

State of Minnesota

District Court

County of Hennepin

Fourth Judicial District

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State of Minnesota,  
Plaintiff,

Judge Carolina A. Lamas  
Case Type: Criminal

**ORDER**

v.

Terrell Johnson,  
Defendant.

Case No. 27-CR-19-12466;  
27-CR-18-27501

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**FINDINGS OF FACT**

1. Defendant (date of birth 08/28/1979) was charged in MNCIS Case No. 27-CR-19-12466 with Drugs Possession in the Third Degree (Felony) arising from an incident alleged to have occurred on May 28, 2019; MNCIS Case No. 27-CR-18-27501, Defendant was convicted and sentenced for Drug Possession in the Fifth Degree (Felony) arising from an incident alleged to have occurred on November 6, 2018. On May 31, 2019, Judge Lois Conroy found probable cause to believe that the felony was committed and that Defendant committed them for Rule 20 purposes.
2. On May 31, 2019, Judge Lois Conroy ordered that Defendant undergo an evaluation to assess Defendant's competency to proceed in this matter pursuant to Minn.R.Crim.P. 20.01.
3. Dr. Sonia Reardon, Ph.D., LP, for Psychological Services of Hennepin County District Court reviewed Defendant's records, interviewed Defendant, and filed a written report with this Court.
4. Dr. Sonia Reardon, Ph.D., LP, for Psychological Services of Hennepin County District Court opined that Defendant, due to mental illness or cognitive impairment, lacks the ability to rationally consult with counsel; or lacks the ability to understand

the proceedings or participate in the defense. This opinion was uncontested by either party.

5. On June 25, 2019, the Defendant appeared in custody with counsel before the Court and Judge Carolina A. Lamas found Defendant incompetent to stand trial and ordered the criminal proceedings in this matter be suspended until Defendant is restored to competency to proceed. Judge Carolina A. Lamas ordered "Bail to Stand" and Defendant remained in custody.
6. On July 1, 2019, Judge Elizabeth V. Cutter of Hennepin County District Court issued an Order for Commitment as a Person Who is Mentally Ill (Rule 20) in MNCIS Case No. 27-MH-PR-19471; the Defendant was civilly committed to the Commissioner of Human Services.
7. On July 3, 2019, the Defendant was admitted to the Anoka Metro Regional Treatment Center.
8. On December 18, 2018, the Minnesota Department of Human Services issued a Bulletin announcing the unilateral decision that "DHS will provisionally discharge civilly committed defendants from a treatment facility to jail when the individual's mental health needs do not require in-patient care and the individual's conditions of release prevent community placement." Minnesota Department of Human Services, Bulletin No. 18-76-01, Provision Discharge of Direct Care and Treatment Patients, page 2, (2018).
9. On July 25, 2019, a Notification of Reduction in Custody was filed into this criminal case, noting a Provisional Discharge to the jail to go into effect on or after July 31, 2019 as the Defendant was determined to no longer require in-patient level of care. The Court asked the Minnesota Department of Human Services to find a placement other than jail.
10. On July 29, 2019, a Notification of Reduction in Custody was filed into this criminal case, noting a Provisional Discharge to a community setting with ACT Team Services as the Defendant was determined to no longer require in-patient level of care.

11. Defendant remains incompetent and the criminal case remains suspended pursuant to Minn.R.Crim.P. 20.01, Subd. 6(b).
12. If the Criminal Court Judge denied the request to provisionally discharge Defendant to the community with ACT Team Services Defendant would be released to the jail on the previously ordered bail pursuant to DHS's Bulletin.
13. The Hennepin County Jail does not provide competency restoration treatment or therapy and is not able to administer *Jarvis* orders.
14. Due to DHS's unilateral changing of policy that was issued without warning, if the defendant was provisionally discharged to the jail, the court would have to make the impossible decision as to whether to keep the incompetent defendant in the jail not receiving treatment with a suspended criminal case, or, to release the defendant to the street.
15. Given the options, Judge Lisa Janzen approved the request to provisionally discharge Defendant and lifted the bail.

### ANALYSIS

There is no case directly on point in Minnesota as to whether an incompetent defendant, whose criminal case has been suspended, can be held in the jail awaiting restoration to competency while not receiving competency restoration treatment at said jail. In dealing with similar issues, courts around the country have held that "incompetent criminal defendants - as pretrial detainees - have a liberty interest in being free from incarceration absent a criminal conviction." *Goodman v. Utah Department of Human Services*, 180 F.Supp.3d 998, 1009 (D. Utah 2016); that the "Constitutional questions pertaining to the pretrial confinement of incompetent criminal defendants are analyzed under the due process clause of the Fourteenth Amendment." *State v. Hand*, 429 P.3d 502 (Wash. 2018); and that the relevant question is whether the nature and duration of said detention, "is reasonably related to the purpose for which he was committed." *Id.* (citing *Jackson v. Indiana*, 406 U.S. 715, 738, 92 S.Ct. 1845, 32 L.Ed.2d 435 (1972)).

In *Jackson*, the court held that:

a person charged by a State with a criminal offense who is committed solely on account of his incapacity to proceed to trial cannot be held more than the reasonable period of time necessary to determine whether there is a substantial probability that he will attain that capacity in the foreseeable future. If it is determined that this is not the case, then the State must either institute the customary civil commitment proceeding that would be required to commit indefinitely any other citizen, or release the defendant. Furthermore, even if it is determined that the defendant probably soon will be able to stand trial, his continued commitment must be justified by progress toward that goal.

406 U.S. 715, 738, 92 S.Ct. 1845, 32 L.Ed.2d 435 (1972). Similarly, in *United States v. Jackson*, 306 F.Supp. 4 (N.D.Cal. 1969), the court held that the accused, who was incompetent to stand trial because of serious mental illness, that was not likely to be cured in foreseeable future, and who had already spent over a year and a half in federal hospital must be discharged from federal custody and responsibility for accused should transfer to state. The underlying tone in all of these decisions is the general understanding as stated in *Cook v. Ciccone*, 312 F.Supp. 822 (W.D.Mo. 1970), that "Such consideration is dictated by the inherent unfairness and substantial injustice in keeping an unconvicted person in federal custody to await trial where it is plainly evident his mental condition will not permit trial within a reasonable period of time." 312 F.Supp. at 824.

#### ORDER

1. Defendant is released in the criminal case no bail required.
2. Defendant is ordered to cooperate with his civil commitment including following all treatment recommendations and appearing at all court appearances in the civil and criminal cases.

3. DHS shall continue to submit a written reports addressing the Defendant's competency to proceed in the criminal case when the Defendant has attained competency, or at least every six months.

BY THE COURT:

DATED: July 31, 2019

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Carolina A. Lamas  
Judge of District Court  
Fourth Judicial District

MINNESOTA  
JUDICIAL  
BRANCH