

REPUBLIC OF LIBERIA, by and thru the **MINISTRY OF JUSTICE**, Petitioner,
v. **HIS HONOUR C. ALEXANDER ZOE**, Circuit Judge, Criminal Court "A",
and **PETER J. WARKIE**, Respondents.

APPEAL FROM THE RULING OF THE JUSTICE IN CHAMBERS DENYING
THE PETITION FOR A WRIT OF CERTIORARI.

Heard. May 9, 1994 Decided. September 22, 1994.

1. The purpose of a criminal prosecution is not to convict, but to see that justice is done.
2. Certiorari cannot lie after enforcement of a judgment from which it emanates.
3. Certiorari cannot lie to review a ruling that has been executed with the assistance of petitioner seeking the writ.
4. A person with a mental disease or defect, and who lacks the capacity to understand the proceedings in a criminal trial, cannot be tried, convicted or sentenced for the commission of an offense, so long as such incapacity continues.

Defendant was indicted for the crime of murder. During the trial, defense counsel moved the court for a psychiatric examination of the defendant. The motion was resisted by the prosecution, argued by the parties and granted by the court, to which ruling prosecution excepted. Notwithstanding its exception to the ruling, prosecution subsequently facilitated the implementation of the ruling by transporting the defendant to the medical doctor and paying the fees for the examination. After the examination was conducted and the report submitted to the court, the medical doctor who conducted the examination was subpoenaed and examined. Instead of proceeding to cross examine the medical doctor, prosecution moved the court to rescind the ruling granting the motion for the psychiatric examination. The court denied the motion, to which exceptions were noted by prosecution and a petition for certiorari filed before the Justice in Chambers. From a ruling by the Chambers Justice denying the petition, the prosecution appealed to the full Bench.

The Supreme Court, upon review of the records, affirmed the ruling of the Chambers Justice, holding, among other things, that the purpose of a criminal prosecution is not to convict, but to see that justice is done, and that the motion to rescind should and ought to have been filed prior to the implementation of the ruling sought to be rescinded. The Court therefore *denied* the petition.

Ministry of Justice appeared for petitioner. *Emmanuel S. Koroma* appeared for respondents.

MR. JUSTICE SMITH delivered the opinion of the Court.

These certiorari proceedings were filed by the Republic, by and thru the Ministry of Justice, against the ruling of His Honour C. Alexander Zoe who, by assignment, presided over the May 1993 Term of the First Judicial Circuit Court, Criminal Assizes "A", Montserrado County. The facts as disclosed by the records before us are as follows: Peter J. Warkie, one of the respondents in these proceedings was indicted for the crime of murder. When the case came on for trial during the May, 1993 Term of the First Judicial Circuit Court, the defendant, upon his arraignment, entered a plea of not guilty. Therefore the prosecution took the stand, produced evidence and rested.

When the defendant took the stand, the following question was put to him on the cross examination and his answer follows:

QUES. "The Republic of Liberia has charged you with the commission of the crime of murder on the body of one Elizabeth Toe-Wleh. When the indictment was read to you, you made and entered a plea of not guilty. Having now taken the stand in support of your plea of not guilty, please tell this Honourable Court and jury all facts and circumstances that lie within your knowledge in your own defense. You may proceed.

ANS. As I sit before the judge and Honourable Court, I cannot really remember what happened on that day on which I am accused of murder. If I do, I am telling a black lie. This is all I know.

The aforesaid answer of the defendant appeared to his counsel as having been made by one who is of unsound mind; he therefore applied to the Court for the prisoner to be sent for psychiatric examination. He went further to tell the Court that he had reason to believe, from the defendant's testimony, that his mental fitness was questionable because from interviews he had had with the defendant while in jail, he observed that the defendant must have had a mental problem. This application was resisted by the prosecution, argued by the parties and granted by the trial judge. The judge, in reliance on the Criminal Procedure Law, Rev. Code 2:6.2, and the case *Gartargar v. Republic*, 4 LLR70 (1934), held that if during a criminal prosecution there is reason to believe that the defendant is not fit to proceed, the court shall appoint at least one qualified medical practitioner to examine and report the mental condition of

the defendant. To this ruling, the prosecution noted exceptions and submitted without giving notice of her intention to seek remedial relief from this ruling. Accordingly, the defendant was sent for psychiatric examination. Counsel for respondent argued before us that the prosecution facilitated the implementation of the ruling for psychiatric examination by providing transportation and paying the fee for the examination.

The records from the court below reveals that the examination was performed and a report to the effect was submitted. The medical doctor was subpoenaed. He appeared and confirmed his report, after which petitioner rested with direct examination of him, and he was then exposed to cross-examination.

Before the witness could take the stand for the cross-examination, the prosecution filed a written motion requesting the trial judge to rescind his ruling granting defendant's application for psychiatric examination which, as indicated earlier, was made, argued, granted and the ruling of the trial Court was implemented with the aid of the prosecution. This motion to rescind was resisted by the defense, argued and denied by the trial Court. The prosecution noted its exceptions and this time, gave notice that it would take advantage of the statute laws as made and provided. It is from the ruling of the respondent judge denying the motion to rescind that the prosecution sought review from the Chambers of this Court upon a writ of certiorari. Our distinguished colleague, Mr. Justice Morris, heard the petition, and denied the issuance of the writ of certiorari. Because we are in full agreement with the conclusion of our colleague, we quoted a relevant portion of his ruling from which this appeal has been taken. It reads:

"...The question now is, can certiorari lie to review a ruling that has already been fully executed? That is, the application for psychiatric examination has been granted since June 23, 1993, and executed completely. The report was brought into court, testified to, ordered mark, and confirmed by court. Can the petitioner who assisted in the implementation and execution of the ruling by taking the co-respondent from the prison compound to the doctor and also paying the doctor his examination fee in the amount of one thousand five hundred Liberian dollars (L\$1,500.00) now seek a review of that ruling by certiorari?

In the case *iljavon v. Bull et al*, 14 LLR 178 (1960), this Court held:

"Certiorari will not lie after enforcement of a judgment". In this case, the psychiatric examination had been performed with the aid and assistance of the petitioner and the report brought to court, ordered marked and confirmed by court.

In view of the foregoing, it is our holding that the ruling having been completely enforced thru the aid, assistance and cooperation of the petitioner, certiorari will not lie. The petition is therefore dismissed. The Clerk of this Court is hereby ordered to send a mandate to the court below commanding the judge presiding therein to resume jurisdiction and continue with the trial. And it is hereby so ordered.

GIVEN UNDER MY HAND AND SEAL OF
THIS HONOURABLE COURT THIS 21 ST
DAY OF OCTOBER, A.D. 1993.

/t/Boima K. Morris, Sr.

/s/Boima K. Morris, Sr.

ASSOCIATE JUSTICE PRESIDING IN CHAMBERS

We cannot understand why the State would want the ruling granting the application for psychiatric examination to be rescinded when, indeed, the purpose of criminal prosecution is not to convict but to see that justice is done; unless the prosecution intended to abort the criminal trial as its mind was bent on persecution rather than prosecution. It cannot be concluded that the State did not know that no person who, as a result of mental disease or defect, or who lacks the capacity to understand the proceedings against him or to assist in his own defense, shall be tried, convicted, or sentenced for the commission of an offense so long as such incapacity endures, and that no person under sentence of death, who as a result of mental disease or defect, lacks capacity to understand the nature and purpose of such sentence, shall be executed so long as such incapacity endures. Criminal Procedure Law, Rev. Code 2:6.1.

Without belaboring any further on the prosecution's failure to speak at the time it should have spoken, and until the order for psychiatric examination was completely implemented with its aid, it is our holding that the ruling of Mr. Justice Morris, presiding in the Chambers of this Court, be and the same is hereby confirmed and affirmed. And it is hereby so ordered.

Petitioner denied; ruling affirmed