12/20/2019 "See News Release 054 for any Concurrences and/or Dissents."

SUPREME COURT OF LOUISIANA

No. 2019-KK-1398

STATE OF LOUISIANA

VS.

CHRIS WALLACE

ON SUPERVISORY WRITS TO THE CRIMINAL DISTRICT COURT FOR THE PARISH OF ORLEANS

CRICHTON, J., concurs and assigns reasons

Defendant is charged with armed robbery, a serious and violent felony. He was remanded to the custody of the Department of Health and Hospitals, treated, and released from treatment. The parties agree, however, that he is incompetent, he cannot be restored to competency, and that he will not benefit from additional inpatient treatment at this time. Thus, the district court had no other option under Code of Criminal Procedure article 648(B) but to order him released. *See State v. Santacruz*, 19-0328 (La. 5/6/19), 268 So.3d 1026. Therefore, I concur in this Court's denial of the State's writ application. However, I write separately to urge the legislature to reexamine Article 648(B) and enact a middle-ground between involuntary inpatient treatment and unsupervised release into the community for persons who, while deemed to be insusceptible to being restored to competence, are not at present a danger to self or others or gravely disabled, but remain accused of a violent felony.

In fact, Article 648(B) previously contained a middle ground in the form of probation. Article 648(B)(2), now repealed by Acts 2008, No. 861, § 2, eff. July 9, 2008, had provided:

> If, after the hearing, the court determines the defendant is, and will in the foreseeable future be, incapable of standing trial and may be released without danger to himself or others, the court shall release the defendant on probation. The probationer shall be under the supervision of the Department of Public Safety and Corrections, division of probation and parole, and subject to such conditions as may be imposed by the court.

This Court, which was bound by United States Supreme Court precedent in *Jackson v. Indiana*, 406 U.S. 715, 731, 92 S.Ct. 1845, 32 L.Ed.2d 435 (1972), found that Article 648(B)(2) violated the Due Process Clause because it required that a defendant, who has not been convicted of any crime, "be held in state custody after it has been determined that he or she is incapable of standing trial in the foreseeable future, solely on account of his or her incapacity to stand trial." *State v. Denson*, 04-0846, p. 10 (La. 12/1/04), 888 So.2d 805, 811. That finding likely contributed to the ultimate repeal of Article 648(B)(2), but which now severely limits the district court's options. Nonetheless, while mindful of the limitations imposed by due process, I believe the legislature can and should revisit this issue and craft some intermediate form of supervision that can exist between the extremes of involuntary inpatient treatment and complete release, which would protect the liberty interests of the accused while also protecting the community from the risk of further violence. In the absence of a legislative solution to this frustrating and potentially dangerous situation, I am forced to concur in the writ denial, which leaves intact the district court's order releasing the defendant.