

# STATE OF FLORIDA

## OFFICE OF THE GOVERNOR

### EXECUTIVE ORDER NUMBER 12-220

(Commission to Determine Mental Competency of Inmate)

**WHEREAS**, counsel for JOHN ERROL FERGUSON, an inmate under sentence of death and with a pending death warrant, has written a letter to the Governor alleging that JOHN ERROL FERGUSON may be insane; and

**WHEREAS**, the letter recounts past diagnoses of various mental conditions attributed to JOHN ERROL FERGUSON, none of which demonstrate that JOHN ERROL FERGUSON currently lacks the mental capacity to understand the nature of the death penalty and the reasons why it was imposed; and

**WHEREAS**, every court that has considered the mental capacity claims of JOHN ERROL FERGUSON has rejected those claims, *see Ferguson v. State*, 417 So. 2d 631 (Fla. 1982) (affirming trial court's determination that JOHN ERROL FERGUSON was sane at the time of the offense and that he was competent to stand trial); *Ferguson v. State*, 593 So. 2d 508, 513 (Fla. 1992) (rejecting claim that proceedings should be stayed pending determination of competence to proceed); *Ferguson v. Singletary*, 632 So. 2d 53 (Fla. 1993) (rejecting claim that appellate counsel should have argued that trial court should have *sua sponte* conducted competency hearing in the middle of trial, and rejecting claim that appellate counsel should have appealed the trial court's finding of competency); *Ferguson v. Sec'y for Dept. of Corr.*, 580 F.3d 1183, 1220 (11th Cir. 2009) (affirming determinations that state court properly evaluated the claim that Ferguson was competent to proceed in state postconviction proceedings, and rejecting claim that Ferguson was not competent to proceed in federal habeas proceedings); and

**WHEREAS**, section 922.07, Florida Statutes, requires that “[w]hen the Governor is informed that a person under sentence of death may be insane, the Governor shall stay execution of the sentence and appoint a commission of three psychiatrists to examine the convicted person”; and

**WHEREAS**, to invoke section 922.07, an inmate must make sufficient allegations of insanity to the Governor, *see Provenzano v. State*, 751 So.2d 37, 40 (Fla. 1999); and

**WHEREAS**, the repetition of allegations that have been repeatedly rejected by courts of competent jurisdiction does not constitute sufficient allegations of insanity under section 922.07; and

**WHEREAS**, because the Governor’s solemn duty to execute a duly imposed sentence of death requires the exercise of utmost caution, I will nonetheless implement the requirements of section 922.07.

**NOW, THEREFORE, I, RICK SCOTT**, Governor of Florida, by virtue of the authority vested in me by the Constitution and laws of the State of Florida, direct as follows:

A. The following psychiatrists are hereby appointed as a Commission to examine the mental condition of JOHN ERROL FERGUSON, pursuant to section 922.07, Florida Statutes:

1. Dr. Wade Myers
2. Dr. Alan Waldman
3. Dr. Tonia Werner

B. The above-named psychiatrists constitute the “Commission to Determine the Mental Competency of John Errol Ferguson.” The Commission shall examine JOHN ERROL FERGUSON to determine whether he understands the nature and effect of the death penalty and why it is to be imposed upon him. The examination shall take place with all three psychiatrists present at the same time. Counsel for JOHN ERROL FERGUSON and counsel for the State, and any necessary correctional personnel, may be present at the examination. Counsel may not participate in the examination.

C. The examination shall be conducted on October 1, 2012. Upon completion of the examination, the Commission shall promptly, and by no later than close of business October 2, 2012, report its findings to me.

D. The expenses incurred by the Commission for this examination and report shall be paid by the Department of Corrections.

E. The execution of sentence imposed upon JOHN ERROL FERGUSON, scheduled for October 16, 2012 at 6:00 p.m., is hereby temporarily stayed pending receipt of the Commission's report. In the event that, after receiving the report, I decide that JOHN ERROL FERGUSON has "the mental capacity to understand the nature of the death penalty and why it was imposed on him," the execution of sentence imposed upon JOHN ERROL FERGUSON will occur on October 16, 2012 at 6:00 p.m. In the event that, after receiving the Commission's report, I decide that JOHN ERROL FERGUSON does not have "the mental capacity to understand the nature of the death penalty and why it was imposed on him," JOHN ERROL FERGUSON will be committed to a Department of Corrections mental health treatment facility until such time as he has been restored to sanity and the sentence of death may be executed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and have caused the Great Seal of the State of Florida to be affixed at Tallahassee, this 26th day of September, 2012.



GOVERNOR

ATTEST:

SECRETARY OF STATE

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DEPARTMENT OF STATE  
TALLAHASSEE, FLORIDA