2015 WL 4976516 (Fla.Cir.Ct.) (Trial Order)
Circuit Court of Florida.
Eleventh Judicial Circuit
Miami-dade County

STATE OF FLORIDA, Plaintiff,
v.
Matheu DORMEUS, Defendant.

No. F08-33710.
May 29, 2015.

Order Granting Petition for Writ of Habeas Corpus

Miguel M. de la O, Judge.

***1 THIS CAUSE** came before the Court on Defendant, Matheu Dormeus' ("Dormeus"), Petition for Writ of Habeas Corpus ("Petition"). The Court has reviewed the Petition, taken testimony, and heard argument of counsel.

The Petition asks this Court to vacate the plea of not guilty by reason of insanity ("NGI") that his counsel entered on his behalf, and set the case for trial. As grounds for the Petition, Dormeus argues that he was misled about the effects of an NGI plea, and that he did not knowingly and voluntarily waive his right to a jury trial.

I. BACKGROUND.

On October 14, 2008, Dormeus was charged by Information with Attempted Second Degree Murder and Aggravated Battery. Dormeus was represented by the Office of the Public Defender. On November 19, 2009, Dormeus' lawyer entered a plea of NGI, the State stipulated that Dormeus was insane at the time of the crime, and the trial court entered a Judgment of Acquittal By Reason of Insanity. Dormeus has remained in State custody, in a variety of settings ranging from community-based treatment facilities to hospitalization, since that time.

II. DORMEUS HAS A STATUTORY AND CONSTITUTIONAL RIGHT TO SEEK HABEAS RELIEF.

The State argues that this Court does not have jurisdiction to address the Petition because Dormeus was acquitted by the Court. Technically so, but Dormeus' "acquittal" is the quintessential Pyrrhic victory – an acquittal in name only. Dormeus remains hospitalized against his will more than five years since his "acquittal." In a case arising under different circumstances, a Louisiana appellate court rightly observed that defendants who are involuntarily hospitalized are essentially "incarcerated for treatment" and suffer the same consequences as a defendant who is convicted and sentenced. *See State v. LeBeouf*, 448 So. 2d 232, 235 (La. Ct. App. 1984) ("We note that the trial court did not find LeBeouf guilty or not guilty. Rather, the State *stipulated* that LeBeouf was *not guilty* by reason of insanity and the court did not sentence LeBeouf but ordered him incarcerated for treatment. We cannot permit the State to agree to a plea bargain, allow the defendant to face and endure nine years of conviction consequences, and then deny the plea bargain."). A writ of habeas corpus is available to "any person detained in custody, whether charged with a criminal offense or not." § 79.01, Fla. Stat. (2014). There can be no fair dispute that Dormeus is in custody.

Therefore, even though the trial court acquitted Dormeus, he retains the right to seek habeas relief.

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The state cavalierly claims that [defendant] has no recourse for his lot because we do not have the jurisdiction to entertain his claims. It argues that we cannot address the merits of [defendant's] plight because he failed to file a motion to withdraw his plea at the first violation hearing. Moreover, the state suggests that the rule 3.850 motion was time barred. Although the state is technically correct, where, as here, the court finds that a manifest injustice has occurred, it is the responsibility of that court to correct the injustice if it can. *See Baker v. State,* 878 So. 2d 1236, 1246 (Fla. 2004) (Anstead, C.J., specially concurring) (the writ of habeas corpus "is enshrined in our Constitution to be used as a means to correct manifest injustices and its availability for use when all other remedies have been exhausted has served our society well over many centuries. This Court will, of course, remain alert to claims of manifest injustice, as will all Florida courts."). *See also Jamason v. State,* 447 So. 2d 892, 895 (Fla. 4th DCA 1983) ("If it appears to a court of competent jurisdiction that a man is being illegally restrained of his liberty it is the responsibility of the court to brush aside formal technicalities and issue such appropriate orders as will do just justice.") (*quoting Anglin v. Mayo,* 88 So. 2d 918, 919 (Fla. 1956)).

***2** *Adams v. State*, 957 So. 2d 1183, 1186-87 (Fla. 3d DCA 2006). *See* § 394.459(8)(a), Fla. Stat. (2014) ("At any time, and without notice, a person held in a receiving or treatment facility, … may petition for a writ of habeas corpus to question the cause and legality of such detention and request that the court order a return to the writ ...."); *Clarke v. Regier*, 881 So. 2d 656, 657 (Fla. 3d DCA 2004) ("'[h]abeas corpus is the traditional remedy used to obtain a person's release from an illegal order of involuntary commitment.'") (quoting *MacNeil v. State,* 586 So. 2d 98, 99 (Fla. 5th DCA 1991)).

III. THE PETITION IS WELL-TAKEN.

The trial court did not colloquy Dormeus about whether he was waiving his right to a jury trial. In fact, the transcript of the hearing where the trial court accepted the NGI plea by defense counsel, with the State's agreement, reflects that the trial court did not ask Dormeus *any* questions. Moreover, there is no written waiver of the right to jury trial in the court file. "A waiver of jury trial must be made knowingly and voluntarily." *Thompson v. Crawford*, 479 So. 2d 169, 178 (Fla. 3d DCA 1985).

Under remarkably similar facts, the court in *Harringer v. State*, 566 So. 2d 893 (Fla. 4th DCA 1990) reversed the trial court's denial of a motion to set aside an order adjudging defendant not guilty by reason of insanity.

> With respect to the merits we first find that the record is devoid of any showing that the defendant knowingly and intelligently waived his right to a jury trial. While noncompliance with the technical requirement of a written waiver of jury trial pursuant to Florida Rule of Criminal Procedure 3.260 is permissible where there is no harm shown, *see Tucker v. State,* 559 So. 2d 218 (Fla. 1990), it must appear in the record that the trial court inquired into the defendant's waiver of a jury trial or conducted a sufficient inquiry.

Id., at 894. *See Fuller v. State,* 970 So. 2d 422, 423 (Fla. 4th DCA 2007) (following stipulation by State to adjudication of defendant as not guilty by reason of insanity, appellate court reversed commitment order because "trial judge failed to ask whether Appellant knew he was waiving his right to a jury trial").

Moreover, Dormeus' unrebutted testimony is that he wanted a jury trial and only agreed to "go to the hospital" because he thought the charges would be dropped after six months of treatment and he would be sent home. Dormeus has testified that he never agreed to waive his right to a jury trial, and would never have agreed if he knew that the Court could maintain supervision over him for the rest of his life. Therefore, the undisputed record establishes that Dormeus did not knowingly and intelligently waive his right to a jury trial.

IV. CONCLUSION.

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On the authority of *Harringer* and *Fuller,* this Court grants petition for writ of habeas corpus, vacates the Judgment of Acquittal By Reason of Insanity, and sets this case for trial.

DONE and ORDERED in Miami-Dade County, Florida this 29th day of May, 2015.

<<signature>>

Miguel M. de la O

Circuit Judge

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