

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT
CRIMINAL DIVISION

State of Minnesota,

Plaintiff,

vs.

Gordon Eugene Sharp, Jr.,

Defendant.

Court File No. 27-CR-21-1980, 27-CR-21-20072, 27-CR-21-20988, 27-CR-21-21355, 27-CR-21-23188, 27-CR-21-23215, 27-CR-22-4087, 27-CR-22-22963, 27-CR-23-1752

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER REGARDING
COMPETENCY

This matter came before the undersigned Referee of District Court on May 30, 2023. The hearing was held remotely using the Zoom internet platform. Tom Arneson, Assistant Hennepin County Attorney, represented the plaintiff. Defendant appeared in custody and was represented by Susan Herlofsky, Assistant Hennepin County Public Defender.

Based on all the files, records and proceedings in this case, the Court makes the following:

FINDINGS OF FACT

1. Defendant (date of birth 05/13/1988), was charged in MNCIS file 27-CR-21-1980 with Theft (Felony) arising from an incident alleged to have occurred on January 27, 2021; in MNCIS file 27-CR-21-20072 with 3rd Degree Burglary (Felony) arising from an incident alleged to have occurred on October 1, 2021; in MNCIS file 27-CR-21-20988 with 3rd Degree Burglary (Felony) arising from an incident alleged to have occurred on November 9, 2021; in MNCIS file 27-CR-21-21355 with 3rd Degree Burglary (Felony) arising from an incident alleged to have occurred November 16, 2021; in MNCIS file 27-CR-21-23188 with 3rd Degree Burglary (Felony) arising from an incident alleged to have occurred on December 11, 2021; in MNCIS file 27-CR-21-23215 with 3rd Degree Burglary (Felony) arising from an incident alleged to have occurred on December 16, 2021; in MNCIS file 27-CR-22-4087 with 3rd Degree Burglary (Felony) arising from an incident alleged to have occurred on December 9, 2021; in MNCIS file 27-CR-22-22963 with 3rd Degree Burglary (Felony) arising from an incident alleged to have occurred on May 27, 2022; and in MNCIS file 27-CR-23-1752 with 4th Degree Damage to Property and Trespass (Misdemeanor) arising from an incident alleged to have occurred on

January 22, 2023. On August 9, 2022, Judge Gina Brandt found probable cause to believe that the offenses were committed and that Defendant committed them.

2. On April 3, 2022, Judge Melissa Houghtaling 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. Lauren A. Herbert, Psy.D., LP, Psychological Services of Hennepin County District Court, reviewed Defendant's records, interviewed Defendant, and filed a written report with this Court.
4. Dr. Lauren A. Herbert, Psy.D., LP, 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.

CONCLUSIONS OF LAW

Defendant is presently incompetent to stand trial. The misdemeanor charges must be dismissed pursuant to Rule 20.01.

ORDER

1. The criminal proceedings in this matter are suspended until Defendant is restored to competency to proceed. While suspended, the criminal court retains authority over the criminal case including, but not limited to, bail or conditions of release.
2. Copies of this Order shall be served upon counsel for the parties and any objections to this Order shall be filed with the Court within ten (10) days of the date of service.

Darren Borg, Assistant Hennepin County Attorney – Criminal Division;
Cory Strecker, Assistant Hennepin County Attorney – Criminal Division;
Hilary Minor, Assistant Hennepin County Attorney – Criminal Division;
Chase Myhran, Assistant Hennepin County Public Defender

3. The Hennepin County Prepetition Screening Program (PSP) must conduct a prepetition screening pursuant to the Minnesota Commitment and Treatment Act and make a recommendation as to whether the defendant should be civilly committed under the Act.

4. PSP shall investigate whether civil commitment should be pursued and forward a recommendation in a written report supporting or not supporting civil commitment to the Hennepin County Attorney's Office – Adult Services Division ("HCAO-ASD") within five (5) days of receiving this Order.
5. Prepetition Screening shall provide copies of the Rule 20 Competency Evaluation, the criminal Complaint(s), and the underlying police report(s) along with its written recommendation to the Hennepin County Attorney's Office – Adult Services Division.
6. Defendant is ordered to cooperate with the civil commitment process including appearing at all court appearances in the civil and criminal cases.
7. Members of PSP shall have access to all Defendant's files and records, including those protected by Federal regulation or law. This Order grants the members of PSP access to the records of any individual or entity that has provided observation, evaluation, diagnosis, care, treatment, or confinement of the Defendant. This Order applies to, but is not limited to, records maintained by: Minnesota Fourth Judicial District Court Psychological Services; chemical dependency evaluators and treatment providers; health clinics; medical centers and hospitals; physicians; psychologists; mental health care providers; case managers; parole and probation agencies; residential and nonresidential community mental health treatment facilities or programs; regional treatment centers; the Minnesota Department of Corrections; the correctional authority for any other state; schools and school districts; law enforcement agencies; and the Court's own records.
8. This Order also authorizes employees or officers of the record keepers described above to discuss the Defendant's condition, history, treatment, and/or status with the members of PSP. Information collected by PSP pursuant to this Order shall be considered private data on the Defendant, but it may be included in the written report produced by PSP and forwarded to the HCAO-ASD.
9. If the Fourth Judicial District Court – Probate/Mental Health Division finds the Defendant to be mentally ill, developmentally disabled, chemically dependent, or mentally ill and dangerous to the public, the Defendant may be committed directly to an appropriate safe and secure facility. The Hennepin County Sheriff shall transport the Defendant from the Hennepin County Adult Detention Center to the custody of the head of the facility named in the order for civil commitment when notified that placement is available for the Defendant.

10. The head of the treatment facility shall submit a written report addressing the Defendant's competency to proceed in the criminal case when the Defendant has attained competency, or at least every six months.
11. Psychological Services of Hennepin County District Court, or the Department of Human Services Forensic Evaluation Department if the defendant is civilly committed, shall have access to Defendant's treatment records to prepare the required report(s) on the defendant's mental condition with an opinion as to competency to proceed. By presentation of a copy of this order, whether mailed, sent electronically, discussed verbally, or personally delivered, the custodian of records for any agency, department, or health care provider shall release all information and/or records related to Defendant, including medical, psychological, behavioral, social service, probation/correctional, developmental disability, military, Social Security, employment, and educational records, to the agency requesting the records within 72 hours. This Order shall be sufficient to require an agency, department, entity, or health care provider to release the requested information and/or records related to treatment Defendant has received in connection with that facility. Any of the defendant's records released pursuant to this order may not be disclosed to any other person without court authorization or Defendant's signed consent.
12. The criminal conditions of release remain in effect until placement at an appropriate facility can occur.
13. If Defendant is not subject to the provisions of Minn. Stat. § 253B.18, the head of the treatment facility shall hold Defendant safe and secure under the civil commitment, and shall not permit the Defendant's release, institutional transfer, partial institutionalization status, discharge, or provisional discharge of the civil commitment until the Fourth Judicial District Court – Criminal Division has ordered conditions of release consistent with the proposed change in status. Any proposed change in status under the civil commitment requiring amended conditions of release shall be made in writing to the Fourth Judicial District Court – Criminal Division and parties at least 14 days prior to proposed change in status. The written proposal shall address the following issues 1) whether the Defendant is competent to proceed; 2) how the proposed plan will meet the Defendant's treatment needs; and 3) public safety risks and how they will be addressed. Either party may request a hearing to address the proposed changes to the conditions of release. If no hearing is requested, the court may issue an order amending

the conditions of release consistent with the proposed change in status in the civil commitment matter.

14. In the event the Fourth Judicial District Court – Mental Health Division does not commit the Defendant, then the Defendant shall be transported in secure custody back to the Fourth Judicial District Court – Criminal Division for further proceedings herein.
15. Defendant's next appearance in Hennepin County District Court – Criminal Division on this matter and status review of Defendant's competence to proceed is November 28, 2023. One week prior to that date, reports regarding Defendant's competency and mental status shall be e-filed and e-served to:
 - a. Fourth Judicial District Court – 4thCriminalRule20 email list;
 - b. Chase Myhran, Assistant Hennepin County Public Defender;
 - c. Darren Borg, Assistant Hennepin County Attorney;
 - d. Cory Strecker, Assistant Hennepin County Attorney;
 - e. Hilary Minor, Assistant Hennepin County Attorney;
 - f. Assistant Hennepin County Attorney's Office – Adult Services Division (if a commitment is ordered);
 - g. The Commitment Defense Panel attorney appointed to represent Defendant by the Fourth Judicial District Court – Probate/Mental Health Division.
16. A copy of this Order, the Rule 20.01 Competency Evaluation, the criminal complaint(s), and the underlying police report(s) shall be delivered via email to the Prepetition Screening Program of Hennepin County's Human Services and Public Health Department.

Order Recommended By:

BY THE COURT:

Referee of District Court

Judge of District Court