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Public Defender helps release Jimmy Ryce client

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He served a sentence of 15 years for armed sexual battery, and then waited another nine years for his release subject to the Jimmy Ryce Act.

The First District Court of Appeal brought an end to Brian Taylor's wait for release from his additional jail time May 23.

Its three-judge panel, Chief Judge Robert Benton, Judge Philip Padovano and Judge T. Kent Wetherell, agreed that Taylor's rights to due process had been violated during Jimmy Ryce proceedings.

It granted his request to prevent further proceedings in the trial court on the state's petition to have him involuntarily committed as a sexually violent predator.

"There are many more. We have 112 Jimmy Ryce cases currently," said Michelle Barki, a Fourth Circuit assistant public defender, who was lead defense for Taylor.

She said 34 cases have not been brought to trial, some from as far back as 1999.

The proceeding may have been lengthy in this case, but the State Attorney's Office explained that the case was an exception rather than the rule.

"I think the process works well, and the Taylor case is a little bit of an aberration, and it's better to look at the cases as a whole rather than single out one case," said Phil Bavington, an assistant state attorney in the Fourth Circuit who handles Jimmy Ryce cases.

"The bottom line is that the state is ready to go on any of these cases. Once the petition has been filed, they have already been reviewed by the psychologist and we have the evidence we need to bring to a jury," he said.

Bavington said the preparation of the defense was the cause for the slow pace of some of the cases.

"What you will find if you look at these cases, some of them are very old, but they are old in every case based on a respondent and his lawyers' legal maneuvering and them not being ready to try the case instead of us not being ready to try the case," said Bavington. "From our perspective, the system works."

The Jimmy Ryce Involuntary Civil Commitment for Sexually Violent Predators' Treatment and Care Act was developed after 9-year-old Jimmy Ryce was kidnapped, raped, murdered and dismembered in 1995 in South Florida.

The act was signed into law in 1998 in response to the incident, and it was intended to create a civil commitment procedure to provide for the care and treatment of sexually violent predators.

It calls for the Department of Corrections, Department of Children and Family Services and state attorneys to review the histories of sex offenders who are nearing the end of their sentences and determine what level of risk they are for re-offense. The review takes place while offenders are still in custody.

According to the First DCA opinion written by Padovano, one week before Taylor was to be released from the Department of Corrections at the completion of his sentence, May 30, 2002, the state filed a petition to have him involuntarily committed as a sexually violent predator under the Jimmy Ryce Act.

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The trial court found probable cause that day and appointed counsel.

An adversarial probable cause hearing was set for July 10, 2002, more than 30 days from the finding of probable cause and beyond the time limit for trial.

Both sides agreed to postpone the adversarial hearing, and it took place Dec. 5, 2002. The trial judge found probable cause, but a trial date was not set at that time.

More than two years later, the court entered an order setting the trial for Sept. 13, 2005.

The process stalled again as the state moved to continue the trial beyond the September date because one of its expert witnesses had changed his opinion and no longer thought that Taylor met the criteria for involuntary commitment.

"Taylor believed this recent development might lead to a settlement and for that reason he did not object to the state's motion," Padovano stated in the opinion.

The state's motion to continue was granted, but a trial date was again absent from the order on the motion. After almost five years with no progress in the case, Taylor filed a motion to dismiss the state's petition for involuntary commitment Feb. 4, 2010. The trial court eventually granted the motion.

The order dismissing the state's petition was filed July 16, 2010, and was followed later that day with a notice of appeal from the state.

The next step for the state was to file a pleading Sept. 30, 2010, designated as an "amended" petition under the Jimmy Ryce Act and it dismissed the appeal it filed in July.

Taylor filed for review by the First District Court of Appeal to prevent the trial court from taking further judicial action on the state's petition.

The three-judge panel concurred. "Taylor was not in lawful custody when the amended petition for involuntary commitment was filed and that the trial court is without jurisdiction to proceed on the amended petition."

The Fourth Circuit Public Defender's Office plans to see more of these cases.

"Basically, we are trying to see what happens with the 34 other men. If we go to trial on the 34 others, then everybody will need more resources: the state attorney's office, the public defender's office and the court system," said Barki.

"These are not short trials. It's expert intensive. We are waiting to see how we proceed in the next step."

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