

**STATE OF MINNESOTA
COUNTY OF HENNEPIN**

**DISTRICT COURT
FOURTH JUDICIAL DISTRICT
PROBATE/MENTAL HEALTH DIVISION**

State of Minnesota,
Plaintiff,

Court File No. 27-CR-17-1555,
27-CR-17-8342

v.

Adrian Michael Wesley,
Defendant.

ORDER DENYING MOTION

This matter came on for hearing before the undersigned referee of district court on March 20, 2024, pursuant to the Defendant's Motion to Dismiss in the Interests of Justice filed on January 31, 2024. The matter was continued from February 13, 2024. The hearing was held remotely using the Zoom internet platform. Amy Blagoev, Assistant Hennepin County Attorney, represented the Plaintiff. The Defendant appeared from the Forensic Mental Health Program and was represented by Julius Nolen, Assistant Hennepin County Public Defender. Also present was Gina Alvarado, American Sign Language Court Interpreter.

Defense filed the Motion under Minn. Stat § 611.46. to dismiss the matters in the interests of justice. Based upon the arguments of counsel, all the files, records, and proceedings herein, and the adjudicated facts in this file, the undersigned referee makes the following recommendation:

FINDINGS OF FACT

1. Adrian Michael Wesley, hereafter Defendant, was charged in 27-CR-17-1555 with Criminal Sexual Conduct-2nd Degree-Fear Great Bodily Harm, from an event alleged to have occurred on or around January 15, 2017. Defendant was charged in 27-CR-17-8342 with Damage to Property 1st Degree-Value Reduced Over \$1,000, for an event alleged to have occurred on March 5, 2017.

2. Pursuant to Court Orders dated January 20, 2017, probable cause was found.
3. A Notice of Intent to Prosecute was filed on February 23, 2017.
4. Defendant's competency to proceed was assessed in reports filed on October 19, 2017; April 16, 2018; October 15, 2018; April 18, 2019; October 20, 2019; May 7, 2021; October 22, 2021; April 20, 2022; January 4, 2023; and June 29, 2023.
5. Defendant has been found incompetent 12 times, most recently by the Court on January 9, 2024 by the Honorable Judge Michael K. Browne.
6. Previously, Defendant challenged the opinion of Dr. Jason Lewis, dated October 1, 2019 that Defendant was competent to proceed and a contested competency hearing was held. In the Court Order filed May 8, 2020, the Court found Defendant incompetent to proceed. That finding was by the greater weight of the evidence.
7. On June 23, 2023 Dr. Soniya Hirachan, M.D., Executive Medical Director, filed a letter with the Court indicating that the Department of Human Services was modifying its practice around opinions regarding competency proceed regarding a "non-restorable defendant who remains in a DHS treatment facility." The letter continues, that should Defendant's treatment team "note a change in this patient's presentation in the future such that another competency evaluation may be indicated, an updated report will be completed by a DHS examiner and filed with the Court."
8. The Court has previously opined based on prior Court Examiner's opinions that Defendant's "clinical presentation is complex due to his long standing and well-documented history of neurodevelopmental deficits and intellectual disabilities which contribute to problems with emotional regulation and behavioral control as well as his

ability to communicate effectively his thoughts and emotions.” Court Order filed May 8, 2020.

9. Defendant is subject to civil commitment as a Person Who is Mentally Ill and Dangerous to the Public, and as a Person With a Developmental Disability, in Court File No. 27-MH-PR-17-175.
10. Defendant’s counsel filed a Notice of Motion to Dismiss in the Interests of Justice (“Motion To Dismiss”) on January 31, 2024.
11. The Motion to Dismiss states that Defendant’s diagnosis is Unspecified Schizophrenia Spectrum and Other Psychotic Disorder; Other Specified Neurodevelopmental Disorder Associated with prenatal Alcohol Exposure and Language Deprivation; Intellectual Developmental Disorder, mild; and Illiteracy and Low-Level Literacy. *Id.* at 2. Defendant additionally has the medical diagnosis of Fetal Alcohol Spectrum Disorder. *Id.*
12. Defendant’s counsel cites to Respondent’s confinement in jail for 194 days in pretrial detention and a pretrial confinement in the hospital pursuant to a Mentally Ill and Dangerous commitment. *See* Motion To Dismiss, pp. 1- 2. According to his counsel, Defendant’s pretrial credit would satisfy the presumptive guideline sentence of 90 months. *Id.* Counsel further notes that Defendant has been in the custody of either law enforcement or human services since January 15, 2017. *Id.* The Motion to Dismiss further states that Defendant has his next review for civil commitment as a developmentally disabled person in December 2025. *Id.*
13. Defense cites Defendant’s “history and reports,” as reason for dismissal. Motion To Dismiss, p. 3.

14. Defense informed the Court that they were also requesting dismissal under the general criminal dismissal statute Minn. Stat. § 631.21.

15. The State argues that the interests of justice are not served by dismissal of the charges against the Defendant arguing that it is possible that another examiner could find the Defendant incompetent to proceed, as has happened in the past, and that there is no discernible prejudice to Defendant to continue to have these charges pending.

CONCLUSIONS OF LAW

Regarding the Defense Motion to Dismiss in the Interests of Justice, this Court finds that Minn. Stat. § 611.46, subd. 8, does apply to these proceedings, but notes that the statute was not effective until April 1, 2024. The statute states “Counsel for the defendant may bring a motion to dismiss the proceedings in the interest of justice at any stage of proceedings.”

The Court does not find the interests of justice are served by dismissal of the charges. The State notes that the Victim in this case remains invested in the outcome, and desires to see accountability on behalf of Defendant for the traumatic harm she experienced as result of Defendant’s actions. Memorandum in Response and Opposition to Defendant’s Motion to Dismiss, p. 4. Pursuant to Minn. Stat. § 611.46 SUBD. 8(d), p. 2. At the hearing, Defendant’s Counsel argues that Defendant experienced apprehension, fixation, and concern regarding his criminal charges. In prior orders, the Court has expounded upon the changes to the competency curriculum and how for this Defendant, it has increased his familiarity with legal proceedings. *See* Court Order filed May 8, 2020, p. 4-5. No additional evidence was brought forward permitting the Court to weigh or compare the anguish felt by Defendant versus that felt by the Victim. The Court notes the Victim in this matter was the victim of a violent sexual assault at her place of employment.

Defendant's counsel also brought the Motion for Dismissal Pursuant to Minn. Stat. § 631.21, which states, "[t]he court may order a criminal action, whether prosecuted upon indictment or complaint, to be dismissed. The court may order dismissal of an action either on its own motion or upon motion of the prosecuting attorney and in furtherance of justice. If the court dismisses an action, the reasons for the dismissal must be set forth in the order and entered upon the minutes. The recommendations of the prosecuting officer in reference to dismissal, with reasons for dismissal, must be stated in writing and filed as a public record with the official files of the case."

On page 3 of its brief, the Defense relies upon *Matter of Opiacha*, 943 N.W.2d 220 (Minn. Ct. App. 2020) for the principle that "due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed." *Opiacha*, 943 N.W.2d 220, 226 (Minn. Ct. App. 2020)(quoting *Jackson v. Indiana*, 406 U.S. 715, 738, (1972)). The Court should engage in an assessment of Mr. Wesley's circumstances to determine if his current status at the Forensic Mental Health Program bares a reasonable relationship to his treatment needs. Accordingly, the Court adopted the test outlined in *Opiacha*: "The reasonable-relationship requirement is satisfied if a committed person 'is confined for only so long as he or she continues both to need further inpatient treatment and supervision for his ... disorder and to pose a danger to the public.' *Call v. Gomez*, 535 N.W.2d 312, 319 (Minn. 1995)." *Opiacha*, 943 N.W.2d 220, 226–27 (Minn. Ct. App. 2020). Taking into consideration that Mr. Wesley's civil commitment is indefinite in 27-MH-PR-17-1255 with specific psychiatric treatment needs; there was sufficient reliable information presented for the Court to find that the Defendant needs treatment, requires supervision, and continues to pose a risk to public safety. Accordingly, the nature and duration of Defendant's detention bares a reasonable relationship to the purpose for his detention.

CONCLUSION

In summary, this Court does not find the Defendant's argument persuasive that due to his repeated findings of incompetency and due to his prognosis, there is no likelihood that he will be restored to competence, and the charges should be dismissed. There is not a set metric for the number of times when a Respondent will be determined incompetent to proceed for a dismissal in the interest of justice. At this time, the Victim in this case remains invested in the outcome of this case. Defendant is charged with a crime of violence, Criminal Sexual Conduct in the Second Degree. The State has filed the appropriate intent to prosecute. The length of his indeterminate commitment and treatment as part of the civil commitment process, coupled with Defendant's diagnosis does not alter the crime committed by Defendant.

ORDER

The Defense's Motion to Dismiss in the Interests of Justice filed on January 31, 2024 2024, is **DENIED**.

Order Recommended by:

BY THE COURT:

Referee of District Court

Judge of District Court