

STATE OF FLORIDA vs JAMES PHILLIP BARNES
Case Management Conference on 06/27/2023

1 IN THE CIRCUIT COURT OF THE
2 EIGHTEENTH JUDICIAL CIRCUIT, IN
AND FOR BREVARD COUNTY, FLORIDA

3 CASE NO. :
4 05-2006-CF-014592-AXXX-XX

5 STATE OF FLORIDA,

6 Plaintiff,

7 vs.

8 JAMES PHILLIP BARNES,

9 Defendant.

10 _____/

11 CASE MANAGEMENT CONFERENCE
12

13 BEFORE: Honorable Steven Henderson

14 DATE: Tuesday, June 27, 2023

15 TIME: 2:11 p.m. - 5:51 p.m.

16 PLACE: Moore Justice Center
17 2825 Judge Fran Jamieson Way
Courtroom 4F
18 Viera, Florida 32940

19 STENOGRAPHICALLY
REPORTED BY: Melodie K. Lewis, RPR

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19 ALSO PRESENT:

20 JAMES PHILLIP BARNES, Defendant (Appeared Via
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21 CLAYTON ROGER, Investigator (Appeared Via
Videoconference)
22 AMANDA CHIN, Investigator (Appeared Via
Videoconference)
23 KIM BARDING, Clerk of Court's Office
THERESA EBERHART, Criminal & Compliance Supervisor
24

25

1 P R O C E E D I N G S

2 *****

3 THE COURT: We're on the record. Case No.
4 2006-CF-14592, State of Florida versus James Phillip
5 Barnes. We'll go ahead and admit everybody in
6 Microsoft Teams.

7 Good afternoon, everybody. This is Judge
8 Henderson. You are on Teams, Microsoft Teams. I do
9 have a stenographer present in front of me. And I'm
10 going to go through, make sure who I have on
11 Microsoft Teams there.

12 So who do I have from the AG's office?

13 MR. BOBEK: Patrick Bobek with the Attorney
14 General's office.

15 THE COURT: Yes, sir.

16 MS. MEACHAM: Doris Meacham, Attorney General's
17 office.

18 THE COURT: Thank you, ma'am.

19 And from the Department of Corrections?

20 MS. PORRELLO: Good afternoon, Your Honor.
21 Christina Porrello on behalf of the Florida
22 Department of Corrections and also Philip Fowler
23 here on behalf of the Florida Department of
24 Corrections.

25 THE COURT: Thank you.

1 And for Defense?

2 COURT REPORTER: Your Honor -- I couldn't hear
3 any of that, Your Honor.

4 THE COURT: We couldn't hear anything. Do you
5 mind turning up or going closer to your microphone
6 if possible?

7 MR. SHAKOOR: Ali, Shakoor, Your Honor. Can
8 you hear me now?

9 COURT REPORTER: No.

10 THE COURT: Not really.

11 MR. SHAKOOR: Last name is Shakoor,
12 S-H-A-K-O-O-R. First name is Ali, A-L-I. I am here
13 on behalf of Mr. Barnes. I'm here with my
14 co-counsel, Adrienne Shepherd. Also -- Middle
15 Region, Eric Pinkard is present.

16 THE COURT: What was the first thing Pinker?
17 Eric Pinkard? Thank you.

18 MR. SHAKOOR: And we also have two
19 investigators sitting in. Amanda Chin and Clayton
20 Rogers. They will not be speaking for the --

21 THE COURT: Amanda Chin and what was the other
22 name, please?

23 MR. SHAKOOR: Clayton Rogers.

24 THE COURT: Thank you. And do I have
25 Mr. Barnes present?

1 MR. BARNES: James Phillip Barnes. I am
2 currently housed on death watch at Florida State
3 Prison. I would like to address -- I would like to
4 make an ore tenus motion to discharge Counsel and
5 substitute with myself pro se.

6 THE COURT: Hang on a second, Mr. Barnes. I'm
7 still seeing who I have on Teams before I address
8 anything; okay? So I am making sure that you are
9 present.

10 MR. BARNES: Yes, sir.

11 THE COURT: So I've got you present.
12 Mr. Barnes is present. Anyone else is on Microsoft
13 Teams that I did not address?

14 MS. ROBINSON: Janine Robinson, Your Honor.
15 Good afternoon. For on behalf of the Florida
16 Department of Law Enforcement.

17 THE COURT: Thank you. Anyone else on
18 Microsoft Teams I did not address?

19 All right. Anyone in the courtroom?

20 MS. GARRETT: Susan Garrett with the Office of
21 the State Attorney.

22 THE COURT: Ms. Garrett. Thank you.

23 All right. So we are here on the Court's order
24 scheduling a case management conference that the
25 Court entered on June 23rd, 2023. And, Mr. Barnes,

1 do you wish to be heard?

2 MR. BARNES: Yes, Your Honor. I would like to
3 proceed pro se, but first I would like to discharge
4 Counsel.

5 THE COURT: Okay. I'm going to ask you some
6 questions here, Mr. Barnes. I know you've
7 represented yourself before; is that correct?

8 MR. BARNES: That's correct.

9 THE COURT: Okay. And how far did you go in
10 school?

11 MR. BARNES: 13 years.

12 THE COURT: Okay. Did you obtain any degrees?

13 MR. BARNES: No, Your Honor.

14 THE COURT: Okay. And when you say "13 years,"
15 what did that education consist of?

16 MR. BARNES: I completed a high school diploma,
17 and I had continuing education units that I'm not
18 counting, but here at community college.

19 THE COURT: All right. High school diploma and
20 community college. And you said you had some other
21 courses that you --

22 MR. BARNES: Continuing education.

23 THE COURT: Thank you, sir. Continuing
24 education. And what is your current age, sir?

25 MR. BARNES: 61.

1 THE COURT: Okay. And have you had any legal
2 training?

3 MR. BARNES: Yes, Your Honor. I used to be
4 a -- I've had legal training.

5 THE COURT: Okay. And what would that -- okay.
6 And what did that legal training consist of?

7 MR. BARNES: Many, many courses. I don't have
8 a JD, if that's what you're getting at.

9 THE COURT: No. No. No. I'm not asking if
10 you have a JD. I'm just inquiring if you can name
11 any of the courses that you've taken here.

12 MR. BARNES: I've spent many years as a law
13 clerk, Your Honor.

14 THE COURT: For the judge or with an attorney?

15 MR. BARNES: Just a law clerk in prison.

16 THE COURT: Okay. So while you've been in DOC,
17 you've been working as a law clerk?

18 MR. BARNES: Yes, sir.

19 THE COURT: Okay. And as a law clerk, what do
20 you generally do there?

21 MR. BARNES: Read, analyze, disseminate the
22 information in front of you for other inmates.
23 Sometimes you have to clearly put statements
24 together so that they can submit their own papers of
25 relief to the Court.

1 THE COURT: All right. And how long have you
2 been doing that?

3 MR. BARNES: Well, I've been on death row for
4 many years. But it seems that things do come back
5 pretty quickly once you have special incentive.

6 THE COURT: Okay. So you're saying that you
7 are unable to work as a law clerk while you've been
8 on death row or have you have been?

9 MR. BARNES: No. But I've read many, many
10 documents since I've been on death row.

11 THE COURT: Okay.

12 MR. BARNES: Can we proceed with my motion?

13 THE COURT: Not quite yet. I'm still asking
14 you questions.

15 Are you currently taking any medication or
16 anything like that?

17 MR. BARNES: No, Your Honor.

18 THE COURT: Do you suffer from any mental
19 illnesses?

20 MR. BARNES: No, Your Honor.

21 THE COURT: And you're thinking clearly today?

22 MR. BARNES: Very clearly, Your Honor.

23 THE COURT: All right. Give me one second,
24 sir.

25 I just had to step out for a moment.

1 All right. Could I hear from the AG's office
2 on Mr. Barnes' request to represent himself?

3 MR. BOBEK: Yes. Just one moment, Judge. I'm
4 trying to pull up a rule.

5 MR. BARNES: Your Honor, this is James Philip
6 Barnes. We did understand that I made an ore tenus
7 motion to discharge Counsel first and then represent
8 myself pro se in this proceeding?

9 THE COURT: I heard you the first time,
10 Mr. Barnes, so.

11 MR. BARNES: Okay. Thank you.

12 THE COURT: Thank you.

13 MR. BOBEK: Yes, Judge. One of the things he
14 needs to understand is that if you find that he's
15 knowingly, intelligently involved -- waiving that,
16 he's also waiving appellate review of dismissal
17 post-conviction proceedings. So your decision to
18 grant his dismissal would no longer be appealable by
19 him.

20 THE COURT: Okay. Any other input from the
21 AG's office on Mr. Barnes' request to represent
22 himself?

23 MR. BOBEK: Also that he understands that this
24 is a final decision, he can't change his mind, and
25 that his motion is due at noon tomorrow.

1 THE COURT: Thank you. And may I hear from
2 Defense Counsel, please?

3 MR. SHAKOOR: Yes, Your Honor. I know this is
4 kind of a novel situation that warrants -- 3.851(b)
5 as in boy (6). Mr. Barnes is not permitted to
6 represent himself in warrant proceedings. He's not
7 permitted to go pro se.

8 That's according to 3.851(b)(6). He's been
9 sentenced to death. He may not represent himself in
10 capital post-conviction proceedings. That's the
11 posture that we're in right now. Unless --

12 MR. BARNES: Ali, you're fired.

13 MR. SHAKOOR: -- that's my position.

14 MR. BARNES: We all understand that? Ali
15 Shakoor, you're fired.

16 THE COURT: Mr. Barnes, if you keep
17 interrupting, I'm going to have no alternative but
18 to mute you; all right? I'm trying to hear your
19 motion and let you represent yourself, but I have to
20 hear from Defense Counsel and the AG's office; all
21 right?

22 MR. BARNES: I didn't ask you to put any
23 motions in for me. You're fired.

24 THE COURT: Anything else from Defense Counsel?

25 MR. SHAKOOR: No, Your Honor. Just that we are

1 required to represent Mr. Barnes unless and until
2 there's a conflict of interest.

3 THE COURT: Okay. All right. Court's going to
4 take a brief recess and be back in a few moments.
5 Thank you, everybody.

6 We'll be in recess.

7 (A 19-minute recess was taken at 2:29 p.m.,
8 after which time the proceedings continued as follows:)

9 THE COURT: All right. We're back on the
10 record. State of Florida versus James Barnes, Case
11 No. 2006-CF-14582 -- I apologize -- 14592. Do we
12 have we have everybody on Teams? Anyone missing?
13 Looks like we've got everybody. Mr. Barnes present?

14 MR. BARNES: Yes, Your Honor.

15 THE COURT: Very good. All right. The Court
16 took a brief recess to research the issue that
17 Defense Counsel raised.

18 Defense Counsel, I'm not sure if you all are
19 using a -- like a speaker phone or something like
20 that. But if you could try and speak more directly
21 into the mic, I'd greatly appreciate it so that I
22 can hear you and the court reporter can hear you as
23 well.

24 I did have a chance to go back and review Rule
25 3.851(b)(6). Defense Counsel is correct.

1 Mr. Barnes, unfortunately, even if I wanted to let
2 you represent yourself, I cannot. So I'm going to
3 deny your request to represent yourself.

4 MR. BARNES: Okay.

5 THE COURT: And that's pursuant to Rule
6 3.851(b)(6). We've also researched the case law to
7 see if there had been any changes and there has not
8 been.

9 Just one note before we continue. I just want
10 to, you know, advise everyone, all the attorneys
11 particularly from each side if you're going to be
12 contacting the Court, make sure you do that through
13 email. And if you serve something in the portal,
14 make sure that you're serving all the parties
15 involved in the case.

16 Let me ask all the attorneys and -- well,
17 answer if you know. If anyone hasn't -- answer this
18 question if you know.

19 Has everybody received this Court's amended
20 scheduling order?

21 All right. Nobody said no, so I'm assuming
22 everybody received it.

23 Does anybody have -- any attorneys have any
24 issues that you feel the Court missed in its
25 scheduling order -- or its amended scheduling order?

1 AG's office, you're good with the amended
2 scheduling order?

3 MR. BOBEK: Yes, Judge. I did just want to
4 point out that Mr. Barnes can still discharge
5 Counsel. I don't know if he still wanted to do
6 that --

7 THE COURT: No. I've already ruled on that, so
8 we're moving on to something else.

9 MR. BOBEK: I just meant so he can't proceed
10 pro se, but I don't know if he still wanted to
11 discharge Counsel, we'll just end the proceeding.
12 There would be no -- for his execution. I just
13 didn't know what his wishes were at this point.

14 MR. BARNES: I would like to --

15 COURT REPORTER: I couldn't hear him, Your
16 Honor.

17 THE COURT: What did you say, Mr. Barnes?

18 MR. BARNES: Please discharge the motion. I am
19 prepared for execution. Don't drag this out.

20 THE COURT: All right, Mr. Barnes. Give me a
21 moment; okay?

22 MR. BARNES: Thank you.

23 THE COURT: And what I'm hearing, Mr. Barnes,
24 is that you don't want your attorneys to assist you
25 at all in this?

1 MR. BARNES: No, Your Honor.

2 THE COURT: I understand.

3 I heard from the AG's office. Can I hear from
4 Defense Counsel, please.

5 MR. SHAKOOR: Yes, Your Honor. I just -- first
6 things first, I would recommend that the Court
7 consider appointing a doctor for a competency
8 evaluation or -- evaluation at this point just in an
9 abundance of caution because Mr. Barnes waiving the
10 proceedings at this juncture.

11 I just have concerns based on the history of
12 mental illness. I don't have any personal concerns
13 of his competency exactly, but just in a abundance
14 of caution I think the Court might want to consider
15 appointing a doctor to evaluate him for competency
16 and sanity.

17 And, secondly, Your Honor, I want Mr. Barnes'
18 waiver to be -- intelligent and involuntary. Since
19 the warrant was announced last Thursday, Co-Counsel
20 and I have hired experts and been researching the
21 issues. We have a couple of different issues that
22 we're looking into regarding access to records
23 regarding lethal injection.

24 Also, his mental illness and his personality
25 disorders are mitigating in nature. So we have

1 experts on right now working on the case as we
2 speak. So if -- I just want to be knowing,
3 intelligent, and voluntary about what he's waiving.

4 THE COURT: Understood.

5 All right. Before we do that, before I go into
6 that issue, I want to address some other issues with
7 Counsel.

8 Specifically, I want to ask Defense Counsel,
9 did you all receive the records that you demanded
10 back on September 2nd, 2020, Documentary No. 397?

11 MR. SHAKOOR: Yes, Your Honor. No issues
12 there.

13 THE COURT: So you did receive that?

14 MR. SHAKOOR: Yes, Your Honor.

15 THE COURT: All right. You just didn't file a
16 notice of filing? Or did you receive it and file
17 it, apparently?

18 MR. SHAKOOR: Perhaps not, Your Honor. I'm not
19 sure.

20 THE COURT: Okay.

21 MR. SHAKOOR: -- outstanding records --

22 COURT REPORTER: Your Honor, I cannot hear him.
23 I'm so sorry.

24 THE COURT: You're fine.

25 Defense Counsel, I still need you to speak up

1 when you all speak because we're having some trouble
2 hearing you.

3 My understanding, your answer was that you
4 received the documentation from your demand that you
5 filed back on September 2nd, 2020; is that correct?

6 MR. SHAKOOR: Yes, Your Honor.

7 THE COURT: All right. And the attorney for
8 Department of Corrections, you all confirmed that
9 you've provided those records.

10 MS. PORRELLO: Christina Porrello, for the
11 record. Yes, Your Honor, we did and this afternoon
12 provided the transmittal forms. We filed those in
13 the court file to document our submissions to the
14 repository.

15 THE COURT: Okay. Very good. So those are
16 taken care of. All right.

17 Looks like I received at least four objections.

18 There's an objection from the Department of
19 Corrections from Defense's request filed yesterday
20 for a lethal injection records of other inmates.

21 There's also an objection from the medical
22 examiner's office in Gainesville for autopsies of
23 other executed inmates.

24 I believe there's an objection from FDLE to
25 request various records by Defense.

1 And then there was an objection by Department
2 of Corrections as to requests for overdoses of
3 fentanyl, administrative grievances made by Mr. --
4 the defendant, classification records by the
5 defendant, and visitation logs for visitors to the
6 defendant.

7 Were those the four objections the parties are
8 aware of?

9 Let me ask the AG's office. Are those the
10 objections you all are aware of?

11 MR. BOBEK: Yes, Judge.

12 THE COURT: All right. And, Defense, are
13 those -- I apologize.

14 MS. PORRELLO: I'm sorry, Your Honor.
15 Christina Porrello for the Department of Corrections
16 again.

17 THE COURT: Yes, ma'am.

18 MS. PORRELLO: Our objection was to the lethal
19 injection records. And then we did provide the
20 classification records. We were not objecting to
21 that. We did provide visitation logs. We were not
22 objecting to that. And so -- and I'm sorry. The
23 fentanyl overdose we were objecting to.

24 THE COURT: Okay. Thank you.

25 MS. PORRELLO: So of those that were requested

1 to us that were provided to us for consideration, we
2 were not objecting to every single one.

3 THE COURT: Understood. All right.

4 So -- all right. Over the DOC's objection and
5 I know -- I apologize. I have an attorney from
6 FDLE. Ms. Robinson, is it?

7 MS. ROBINSON: Yes. Janine Robinson. Good
8 afternoon, Your Honor.

9 THE COURT: Good afternoon, ma'am. You all
10 filed an objection to various records?

11 MS. ROBINSON: We did. Yes, sir. The demand
12 was exclusively regarding lethal injection records
13 as well.

14 THE COURT: All right. I'll take those
15 objections up at the next hearing after we conclude
16 this one.

17 Defense, were there any other public record
18 requests that you all have made that I did not just
19 discuss?

20 MR. SHAKOOR: No, Your Honor.

21 THE COURT: You said "no"?

22 MR. SHAKOOR: No.

23 THE COURT: Very good. Thank you.

24 Defense Counsel, I apologize. If I were to
25 deny -- I haven't decided what I'm going to do yet.

1 But if I decided to deny Mr. Barnes' request to
2 discharge Counsel, does that effect your decision or
3 your request, rather, for a competency evaluation?

4 MR. SHAKOOR: Well, Your Honor. At this point
5 we're in a precarious situation because we had an
6 expert scheduled to see Mr. Barnes today.
7 Mr. Barnes refused to see that expert. So I'm in
8 the dark right now regarding Mr. Barnes' competency.
9 I have not seen him in, I believe, a couple, maybe
10 several years. He's refused multiple visits.

11 I'm just articulating that if Mr. Barnes were
12 to waive his proceedings -- which is his right --
13 out of an abundance of caution, the Court might on
14 its own accord -- a competency doctor or a sanity
15 doctor just in an abundance of caution, again.

16 THE COURT: All right. So it doesn't cure
17 Defense Counsel's issue if you all weren't
18 discharged; correct?

19 MR. SHAKOOR: Your Honor, I don't have any
20 opinion of his competency. I just have concerns.

21 THE COURT: Understood.

22 MR. SHAKOOR: Specific concerns.

23 But we have a motion due tomorrow at noon. So
24 if Mr. Barnes is articulating that -- and we're not
25 permitted to file that motion. However, if we are

1 going to be on the case and if this Court is going
2 to order us to remain on the case to litigate on
3 behalf of Mr. Barnes, irrespective of his wishes,
4 then we have a motion due tomorrow. So we just need
5 an answer.

6 THE COURT: Understood.

7 MR. SHAKOOR: From this hearing.

8 THE COURT: Thank you, Counsel.

9 Can I get the AG's office to weigh in on the
10 competency issue?

11 MR. BOBEK: Yes, Judge. I believe Mr. Shakoor
12 earlier said that even he doesn't believe he's
13 incompetent at this point. The only times in
14 evaluating in the past, he's been found competent to
15 proceed.

16 In fact, he has a pretty robust understanding
17 of the legal process that he's facing. And I don't
18 believe it's within your discretion to deny a
19 discharge if his waiver is knowing, voluntarily, and
20 intelligent and if he's competent.

21 THE COURT: That's not what I'm asking. I'm
22 asking about the competency issue.

23 MR. BOBEK: Right. I don't think there's any
24 signs that he's incompetent to proceed. There never
25 have been. Just general disagreement with the way

1 he's proceeded to represent himself and plead
2 guilty. I think the only reason those concerns
3 exist. Every doctor he's talked to him as not
4 shared those concerns.

5 THE COURT: And --

6 MR. BOBEK: And he has no -- mental illness.

7 THE COURT: Thank you.

8 And, Defense Counsel, if there was to be an
9 evaluation, procedurally, how are you all going to
10 do that?

11 MR. SHAKOOR: Well, Your Honor, we have already
12 had an expert scheduled to evaluate Mr. Barnes today
13 and he refused. We don't have -- Mr. Barnes to come
14 out to be evaluated.

15 THE COURT: All right. Understood.

16 All right, folks. I'm going -- apologize. I'm
17 going to take a brief recess here, and then I'll be
18 back with you all; all right?

19 Court will be in recess.

20 (A 60-minute recess was taken at 3:04 p.m.,
21 after which time the proceedings continued as follows:)

22 THE COURT: All right. Going back on the
23 record in State of Florida versus James Phillips
24 Barnes, Case No. 2006-CF-014592. Make sure I've got
25 everybody -- looks like I've got everybody present.

1 Folks, specifically the attorneys for the AG's
2 office and the attorneys for Defense Counsel, I'm
3 going to ask both sides to carefully review Rule
4 3.851(b) (6). I'm going to give you, like, 15 to 20
5 minutes to do that.

6 I also want you all, both sides to consider
7 that Mr. Barnes doesn't want to proceed with any
8 post-conviction appeals and wishes to proceed to his
9 execution posthaste. And that is in regard to the
10 language of about our conflict between Counsel and
11 the defendant in 3.851(b) (6).

12 So I'm going to give you all about 15 to 20
13 minutes to research that issue. Obviously, I cannot
14 take up the objections until we resolve this issue;
15 okay?

16 Thank you folks. We'll be in recess for about
17 15 minutes. We'll be in recess.

18 (A recess was taken at 4:05 p.m., after which
19 time the proceedings continued at 5:30 p.m. as follows:)

20 THE COURT: All right. We're going back on the
21 record. State of Florida versus James Phillip
22 Barnes, Case No. 2006-CF-14592. Let everyone get
23 back on Teams.

24 Appreciate everyone's patience. Mr. Barnes, do
25 I have you present, sir?

1 MR. BARNES: Yes, sir.

2 THE COURT: Thank you, Mr. Barnes.

3 All right. When we broke, I had asked
4 respectfully the AG's office and the defense to
5 carefully look at 3.851(b)(6). I'll hear from the
6 AG's office first.

7 MR. BOBEK: Thank you, Judge. Now that
8 Mr. Barnes has expressed a desire to waive his
9 proceedings, discharge Counsel, and end his
10 post-conviction proceedings, at this point, your
11 task is to do a Faretta-style inquiry according to
12 Durocher v. Singletary to determine if he's
13 competent to waive.

14 And if you have any reasonable grounds to think
15 he's not competent, then you can order -- sorry, I
16 got something in my throat -- then you can order
17 competency evaluations.

18 At this point, I don't think there's any
19 reasonable grounds. We have three previous experts
20 who've talked to him. One for mitigation, two for
21 competency. Two found that he was competent to
22 proceed.

23 The only grounds I've heard from Defense are
24 that they disagree on how to proceed, and that's
25 causing the personality conflicts. But Mr. Barnes

1 is clearly component to proceed at this point.

2 And then once you do that, you do an inquiry to
3 make sure he understands the full ramifications of
4 actually waiving Counsel and post-conviction
5 proceedings. And then you ask him at that point if
6 he does want to do that whether he wants to waive
7 appellate review of your dismissal of
8 post-conviction.

9 THE COURT: All right. Thank you, sir.

10 And, Defense Counsel?

11 MR. SHAKOOR: Your Honor, I concur,
12 particularly with that last part. If Mr. Barnes
13 intends to waive, if that is his wish, then it is
14 governed by 3.851(i)(6). And that would incorporate
15 knowing and intelligent, voluntary of all his
16 post-conviction proceedings as well as the appeal
17 the dismissal of his proceedings. With that in --
18 if that is what Mr. Barnes wants to do.

19 THE COURT: Respectfully, I'm going to deny the
20 request to discharge Counsel. And I'm going to go
21 ahead --

22 MR. BOBEK: Judge, under Durocher, he has an
23 absolute right to discharge Counsel as long as it's
24 knowing, intelligent, and voluntary. The rule says
25 once you find that it's knowing, voluntary, and

1 intelligent, then you must enter an order
2 discharging proceedings. It's not in your
3 discretion --

4 THE COURT: Respectfully, I disagree. The
5 Statute 3.851(b)(6) couldn't be any clearer. I
6 haven't heard that there is any conflict between
7 Defense Counsel and his client. And, in fact,
8 Defense Counsel indicated that there was no
9 conflict.

10 And the plain reading of the statute indicates
11 that he can't proceed pro se, which means he can't
12 discharge an attorney. Also, if I was to grant
13 it -- if there was a conflict, I'd have to find a
14 statutory conflict, which I do not find. But,
15 hypothetically, if I did, he would be appointed
16 standby counsel so.

17 MR. BOBEK: So, again, Judge -- and I'm sorry
18 to interject -- the decision isn't between whether
19 or not you're letting him go pro se; it's whether
20 the proceedings are over and he's executed.

21 If I could point you to 3.851(i)(7), "If the
22 Court determines the defendant has made the decision
23 to dismiss pending post-conviction proceedings
24 knowingly, intelligently, and voluntarily, the Court
25 must enter an order dismissing all pending

1 proceedings."

2 So it's not a may, it's not a within
3 discretion, your only determination is whether he's
4 doing it knowingly, intelligently, and voluntarily.
5 It has nothing to do with (b) (6). It's a different
6 subdivision.

7 THE COURT: And what subdivision were you
8 citing again?

9 MR. BOBEK: That's 3.851(i) (7). Once he
10 indicates a desire to waive, that's the only
11 determination you make. Because he's not proceeding
12 pro se. He won't file anything. He won't be able
13 to file anything. The proceedings are over.

14 MR. SHAKOOR: Your Honor, (b) (6) -- at this
15 state, we are looking at a probable waiver of
16 proceedings and, at that point, Mr. Bobek is right.
17 It's (i) (6) and (i) (7). So (b) (6), I would tell the
18 Court, is moot at this point. If Mr. Barnes intends
19 to waive proceedings, then we are under 3.852(i) --
20 I'm sorry -- 3.851(i).

21 THE COURT: Okay.

22 All right. Mr. Barnes, can you hear me, sir?

23 MR. BARNES: Yes.

24 THE COURT: All right. So I'm going to ask you
25 a couple questions. I'm going to clarify something

1 here because you said a couple different things.
2 One was you want to discharge your attorney and
3 proceed pro se. And then you also made a comment
4 about potentially proceeding with your execution
5 posthaste.

6 I've already ruled on the issue of you being
7 able to discharge your attorney because the rule
8 prohibits me from doing that, 3.851(b)(6).

9 Did you understand that?

10 MR. BARNES: Yes, Your Honor.

11 THE COURT: Okay.

12 MR. BARNES: We're going -- now; right?

13 THE COURT: I apologize?

14 MR. BARNES: -- 57?

15 THE COURT: Correct. So are you requesting
16 that the Court -- what is your request?

17 MR. BARNES: That to withdraw the motions filed
18 on my behalf. I no longer seek relief.

19 THE COURT: All right. And that includes all
20 the post-conviction motions and?

21 MR. BARNES: Correct.

22 THE COURT: Okay. And your desire is to
23 proceed straight to execution, for lack of a better
24 word; is that correct?

25 MR. BARNES: Correct.

1 THE COURT: Okay.

2 MR. BARNES: I think it's scheduled August the
3 3rd at 6 p.m.

4 THE COURT: Okay.

5 MR. BARNES: I do not wish to delay justice.

6 THE COURT: Okay. I appreciate that,
7 Mr. Barnes. I understand. I was -- I think the
8 Court was confused as to exactly what it was you
9 were requesting. So we were dealing with two
10 different subsections of the statute.

11 So sounds like you want to -- and Counsel for
12 the AG's office, can you -- what subsections again
13 were you all referencing? Is it (i) (7)?

14 MR. BOBEK: So it's I in general about
15 dismissal of post-conviction proceedings. (7) is
16 just the final determination.

17 The first thing you do is a Faretta-style
18 inquiry to determine if he's competent. Similar to
19 the one you did at the beginning of the hearing
20 today.

21 And then if you don't have any concerns about
22 his competency which, again, as I've outlined, the
23 evidence is pretty clear. The reports we have are
24 that he's competent, so he's presumed competent.

25 Then you explain what it means to waive the

1 proceedings. You know, that there will be -- the
2 investigation will cease is to -- it's over. They
3 will not be filing a motion on his behalf tomorrow.
4 And he will be executed on August 3rd.

5 And then if he understands that and still wants
6 to waive, you ask him if he wants to waive appellate
7 review of that decision.

8 THE COURT: All right.

9 MR. BOBEK: And then whether or not he does,
10 you would put that in your order.

11 THE COURT: I apologize to AG's office and
12 Defense Counsel. I was proceeding under
13 3.851(b)(6). Now we're proceeding under (i) of the
14 same statute; correct? State AG's office, Defense
15 agree with that?

16 MR. BOBEK: Yes. (i), yeah.

17 THE COURT: Okay. All right.

18 Mr. Barnes, I had asked you some questions
19 earlier in the hearing regarding -- when you wanted
20 to represent yourself regarding your education. I'm
21 not going to go through all those questions again
22 because I've already asked you all those questions.
23 But I do have some additional questions for you.

24 MR. BARNES: I'm ready, Your Honor.

25 THE COURT: Okay. Just give me one second so I

1 can get my -- switch gears here from the other
2 statute to this subsection. Appreciate your
3 patience.

4 MR. BARNES: For the record, I would like to
5 say that it is my intent to dismiss post-conviction
6 proceedings and waive any more post-conviction
7 proceedings.

8 THE COURT: Yes, sir. I just have to make sure
9 that you're making that decision knowingly,
10 voluntarily, and intelligently. I asked you a bunch
11 of questions earlier. I have those answers. I'm
12 just going to ask you some additional questions.

13 Are you currently taking any substances
14 affecting your judgment?

15 MR. BARNES: No, Your Honor.

16 THE COURT: All right. Have you taken any
17 pills, drugs, or alcohol in the last 24 hours that's
18 affecting your ability to think clearly?

19 MR. BARNES: No, Your Honor.

20 THE COURT: Are you thinking clearly today?

21 MR. BARNES: Yes, Your Honor.

22 THE COURT: Okay. Have you ever been diagnosed
23 with any mental illness?

24 MR. BARNES: No, Your Honor.

25 THE COURT: Are you currently on or have you

1 ever taken any psychiatric or -- type medications?

2 MR. BARNES: No, Your Honor.

3 THE COURT: And have you ever been Baker Acted
4 or?

5 MR. BARNES: I was Baker Acted one time. It
6 was drug -- cocaine psychosis. But that was, like,
7 1992, I think.

8 THE COURT: All right. And how long was that
9 Baker Act?

10 MR. BARNES: Three days.

11 THE COURT: Three days? Okay. And then you
12 were released?

13 MR. BARNES: Yes, Your Honor.

14 THE COURT: All right.

15 MR. BARNES: Yes, Your Honor.

16 THE COURT: Mr. Barnes, you understand that
17 you're waiving any post-conviction arguments? I
18 know you've said it -- post-conviction arguments and
19 motions. Do you understand that?

20 MR. BARNES: Yes, Your Honor.

21 THE COURT: And is anyone forcing you to make
22 this decision today?

23 MR. BARNES: No, Your Honor.

24 THE COURT: And you're doing this -- you're
25 making this decision on your own free will?

1 MR. BARNES: Yes, Your Honor.

2 THE COURT: And have I heard you correctly, you
3 indicated because you wanted justice to be served;
4 is that correct?

5 MR. BARNES: Yes, sir. I do not want to delay
6 justice, Your Honor.

7 THE COURT: Okay. Counsel for the AG's office,
8 do you have additional questions for Mr. Barnes?

9 MR. BOBEK: No, Judge. Just at this time you
10 would determine whether he's competent, and then you
11 would move on to the second query.

12 THE COURT: Okay. Defense Counsel, do you have
13 any questions for Mr. Barnes?

14 MR. SHAKOOR: Just need to determine whether or
15 not he specifically wants to waive appellate review
16 of today's proceedings.

17 THE COURT: Thank you. Mr. Barnes --

18 MR. BARNES: Yes, sir.

19 THE COURT: Do you understand that you're
20 waiving any appellate review of those proceedings?

21 MR. BARNES: Yes, Your Honor.

22 THE COURT: And is that what you wish to do?

23 MR. BARNES: Yes, Your Honor.

24 THE COURT: Okay. Give me one second,
25 Mr. Barnes. I know you can't see because you don't

1 have a camera, so I'm reviewing some documents here.

2 Mr. Barnes, I've had several conversations with
3 you during today's hearing. And based on that
4 conversation with you and the questions that I've
5 asked and the answers that you've given me, I
6 believe that you're -- I find that you're competent
7 and that you're answering all the questions
8 coherently without any delay.

9 So I'm going to go ahead and find that your
10 decision to dismiss any post-conviction proceedings,
11 that your decision is made knowing, intelligently,
12 and voluntarily.

13 I will enter an order this evening dismissing
14 all pending post-conviction proceedings.

15 MR. BARNES: Thank you, Your Honor.

16 THE COURT: Yes, sir. Counsel from AG's
17 office, FDLE, DOC, State wish to add anything or be
18 heard?

19 MR. SHAKOOR: The only thing I would add is
20 that we are still on the case technically. So I
21 just will call Barnes every Friday between now and
22 the execution in case he has anything he wants us to
23 do on his behalf, contacting family, contacting a
24 religious leader. I will call him every Friday
25 between and the execution date. So I'd like to take

1 the opportunity to let him know now on the record
2 since I have another way of contacting.

3 THE COURT: Very good. Thank you, sir.

4 So, Mr. Barnes, your Defense Counsel will be
5 contacting you just to check in with you and answer
6 any questions you may have. Do you understand that?

7 MR. BARNES: I understand that's his wish, yes,
8 Your Honor.

9 THE COURT: All right, Mr. Barnes. I wish you
10 the best of luck. And if you change your mind on
11 any of these issues, you let your attorney know. If
12 there's something that comes up, you contact your
13 attorney right away.

14 MR. BARNES: Yes, Your Honor.

15 THE COURT: All right. Thank you, Mr. Barnes.

16 All right. Court will be in recess.

17 MR. BARNES: Thank you.

18 THE COURT: Thank you, everybody.

19 (The proceedings concluded at 5:51 p.m.)
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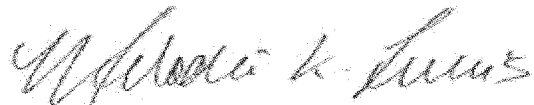
CERTIFICATE OF REPORTER

STATE OF FLORIDA)
)
COUNTY OF BREVARD)

I, Melodie K. Lewis, Registered Professional Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings; and that the transcript, pages 4 through 35, is a true and accurate record of my stenographic notes.

I FURTHER CERTIFY that I am not a relative, or employee, or attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED this 27th day of June, 2023.



Melodie K. Lewis, RPR

STATE OF FLORIDA vs JAMES PHILLIP BARNES

Case Management Conference on 06/27/2023

Index: (6)..alternative

	2023 6:25		address 6:3,
(23rd 6:25	5	7,13,18
(6) 11:5	24 31:17	57 28:14	16:6
(7) 29:15	2:29 12:7	5:30 23:19	administrative
(b) (6) 27:5,	2nd 16:10	5:51 35:19	18:3
14,17	17:5		admit 4:5
(i) 30:13,		6	Adrienne
16	3		5:14
(i) (6) 27:17	3.851 (b)	6 29:3	advise 13:10
(i) (7) 27:17	11:4	60-minute	affecting
29:13	3.851 (b) (6)	22:20	31:14,18
	11:8 12:25	61 7:25	afternoon
1	13:6 23:4,	A	4:7,20
13 7:11,14	11 24:5		6:15 17:11
14592 12:11	26:5 28:8	A-L-I 5:12	19:8,9
15 23:4,12,	30:13	ability	AG's 4:12
17	3.851 (i)	31:18	10:1,21
19-minute	27:20	absolute	11:20 14:1
12:7	3.851 (i) (6)	25:23	15:3 18:9
1992 32:7	25:14	abundance	21:9 23:1
	3.851 (i) (7)	15:9,13	24:4,6
2	26:21 27:9	20:13,15	29:12
20 23:4,12	3.852 (i)	access 15:22	30:11,14
2006-CF-014592	27:19	accord 20:14	33:7 34:16
22:24	397 16:10	Act 32:9	age 7:24
2006-CF-14582	3:04 22:20	Acted 32:3,5	agree 30:15
12:11	3rd 29:3	add 34:17,	ahead 4:5
2006-CF-14592	30:4	19	25:21 34:9
4:4 23:22	4	additional	alcohol
2020 16:10	4:05 23:18	30:23	31:17
17:5		31:12 33:8	Ali 5:7,12
			11:12,14
			alternative

STATE OF FLORIDA vs JAMES PHILLIP BARNES

Case Management Conference on 06/27/2023

Index: Amanda..bunch

11:17	15:7,15	Barnes 4:5	33:1,5,8,
Amanda 5:19,	arguments	5:13,25	13,17,18,
21	32:17,18	6:1,6,10,	21,23,25
amended	articulating	12,25 7:2,	34:2,15,21
13:19,25	20:11,24	6,8,11,13,	35:4,7,9,
14:1	assist 14:24	16,22,25	14,15,17
analyze 8:21	assuming	8:3,7,12,	Barnes'
announced	13:21	15,18,21	10:2,21
15:19	attorney	9:3,9,12,	15:17
answering	4:13,16	17,20,22	20:1,8
34:7	6:21 8:14	10:5,6,10,	based 15:11
answers	17:7 19:5	11 11:5,	34:3
31:11 34:5	26:12	12,14,16,	beginning
apologize	28:2,7	22 12:1,	29:19
12:11	35:11,13	10,13,14	behalf 4:21,
18:13	attorneys	13:1,4	23 5:13
19:5,24	13:10,16,	14:4,14,	6:15 21:3
22:16	23 14:24	17,18,20,	28:18 30:3
28:13	23:1,2	22,23	34:23
30:11	August 29:2	15:1,9	Bobek 4:13
apparently	30:4	20:6,7,11,	10:3,13,23
16:17	autopsies	24 21:3	14:3,9
appeal 25:16	17:22	22:12,13,	18:11
appealable	aware 18:8,	24 23:7,	21:11,23
10:18	10	22,24	22:6 24:7
appeals 23:8	<hr/> B <hr/>	24:1,2,8,	25:22
appellate	back 9:4	25 25:12,	26:17
10:16 25:7	12:4,9,24	18 27:18,	27:9,16
30:6	16:10 17:5	22,23	29:14
33:15,20	22:18,22	28:10,12,	30:9,16
appointed	23:20,23	14,17,21,	33:9
26:15	Baker 32:3,	25 29:2,5,	boy 11:5
appointing	5,9	7 30:18,24	broke 24:3
		31:4,15,	bunch 31:10
		19,21,24	
		32:2,5,10,	
		13,15,16,	
		20,23	

STATE OF FLORIDA vs JAMES PHILLIP BARNES

Case Management Conference on 06/27/2023

Index: call..counsel

	citing 27:8	24:13,15,	8:6
C		21 29:18,	
call 34:21,	clarify	24 33:10	contact
24	27:25	34:6	35:12
camera 34:1	classification		contacting
	18:4,20	completed	13:12
capital	Clayton	7:16	34:23
11:10	5:19,23	component	35:2,5
care 17:16	clear 29:23	25:1	continue
carefully	clearer 26:5	concerns	13:9
23:3 24:5	clerk 8:13,	15:11,12	continued
case 4:3	15,17,19	20:20,22	12:8 22:21
6:24 12:10	9:7	22:2,4	23:19
13:6,15	client 26:7	29:21	continuing
16:1 21:1,	closer 5:5	conclude	7:17,22,23
2 22:24	co-counsel	19:15	conversation
23:22	5:14 15:19	concluded	34:4
34:20,22	cocaine 32:6	35:19	conversations
causing	coherently	concur 25:11	34:2
24:25	34:8	conference	correct 7:7,
caution	college	6:24	8 12:25
15:9,14	7:18,20	confirmed	17:5 20:18
20:13,15	comment 28:3	17:8	28:15,21,
cease 30:2	community	conflict	24,25
chance 12:24	7:18,20	12:2 23:10	30:14 33:4
change 10:24	competency	26:6,9,13,	Corrections
35:10	15:7,13,15	14	4:19,22,24
check 35:5	20:3,8,14,	conflicts	17:8,19
Chin 5:19,	20 21:10,	24:25	18:2,15
21	22 24:17,	confused	correctly
Christina	21 29:22	29:8	33:2
4:21 17:10	competent	consideration	counsel 6:4
18:15	21:14,20	19:1	7:4 10:7
		consist 7:15	11:2,20,24
			12:17,18,

STATE OF FLORIDA vs JAMES PHILLIP BARNES

Case Management Conference on 06/27/2023 Index: Counsel's..determine

25 14:5,11	11:1,16,24	Court's 6:23	16:8,25
15:4 16:7,	12:3,9,15,	12:3 13:19	17:25
8,25 19:24	22 13:5,	courtroom	18:12
20:2 21:8	12,24	6:19	19:17,24
22:8 23:2,	14:7,15,	cure 20:16	20:17 22:8
10 24:9	17,20,23	current 7:24	23:2 24:4,
25:4,10,	15:2,6,14		23 25:10
20,23	16:4,13,		26:7,8
26:7,8,16	15,20,22,	<hr/> D <hr/>	30:12,14
29:11	24 17:7,		33:12 35:4
30:12	13,15	dark 20:8	Defense's
33:7,12	18:12,17,	date 34:25	17:19
34:16 35:4	24 19:3,9,	days 32:10,	degrees 7:12
Counsel's	14,21,23	11	delay 29:5
20:17	20:13,16,	dealing 29:9	33:5 34:8
counting	21 21:1,6,	death 6:2	demand 17:4
7:18	8,21 22:5,	9:3,8,10	19:11
couple 15:21	7,15,19,22	11:9	demanded
20:9 27:25	23:20 24:2	decided	16:9
28:1	25:9,19	19:25 20:1	deny 13:3
courses 7:21	26:4,22,24	decision	19:25 20:1
8:7,11	27:7,18,	10:17,24	21:18
court 4:3,	21,24	20:2	25:19
15,18,25	28:11,13,	26:18,22	Department
5:2,4,9,	15,16,19,	30:7 31:9	4:19,22,23
10,16,21,	22 29:1,4,	32:22,25	6:16 17:8,
24 6:6,11,	6,8 30:8,	34:10,11	18 18:1,15
17,22,25	11,17,25	defendant	desire 24:8
7:5,9,12,	31:8,16,	18:4,5,6	27:10
14,19,23	20,22,25	23:11	28:22
8:1,5,9,	32:3,8,11,	26:22	determination
14,16,19,	14,16,21,	defense 5:1	27:3,11
25 9:1,6,	24 33:2,7,	11:2,20,24	29:16
11,13,18,	12,17,19,	12:17,18,	determine
21,23	22,24	25 15:4	
10:9,12,20	34:16		
	35:3,9,15,		
	16,18		

STATE OF FLORIDA vs JAMES PHILLIP BARNES

Case Management Conference on 06/27/2023 Index: determines..expressed

24:12	34:10	Durocher	22:9
29:18	dismissal	24:12	evaluations
33:10,14	10:16,18	25:22	24:17
determines	25:7,17	_____	evening
26:22	29:15	E	34:13
diagnosed	dismissing	earlier	everyone's
31:22	26:25	21:12	23:24
diploma	34:13	30:19	evidence
7:16,19	disorders	31:11	29:23
directly	15:25	education	examiner's
12:20	disseminate	7:15,17,	17:22
disagree	8:21	22,24	exclusively
24:24 26:4	DOC 8:16	30:20	19:12
disagreement	34:17	effect 20:2	executed
21:25	DOC's 19:4	email 13:13	17:23
discharge	doctor 15:7,	end 14:11	26:20 30:4
6:4 7:3	15 20:14,	24:9	execution
10:7 14:4,	15 22:3	Enforcement	14:12,19
11,18 20:2	document	6:16	23:9 28:4,
21:19 24:9	17:13	enter 26:1,	23 34:22,
25:20,23	Documentary	25 34:13	25
26:12	16:10	entered 6:25	exist 22:3
28:2,7	documentation	Eric 5:15,	expert 20:6,
discharged	17:4	17	7 22:12
20:18	documents	evaluate	experts
discharging	9:10 34:1	15:15	15:20 16:1
26:2	Doris 4:16	22:12	24:19
discretion	drag 14:19	evaluated	explain
21:18 26:3	drug 32:6	22:14	29:25
27:3	drugs 31:17	evaluating	expressed
discuss	due 10:25	21:14	24:8
19:19	20:23 21:4	evaluation	
dismiss		15:8 20:3	
26:23 31:5			

STATE OF FLORIDA vs JAMES PHILLIP BARNES

Case Management Conference on 06/27/2023

Index: facing..Honor

	Florida 4:4,	8:20	heard 7:1
F	21,23 6:2,	give 9:23	10:9 15:3
facing 21:17	15 12:10	14:20	24:23 26:6
fact 21:16	22:23	23:4,12	33:2 34:18
26:7	23:21	30:25	hearing
family 34:23	folks 22:16	33:24	14:23 17:2
Faretta-style	23:1,16	good 4:7,20	19:15 21:7
24:11	forcing	6:15 12:15	29:19
29:17	32:21	14:1 17:15	30:19 34:3
FDLE 17:24	forms 17:12	19:7,9,23	Henderson
19:6 34:17	found 21:14	35:3	4:8
feel 13:24	24:21	governed	high 7:16,
fentanyl	Fowler 4:22	25:14	19
18:3,23	free 32:25	grant 10:18	hired 15:20
file 16:15,	Friday	26:12	history
16 17:13	34:21,24	greatly	15:11
20:25	front 4:9	12:21	Honor 4:20
27:12,13	8:22	grievances	5:2,3,7
filed 17:5,	full 25:3	18:3	6:14 7:2,
12,19		grounds	13 8:3,13
19:10	G	24:14,19,	9:17,20,22
28:17		23	10:5 11:3,
filing 16:16	Gainesville	guilty 22:2	25 12:14
30:3	17:22		14:16
final 10:24	Garrett	H	15:1,5,17
29:16	6:20,22		16:11,14,
find 10:14	gears 31:1	Hang 6:6	18,22
25:25	general	hear 5:2,4,	17:6,11
26:13,14	21:25	8 10:1	18:14
34:6,9	29:14	11:1,18,20	19:8,20
fine 16:24	General's	12:22	20:4,19
fired 11:12,	4:14,16	14:15 15:3	22:11
15,23	generally	16:22 24:5	25:11
		27:22	27:14
			28:10
			30:24

STATE OF FLORIDA vs JAMES PHILLIP BARNES
Case Management Conference on 06/27/2023

Index: hours..lethal

31:15,19, 21,24	inmates 8:22 17:20,23	15:18	juncture 15:10
32:2,13, 15,20,23	input 10:20	involved 10:15 13:15	June 6:25
33:1,6,21, 23 34:15 35:8,14	inquiring 8:10	irrespective 21:3	justice 29:5 33:3,6
hours 31:17	inquiry 24:11 25:2 29:18	issue 12:16 16:6 20:17 21:10,22 23:13,14 28:6	<hr/> K <hr/>
housed 6:2	intelligent 15:18 16:3 21:20 25:15,24 26:1	issues 13:24 15:21 16:6,11 35:11	kind 11:4 knowing 16:2 21:19 25:15,24, 25 34:11
hypothetically 26:15	intelligently 10:15 26:24 27:4 31:10 34:11	<hr/> J <hr/>	knowingly 10:15 26:24 27:4 31:9
<hr/> I <hr/>	intends 25:13 27:18	James 4:4 6:1 10:5 12:10 22:23 23:21	<hr/> L <hr/>
illness 15:12,24 22:6 31:23	intent 31:5	Janine 6:14 19:7	lack 28:23
illnesses 9:19	interest 12:2	JD 8:8,10	language 23:10
incentive 9:5	interject 26:18	judge 4:7 8:14 10:3, 13 14:3 18:11 21:11 24:7 25:22	law 6:16 8:12,15, 17,19 9:7 13:6
includes 28:19	interrupting 11:17	investigation 30:2	leader 34:24
incompetent 21:13,24	investigators 5:19	investigators 5:19	legal 8:1,4, 6 21:17
incorporate 25:14	involuntary	judgment 31:14	lethal 15:23 17:20 18:18 19:12
information 8:22			
injection 15:23 17:20 18:19 19:12			

STATE OF FLORIDA vs JAMES PHILLIP BARNES

Case Management Conference on 06/27/2023

Index: letting.overdoses

letting 26:19	medication 9:15	25 11:19 14:18	23:14
litigate 21:2	medications 32:1	20:23, 25 21:4 30:3	obtain 7:12
logs 18:5, 21	mental 9:18 15:12, 24 22:6 31:23	motions 11:23 28:17, 20 32:19	office 4:12, 14, 17 6:20 10:1, 21 11:20 14:1 15:3 17:22 18:9 21:9 23:2 24:4, 6 29:12 30:11, 14 33:7 34:17
long 9:1 25:23 32:8	mic 12:21	move 33:11	
longer 10:18 28:18	microphone 5:5	moving 14:8	
luck 35:10	Microsoft 4:6, 8, 11 6:12, 18	multiple 20:10	
<hr/> M <hr/>		mute 11:18	opinion 20:20
made 10:6 18:3 19:18 26:22 28:3 34:11	Middle 5:14	<hr/> N <hr/>	opportunity 35:1
make 4:10 6:4 13:12, 14 22:24 25:3 27:11 31:8 32:21	mind 5:5 10:24 35:10	nature 15:25	order 6:23 13:20, 25 14:2 21:2 24:15, 16 26:1, 25 30:10 34:13
making 6:8 31:9 32:25	minutes 23:5, 13, 17	noon 10:25 20:23	
management 6:24	missed 13:24	note 13:9	
Meacham 4:16	missing 12:12	notice 16:16	
means 26:11 29:25	mitigating 15:25	<hr/> O <hr/>	ore 6:4 10:6
meant 14:9	mitigation 24:20	objecting 18:20, 22, 23 19:2	outlined 29:22
medical 17:21	moment 9:25 10:3 14:21	objection 17:18, 21, 24 18:1, 18 19:4, 10	outstanding 16:21
	moments 12:4	objections 17:17 18:7, 10 19:15	overdose 18:23
	moot 27:18		overdoses 18:2
	motion 6:4 9:12 10:7,		

STATE OF FLORIDA vs JAMES PHILLIP BARNES

Case Management Conference on 06/27/2023

Index: p.m...provided

	pills 31:17	posture 21:15, 24
P		11:11
	Pinkard 5:15, 17	23:7, 8
p.m. 12:7		24:22, 24
22:20	Pinker 5:16	25:1 26:11
23:18, 19		28:3, 23
29:3 35:19	plain 26:10	proceeded
papers 8:24	plead 22:1	22:1
part 25:12	point 14:4,	proceeding
	13 15:8	10:8 14:11
parties	20:4 21:13	27:11 28:4
13:14 18:7	24:10, 18	30:12, 13
past 21:14	25:1, 5	
	26:21	proceedings
patience	27:16, 18	10:17
23:24 31:3		11:6, 10
Patrick 4:13	Porrello	12:8 15:10
	4:20, 21	20:12
pending	17:10	22:21
26:23, 25	18:14, 15,	23:19
34:14	18, 25	24:9, 10
		25:5, 16, 17
permitted	portal 13:13	26:2, 20, 23
11:5, 7		27:1, 13,
20:25	position	16, 19
	11:13	29:15 30:1
personal	post-	31:6, 7
15:12	conviction	33:16, 20
personality	10:17	34:10, 14
15:24	11:10 23:8	35:19
24:25	24:10	
	25:4, 8, 16	process
Philip 4:22	26:23	21:17
10:5	28:20	
	29:15	prohibits
Phillip 4:4	31:5, 6	28:8
6:1 23:21	32:17, 18	
	34:10, 14	provide
Phillips		18:19, 21
22:23		
phone 12:19	posthaste	provided
	23:9 28:5	17:9, 12

STATE OF FLORIDA vs JAMES PHILLIP BARNES

Case Management Conference on 06/27/2020 Index: psychiatric..Robinson

19:1	read 8:21	referencing	13:3
psychiatric	9:9	29:13	17:19, 25
32:1	reading	refused	20:1, 3
psychosis	26:10	20:7, 10	25:20
32:6	ready 30:24	22:13	28:16
public 19:17	reason 22:2	regard 23:9	requested
pull 10:4	reasonable	Region 5:15	18:25
pursuant	24:14, 19	released	requesting
13:5	receive	32:12	28:15 29:9
put 8:23	16:9, 13, 16	relief 8:25	requests
11:22	received	28:18	18:2 19:18
30:10	13:19, 22	religious	required
	17:4, 17	34:24	12:1
<hr/>			research
Q	recess 12:4,	remain 21:2	12:16
	6, 7, 16	reporter	23:13
query 33:11	22:17, 19,	5:2, 9	researched
question	20 23:16,	12:22	13:6
13:18	17, 18	14:15	researching
questions	35:16	16:22	15:20
7:6 9:14	recommend	reports	resolve
27:25	15:6	29:23	23:14
30:18, 21,	record 4:3	repository	respectfully
22, 23	12:10	17:14	24:4 25:19
31:11, 12	17:11	represent	26:4
33:8, 13	19:17	10:2, 7, 21	review 10:16
34:4, 7	22:23	11:6, 9, 19	12:24 23:3
35:6	23:21 31:4	12:1 13:2,	25:7 30:7
quickly 9:5	35:1	3 22:1	33:15, 20
	records	30:20	reviewing
<hr/>	15:22	represented	34:1
R	16:9, 21	7:7	Robinson
raised 12:17	17:9, 20, 25	request	6:14 19:6,
ramifications	18:4, 19, 20	10:2, 21	7, 11
25:3	19:10, 12		

STATE OF FLORIDA vs JAMES PHILLIP BARNES

Case Management Conference on 06/27/2023

Index: robust..taking

robust 21:16	served 33:3	31:8 33:5,	statute
Rogers 5:20,	servicing	18 34:16	26:5,10
23	13:14	35:3	29:10
row 9:3,8,	Shakoor 5:7,	sitting 5:19	30:14 31:2
10	11,18,23	situation	statutory
rule 10:4	11:3,13,	11:4 20:5	26:14
12:24 13:5	15,25 15:5	sounds 29:11	stenographer
23:3 25:24	16:11,14,	speak 12:20	4:9
28:7	18,21 17:6	16:2,25	step 9:25
ruled 14:7	19:20,22	17:1	straight
28:6	20:4,19,22	speaker	28:23
	21:7,11	12:19	subdivision
<hr/>	22:11	speaking	27:6,7
S	25:11	5:20	submissions
<hr/>	27:14	special 9:5	17:13
S-H-A-K-O-O-R	33:14	Specific	submit 8:24
5:12	34:19	20:22	subsection
sanity 15:16	shared 22:4	specifically	31:2
20:14	Shepherd	16:8 23:1	subsections
scheduled	5:14	33:15	29:10,12
20:6 22:12	side 13:11	spent 8:12	substances
29:2	sides 23:3,6	standby	31:13
scheduling	signs 21:24	26:16	substitute
6:24	Similar	state 4:4	6:5
13:20,25	29:18	6:2,21	suffer 9:18
14:2	single 19:2	12:10	Susan 6:20
school 7:10,	Singletary	22:23	switch 31:1
16,19	24:12	23:21	
seek 28:18	sir 4:15	27:15	<hr/>
sentenced	6:10 7:23,	30:14	T
11:9	24 8:18	34:17	<hr/>
September	9:24 19:11	statements	taking 9:15
16:10 17:5	23:25 24:1	8:23	31:13
serve 13:13	25:9 27:22		

STATE OF FLORIDA vs JAMES PHILLIP BARNES

Case Management Conference on 06/27/2023

Index: talked..yesterday

talked 22:3 24:20	33:16 34:3		25:4 32:17 33:20
	tomorrow	V	
task 24:11	10:25	versus 4:4	wanted 13:1
Teams 4:6,8, 11 6:7,13, 18 12:12 23:23	20:23 21:4 30:3	12:10 22:23 23:21	14:5,10 30:19 33:3
	training		warrant 11:6
	8:2,4,6	visitation	15:19
technically	transmittal	18:5,21	warrants
34:20	17:12	visitors	11:4
tenus 6:4 10:6	trouble 17:1	18:5	watch 6:2
thing 5:16 29:17 34:19	turning 5:5	visits 20:10	weigh 21:9
	type 32:1	voluntarily	who've 24:20
		21:19	wishes 14:13
things 9:4 10:13 15:6 28:1		26:24 27:4 31:10 34:12	21:3 23:8
	unable 9:7		withdraw
	understand	voluntary	28:17
thinking	10:6,14	16:3	word 28:24
9:21 31:20	11:14 15:2	25:15,24, 25	work 9:7
throat 24:16	28:9 29:7 32:16,19		working 8:17
Thursday	33:19	W	16:1
15:19	35:6,7		
time 10:9 12:8 22:21 23:19 32:5 33:9	understanding	waive 20:12	Y
	17:3 21:16	24:8,13 25:6,13	years 7:11, 14 8:12 9:4 20:10
times 21:13	understands	27:10,19 29:25 30:6 31:6 33:15	yesterday
	10:23 25:3 30:5		17:19
today 9:21 20:6 22:12 29:20 31:20 32:22	Understood	waiver 15:18	
	16:4 19:3 20:21 21:6 22:15	21:19 27:15	
today's	units 7:17	waiving	
		10:15,16 15:9 16:3	