

Not for Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

IN RE: PEOPLE OF THE VIRGIN ISLANDS,  
Petitioner.

)  
) S. Ct. Civ. No. 2013-0056  
) Re: Super. Ct. Crim. No. 110/2013 (STX)  
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On Petition for Writ of Prohibition

BEFORE: RHYS S. HODGE, Chief Justice; MARIA M. CABRET, Associate Justice; and  
IVE ARLINGTON SWAN, Associate Justice.

ATTORNEYS:

Tiffany V. Monroe, Esq.  
Assistant Attorney General  
St. Thomas, U.S.V.I.  
*Attorney for Petitioner.*

OPINION OF THE COURT

PER CURIAM.

This matter is before the Court on a July 23, 2013 petition for writ of prohibition filed by the People of the Virgin Islands, which requests that this Court prohibit the Nominal Respondent—the Superior Court judge presiding over *People v. Womack*, Super. Ct. Crim. No. 110/2013 (STX)—from directing the Department of Justice to pay for an indigent criminal defendant’s pre-conviction mental health evaluation. For the reasons that follow, we deny the petition.

I. PROCEDURAL HISTORY

On June 13, 2013, Major Lee Womack, the defendant in Super. Ct. Crim. No. 110/2013 (STX), filed a “Motion to Require a Psychiatric And/Or Psychological Examination and Evaluation” with the Superior Court. In his filing, Womack—who is indigent and is represented

by the Office of the Territorial Public Defender—contended that he possesses “a longstanding history of mental illness,” noted that similar evaluations ordered in two prior criminal cases brought against him disclosed that he had been diagnosed with “Schizophrenia Paranoid Acute, Marijuana Induced Psychosis, and Psychotic Disorder NOS,” and cited *Ake v. Oklahoma*, 470 U.S. 69 (1985) for the proposition that the United States Constitution requires that indigent criminal defendants such as himself receive a psychiatric examination at public expense if sanity is an issue. (Mot. 2.) The Nominal Respondent, in an amended Order entered June 25, 2013, granted the motion, and provided “that the expense of said psychiatric and/or psychological examination and evaluation shall be borne in its entirety by the Department of Justice.” *People v. Womack*, Super. Ct. Crim. No. 110/2013 (STX), slip op. at 2 (V.I. June 25, 2013).

The People filed a petition for writ of prohibition with this Court on July 23, 2013. In its petition—which, excluding the signature page and certificate of service, is only three pages long—the People contend that the Nominal Respondent acted “[w]ithout statutory authority” when it ordered the Department of Justice to pay for the evaluation, and “create[d] an unfunded liability for the remainder of the fiscal year.” (Pet. 2.) Relying on this Court’s decision in *Gov’t of the V.I. v. Durant*, 49 V.I. 366 (V.I. 2008), the People argue that the Nominal Respondent exceeded his authority by directing the Department of Justice to make expenditures that were not appropriated by the Legislature. According to the People, the funds for the examination should be borne either by the defense, or paid from the budget of the Superior Court.

## **II. JURISDICTION AND LEGAL STANDARD**

This Court possesses jurisdiction over original proceedings for extraordinary writs, such as a writ of prohibition. *See* 4 V.I.C. § 32(b); *In re Najawicz*, S. Ct. Civ. No. 2012-0112, 2012 WL 4829227, at \*1 (V.I. Oct 10, 2012) (unpublished). A writ of prohibition is similar to a writ

of mandamus, except that “[a] writ of mandamus may seem more appropriate if the form of the order is to mandate action, and a writ of prohibition if the order is to prohibit action.” *In re People of the V.I.*, 55 V.I. 851, 856 n.4 (V.I. 2011). Thus, to determine whether issuance of a writ of prohibition is appropriate, this Court applies the same test it does to determine whether a party is entitled to a writ of mandamus. *In re Najawicz*, 2012 WL 4829227, at \*1. Under this standard, “a petitioner must establish that it has no other adequate means to attain the desired relief and that its right to the writ is clear and indisputable.” *In re People of the V.I.*, 51 V.I. 374, 382 (V.I. 2009) (citing *In re LeBlanc*, 49 V.I. 508, 517 (V.I. 2008)). Moreover, “even if the first two prerequisites have been met, the issuing court, in the exercise of its discretion, must be satisfied that the writ is appropriate under the circumstances.” *Cheney v. U.S. Dist. Court for the D.C.*, 542 U.S. 367, 380-81 (2004); *In re Najawicz*, 2012 WL 4829227, at \*1.

### III. DISCUSSION

We conclude that the People have failed to meet their burden. As a threshold matter, the People possess adequate alternate means to attain the desired relief. While the People may not appeal the June 25, 2013 Order as of right, *see In re People*, 55 V.I. at 855 (citing 4 V.I.C. § 33(d)(1)-(3)), the People can indirectly obtain appellate review by disobeying the June 25, 2013 Order by not paying the costs of the examination from the Department of Justice’s budget, standing in contempt, and then appealing the order imposing the contempt sanction. *In re People of the V.I.*, 49 V.I. 297, 309 (V.I. 2007). Thus, the People have failed to establish the first prerequisite for obtaining a writ of prohibition.

Even if we were to overlook the availability of other avenues for relief, we note that the People also failed to establish that they possess a clear and indisputable right to the relief sought in their petition. When, as here, a party “argues that [it] possesses a clear and indisputable right

to have a judge issue a legally correct ruling,” a writ of prohibition “is only appropriate ‘to correct judicial action that is clearly contrary to well-settled law’—specifically, decisions that ‘ignore[] clear, binding precedent from a court of superior jurisdiction.’” *In re Rivera-Moreno*, S. Ct. Civ. No. 2013-0046, 2013 WL 3072409, at \*3 (V.I. June 19, 2013) (quoting *In re Morton*, 56 V.I. 313, 319-20 (V.I. 2012)).

The People correctly note that this Court previously found that the Superior Court impermissibly required the expenditure of monies by the Department of Justice without appropriation when it invoked Superior Court Rule 7 to apply the substantive provisions of the federal Insanity Defense Reform Act, 18 U.S.C. §§ 4241-4248. *Durant*, 49 V.I. at 376 n.11. However, we characterized the Superior Court’s actions in that case as violating the separation of powers doctrine because the provisions of the Insanity Defense Reform Act are not mandated by the United States Constitution. *See State v. Becker*, 818 N.W.2d 135, 149 & n.10 (Iowa 2012) (noting “that there is no constitutional underpinning” to many provisions in the Insanity Defense Reform Act). On the contrary, the United States Supreme Court has expressly held that the Due Process Clause of the Fourteenth Amendment to the United States Constitution *compels* state governments to provide an indigent criminal defendant with “access to a competent psychiatrist” at government expense if the “defendant demonstrates to the trial judge that his sanity at the time of the offense is to be a significant factor at trial.” *Ake*, 470 U.S. at 83. In the absence of any legislation providing for which government entity should pay for this constitutionally-mandated expenditure, we cannot say that the Nominal Respondent acted “clearly contrary to well-settled law,” *In re Rivera-Moreno*, 2013 WL 3072409, at \*3, when he concluded that the Department of Justice—and not the Office of the Territorial Public Defender, the Superior Court, or some other entity—should pay for Womack’s evaluation.

#### **IV. CONCLUSION**

For the foregoing reasons, the People have not established that they are entitled to a writ of prohibition. Accordingly, we deny the petition.

**Dated this 12th day of September, 2013.**

**ATTEST:**  
**VERONICA J. HANDY, ESQ.**  
**Clerk of the Court**