

State of Minnesota

District Court

County of Hennepin

Fourth Judicial District

State of Minnesota,
Plaintiff,

Judge Carolina A. Lamas
Case Type: Criminal

ORDER

v.

Aesha Ibrahim Osman,
Defendant.

Case No.: 27-CR-19-3539;
27-CR-19-1916; 27-CR-19-17539
27-CR-18-20198; 27-CR-18-18391

FINDINGS OF FACT

1. Defendant (date of birth 09/03/1998) was charged in MNCIS Case No. 27-CR-19-3539 with Assault in the Fourth Degree (Felony) arising from an incident alleged to have occurred on January 30, 2019; MNCIS Case No. 27-CR-19-1916 with Assault in the Fifth Degree (Felony) and Assault in the Fourth Degree (Felony) arising from an incident alleged to have occurred on January 20, 2019; MNCIS Case No. 27-CR-18-20198 with Assault in the Fifth Degree (Gross Misdemeanor) and Disorderly Conduct arising from an incident alleged to have occurred on April 12, 2018; MNCIS Case No. 27-CR-18-18391 with Assault in the Fifth Degree (Felony) arising from an incident alleged to have occurred on July 2, 2018; MNCIS Case No. 27-CR-19-17539 with Assault in the Fifth Degree (Felony) arising from an incident alleged to have occurred on March 23, 2019. On August 27, 2019, Judge Carolina A. Lamas found probable cause to believe that the felony was committed in 27-CR-19-17539 was committed and that Defendant committed them; previously, on February 26, 2019 Judge Carolina A. Lamas found probable cause to believe that felonies were committed in 27-CR-19-3539, 27-CR-19-1916, 27-CR-18-20198, and 27-CR-18-1839 and that Defendant committed them.

2. On August 19, 2019, the Minnesota Department of Human Services – Direct Care and Treatment submitted a Rule 20.01, Subd. 7 report.
3. Dr. Kristen E. Matson, Ph.D., LP, Minnesota Department of Human Services – Forensic Psychologist with Direct Care and Treatment reviewed Defendant’s records, interviewed Defendant, and filed a written report with this Court.
4. Dr. Kristen E. Matson, Ph.D., LP, Minnesota Department of Human Services – Direct Care and Treatment 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. Assistant Hennepin County Attorney, Elizabeth Smith, requested that MNCIS Case No. 27-CR-19-17539 be added to the calendar for a finding regarding competency be entered.
6. On August 27, 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 subject \$40,000 bail issued on the complaint in MNCIS Case No. 27-CR-19-1916 and subject to a Conditional Release Order issued and signed by Judge Marth Anne Holton Dimick on November 19, 2018 in MNCIS Case No. 27-CR-18-18391.
7. On March 22, 2019, Judge Elizabeth 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-19-280; the Defendant was civilly committed to the Commissioner of Human Services.
8. On March 25, 2019, the Defendant was admitted to the Anoka Metro Regional Treatment Center.
9. On March 25, 2019, Admission Notification for Persons Subject to Continuing Criminal Court Supervision was filed into the criminal cases.

10. On September 30, 2019 a Notification of Reduction in Custody was filed into this criminal case, noting a Provisional Discharge to Adult Foster Care to go into effect on or after October 7, 2019.
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 the defendant to Adult Foster Care, the defendant would be released to the jail on the previously ordered bail.
13. The Hennepin County Jail does not provide competency restoration treatment or therapy and is not able to administer *Jarvis* orders.
14. 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 Katheryn Quaintance approved the request to provisionally discharge Defendant and issued a Conditional Release Order allowing Ms. Osman to be released to an adult foster care facility under her Civil Commitment.

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 pursuant to the condition that she remain at the adult foster care.

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: October 8, 2019

Carolina A. Lamas
Judge of District Court
Fourth Judicial District

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