

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

DISTRICT COURT  
FELONY DIVISION  
FOURTH JUDICIAL DISTRICT

State of Minnesota,	)	<b>NOTICE OF MOTION TO DISMISS IN THE INTERESTS OF JUSTICE</b>
	)	
Plaintiff,	)	
	)	
-vs-	)	MNCIS Case Nos. 27-CR-17-1555
	)	and 27-CR-17-8342
	)	
<b>Adrian Michael Wesley,</b>	)	
	)	
Defendant.	)	

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TO: THE COURT; THE HONORABLE DANIELLE MERCURIO, HENNEPIN COUNTY JUDICIAL OFFICER; AND TOM ARNESON AND AMY BLAGOEV, ASSISTANT HENNEPIN COUNTY ATTORNEYS.

**NOTICE OF MOTION**

PLEASE TAKE NOTICE that on Tuesday, February 13, 2024 at 1:30 p.m., or as soon thereafter as counsel may be heard, Adrian Wesley, will seek the following relief:

**MOTION**

Adrian Wesley moves this court to dismiss this matter in the interests of justice pursuant to Minnesota Statute Section 611.46, which states in relevant part, subd. 8 (d), Counsel for the defendant may bring a motion to dismiss the proceedings in the interest of justice at any stage of the proceedings.

Mr. Wesley was charged by complaint on January 19, 2017, and a Rule 20 evaluation was ordered on January 20, 2017. Mr. Wesley has been found incompetent, without objection, twelve times; on 2/21/17, 10/31/17, 5/1/18, 11/6/18, 5/7/19, 11/10/20, 5/11/21, 11/9/21, 5/6/22, 1/19/23, 7/10/23, and 1/9/24. In addition, he was once found incompetent by Judge Janzen following a contested competency hearing, with Findings of Fact and Conclusions of Law filed on 5/8/20. Mr. Wesley was confined in jail for 194 days in pretrial

detention. Additionally, Mr. Wesley was pretrial confined in the hospital pursuant to a civil commitment for Mentally Ill and Dangerous. Mr. Wesley was pretrial confined between the jail and the hospital for 2571 days, and has been in custody of either law enforcement or human services since January 15, 2017. His next review for his civil commitment is set for December, 2025.

Mr. Wesley has consistently been found incompetent since 2017. As such, the court made the determination that Mr. Wesley lacked the ability to move forward in the criminal process. In the last completed competency exam, dated January 3, 2023, Dr. Gregory Hanson provided a thorough recitation of the evaluative history of Mr. Wesley, and concluded that “(h)is prognosis for competency is poor.” Since that report was filed, the DHS has provided an opinion to the Court that “Mr. Wesley is incompetent and unrestorable”, and they have stopped providing competency evaluations regarding Mr. Wesley.

While the state may have filed a notice of intent to prosecute when Mr. Wesley restored to competency, there is no longer a good faith basis to believe that Mr. Wesley can attain competency. The prior reports indicate that Mr. Wesley is deaf, and has been diagnosed with the following:

Unspecified Schizophrenia Spectrum and Other Psychotic Disorder;

Other Specified Neurodevelopmental Disorder Associated with Prenatal Alcohol

Exposure and Language Deprivation;

Intellectual Developmental Disorder, mild;

Illiteracy and Low-Level Literacy.

Furthermore, he has had the medical diagnosis of Fetal Alcohol Spectrum Disorder, which coupled with Mr. Wesley’s language impoverishment when young impacts “neuro-development in a fashion that results in persisting and permanent impairment to brain function related to communication.” Dr. Hanson report, Jan.3, 2023, p. 6-7. According to Dr. Hanson, the “kind of deficits in conceptual reasoning that Mr. Wesley demonstrates are

not remedial through additional education or practice and have to do with the underlying neurodevelopmental structures of the brain that are permanent and ongoing. Report, p. 14. In his opinion, continued competency restoration efforts would not “result in any appreciable improvement in the defendant’s capacities.” *Id.*

Given the history and reports, the complaints against Mr. Wesley should be dismissed. It is important to note that he has been in custody since the date of offense in January, 2017. Even if he were to be restored to competency and convicted, the amount of pretrial credit would satisfy the presumptive guideline sentence of 90 months. Knowing that he will not be restored to competency and will remain under civil commitment should be sufficient for the prosecution to recognize that further legal proceedings in criminal court are unnecessary and unjust.

“The United States Supreme Court has stated that it would be cruel and unusual punishment to make the status of being mentally ill a crime.” *State v. Bauer*, 299 N.W.2d 493, 498-499 (1980); *citing, Robinson v. California*, 370 U.S. 660, 666 (1962). Pretrial commitment is “a significant deprivation of liberty that requires due process protection.” *Addington v. Texas*, 441 U.S. 418, 426 (1979). The Due Process Clause provides, “No state shall...deprive any person of life, liberty, or property, without due process of law.” U.S. Const. amend XIV, § 1; *see also* Minn. Const. Art. 1, § 7.

In *Jackson v. Indiana*, the Supreme Court held that an incompetent defendant’s substantive due process rights are implicated when they are being held in pretrial detention. 406 U.S. 715, 738 (1972). There, the Court determined that “due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed.” *Id.*; *see also Matter of Opiacha*, 943 N.W.2d 220, 226 (Minn. App. 2020) (citing this quoted language in *Jackson*).

The aforementioned cases guide this court in recognizing that the history of pretrial detention and confinement is a due process issue, a constitutional issue and thus

are worthy of consideration in the interests of justice. Further, even if the state filed a notice of intent to prosecute Mr. Wesley should he attain competence, there is no evidence offered, nor a good faith basis to believe that Mr. Wesley will be able to attain competence. Mr. Wesley has been found incompetent 12 times and there is no reasonable expectation that he will be able to restored to competence. The Criminal Justice system has finite resources and Minnesota Rule of Criminal Procedure 1.02 notes “[t]hese rules are intended to provide a just determination of criminal proceedings, and ensure a simple and fair procedure that eliminates unjustified expense and delay.” Given that there is no expectation that Mr. Wesley can attain competency, the rules show this court that a dismissal is in line with the rules.

Mr. Wesley has had no additional charges, no additional commitments and should no longer be monitored or under the jurisdiction of the Criminal Justice System. The evaluations have noted restoration efforts, stabilization efforts yet his cognitive limitations remain unchanged and he remains unable to move forward on the criminal case. The state has no evidence or good faith basis to believe Mr. Wesley will be able to attain competence. As such, this case should be dismissed in the interests of justice.

This motion is based upon all relevant files, case law, statutes and arguments of counsel.

RESPECTFULLY SUBMITTED,

OFFICE OF THE HENNEPIN COUNTY PUBLIC DEFENDER  
MICHAEL BERGER - CHIEF PUBLIC DEFENDER

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Dated: This 31st day of January 2024.