by the rules governing competency. The trial court cited to *Brockman* and *Carrion* as authority for remanding Petitioner into custody for a mental health evaluation, but those cases clearly establish that if the trial court believed there were reasonable grounds to question Petitioner's competency, it was required to set a competency hearing. And although rule 3.210(b)(3) allows a trial court to order that a defendant be taken into custody until the determination of the defendant's competency, such detention is permitted only if "the court determines that the defendant will not submit to the evaluation or that the defendant is not likely to appear for the scheduled evaluation." Fla. R. Crim. P. 3.210(b)(3). The trial court made no such findings before remanding Petitioner into custody, nor did it ever set a future hearing at which to determine Petitioner's competency; the only future hearing set here was a pretrial hearing. *See Hernandez*, 246 So. 3d at 444 ("Competency requires strict adherence to the Florida Rules of Criminal Procedure."); *Brockman*, 852 So. 2d at 332 ("Holding criminal proceedings when a defendant is mentally incompetent denies that defendant his right to a fair trial." (citing *Hill v. State*, 473 So. 2d 1253, 1259 (Fla. 1985))).

Alternatively, to the extent the trial court intended to make the mental health evaluation a condition of Petitioner's bond, we also find the trial court failed to make the requisite findings in that regard as well. *See* Fla. R. Crim. P. 3.840(c) ("The defendant shall be admitted to bail in the manner provided by law in criminal cases."). A defendant can be temporarily held in custody pending evaluations or competency placement hearings, but only if pretrial detention is authorized. *See Marino v. State*, 277 So. 3d 219, 222 (Fla. 4th DCA 2019). In order for pretrial detention to

be authorized, a trial court must make the required constitutional and statutory findings. *Id*. at 221 (citing to Fla. Const., art. I, § 14 ("If no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained."); § 907.041(4)(c), Fla. Stat. (2018) (setting out the circumstances when a court may order pretrial detention)); *see also* Fla. R. Crim. P. 3.131 (Pretrial Release); 3.132 (Pretrial Detention). Notably, a defendant cannot be denied pretrial release simply based on his incompetence to proceed. *Marino*, 277 So. 3d at 221.

Where the evidence at a bond hearing is insufficient on pretrial release factors, habeas corpus should be granted and the case remanded to the trial court for a new determination. *Rainey v. Lamberti*, 9 So. 3d 58, 59 (Fla. 4th DCA 2009). Thus, we grant the Petition insofar as we quash the trial court's April 24, 2018 order and remand this case for a proper bond determination. *See Marino*, 277 So. 3d at 220 (Fla. 4th DCA 2019) (granting petition for writ of habeas corpus where pretrial detention of petitioner was unwarranted); *see also In re Weiner*, 278 So. 3d 767, 769 (Fla. 2d DCA 2019) (granting petition for writ of habeas corpus and quashing contempt order after contemnor's release from confinement). We add that if on remand the trial court finds reasonable grounds to believe Petitioner may be incompetent to proceed, it must follow the procedures outlined in Florida Rules of Criminal Procedure 3.210, 3.211, and 3.212 accordingly. *Carrion*, 859 So. 2d at 565.

Petition for Writ of Prohibition

Petitioner further petitions this Court to issue a writ of prohibition barring Judge Bryson from issuing any further orders in the proceedings below. "[P]rohibition is the proper avenue for relief in judicial disqualification cases." *State v. Schack*, 617 So. 2d 832, 833 (Fla. 4th DCA 1993). Additionally, prohibition may be the appropriate remedy for a judge who continues to preside

without jurisdiction. *Id*. (citation omitted). We find that Petitioner's requested remedy is appropriate here given the events that transpired during the March 23, 2018 hearing, where Judge Bryson orally recused herself from Petitioner's client's case, as well as the animosity demonstrated at that and subsequent hearings.

Analogous to the facts at hand is the Fourth District Court of Appeal's opinion in *Walls v. State*, 910 So. 2d 432 (Fla. 4th DCA 2005). In *Walls*, the petitioner filed a motion to disqualify the trial judge because the judge had already recused herself from another case due to her adversarial relationship with the same attorney representing the petitioner. 910 So. 2d at 432. On appeal, the Fourth District Court of Appeal granted the petition for writ of prohibition due to the serious level of animosity between the judge and the attorney. *Id*. at 433. As support, the appellate court noted that prior to assuming the bench, the judge was an assistant statewide prosecutor, and in that capacity, she had previously moved the court for indirect criminal contempt proceedings against the same attorney now before her as a judge. *Id*. The appellate court concluded that because the trial judge considered the allegations sufficient to grant the motion to disqualify in the first case, she should have disqualified herself from presiding over the second case as well. *Id*.

We acknowledge that a trial judge generally may preside over contempt proceedings when the contempt charged does not involve disrespect to or criticism of that particular judge. Fla. R. Crim. P. 3.840. We also note that the contempt explicitly charged here relates to an alleged misrepresentation about a signature. However, we cannot overlook that Judge Bryson recused herself from Petitioner's client's case not because of a conflict she had with his client, but because of an issue she had with Petitioner. Not only did she make that explicitly clear when she stated her basis for the recusal was that she "can't take [Petitioner] seriously," but she also felt the need to mention in her Order to Show Cause that "Defendant went on an unprofessional rant in an

attempt to impugn the integrity of the Court," adding that while "not the basis of this charge," it "is included on the recording." Similar to *Walls*, we find the level of animosity present between Judge Bryson and Petitioner serious enough to warrant her recusal in both cases. We also find it sufficient to give Petitioner a reasonable fear that he will not receive a fair contempt hearing, and that his second Motion to Disqualify therefore should have been granted.

Even if that were not the case, we further find Judge Bryson's disqualification necessary due to statements she made at the April 24, 2018 hearing. There, when discussing the recusal issue, Judge Bryson assertively stated to Petitioner's counsel, "I have not recused myself from Mr. Carter's case, *nor will I*." In *Minaya v. State*, the court held that a judge's immediate denial of an ore tenus motion for disqualification based on counsel's request for an opportunity to file such a motion "crossed the line from simply forming mental impressions to prejudging the legal sufficiency of the motion to disqualify." 118 So. 3d 926, 929 (Fla. 5th DCA 2013). The appellate court found this prejudging enough to give the petitioner an objectively reasonable, well-founded fear of not receiving a fair hearing. *Id*.

Here, Judge Bryson affirmatively stated that she will not recuse herself from Petitioner's case. At the time she made that statement, she had just denied Petitioner's second Motion to Disqualify and was attempting to make clear that while she had recused herself from Petitioner's client's case, she had not recused herself from Petitioner's contempt case. Petitioner had not yet filed a third motion to disqualify, though by the end of the hearing, Petitioner's counsel had announced his intention to do so. But given the history of this case, we find that Judge Bryson's affirmative statement that she will not recuse herself from Petitioner's case rose to the level of prejudging the legal sufficiency of a future motion to disqualify, and provided Petitioner with "an objectively reasonable, well-founded fear of not receiving a fair hearing." *Minaya*, 118 So. 3d at

929. We therefore find his requested relief of a writ of prohibition appropriate.

Conclusion

Accordingly, we **DISMISS** the Petition for Writ of Habeas Corpus as moot to the extent it seeks Petitioner's immediate release, but we **GRANT** the Petition for Writ of Habeas Corpus insofar as we **QUASH** the lower court's April 24, 2018 order and **REMAND** this case for a proper bond determination. Should the lower court find that reasonable grounds exist to question Petitioner's competency, the court should proceed with a competency determination in strict accordance with Florida Rules of Criminal Procedure 3.210, 3.211, and 3.212.

We also **GRANT** the Petition for Writ of Prohibition, and direct that all future proceedings upon remand of this case are to take place before a different trial judge. As it appears Judge Bryson has rotated out of the criminal division below, we expect that the issuance of a formal writ will be unnecessary, and that the lower court will govern itself appropriately in accordance with this Opinion.

This Court's April 25, 2018 stay of the proceedings below shall be lifted automatically and without further order of this Court upon issuance of the mandate following this Opinion.

It is so ordered.

CARACUZZO, SUSKAUER, and SCHER, JJ., concur.

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CRIMINAL): AC
CASE NO.: 502018AP000048AXXXMB
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JOHN E. CARTER,
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Opinion/Decision filed: July 1, 2020

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Petition for Writ of Habeas Corpus and Petition for Prohibition from County Court in and for Palm Beach County, Florida;
Judge Marni Bryson

STATE OF FLORIDA,
Respondent.

Petition Filed: April 25, 2018

_____/

DATE OF PANEL: OCTOBER 22, 2019

PANEL JUDGES: CARACUZZO, SUSKAUER, SCHER

AFFIRMED/REVERSED/OTHER:
DISMISS IN PART AND GRANT IN PART PETITION FOR WRIT OF HABEAS CORPUS; GRANT PETITION FOR WRIT OF PROHIBITION

DECISION BY: PER CURIAM

CONCURRING:	DISSENTING: With/Without Opinion	CONCURRING SPECIALLY: With/Without Opinion
Cheryl Caracuzzo	_____	_____
DATE: 6/30/2020 J.	J.	J.
Scott Suskauer	_____	_____
DATE: 6/30/2020 J.	J.	J.
Rosemarie Scher	_____	_____
DATE: 6/30/2020 J.	J.	J.