

**STATE OF MINNESOTA
COUNTY OF HENNEPIN**

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

Court File No. 27-CR-22-13185;
27-CR-22-14723; and
27-CR-23-5213

**STATE OF MINNESOTA,
Plaintiff,
v.
MARK ANTHONY REINHART,
Defendant.**

**Order Denying Motion For
Amended Conditional Release Order**

This matter came before the Court on April 25, 2023, on a Motion by Counsel for the Defendant to remove the bail requirement imposed on Defendant by the Court's Conditional Release Order filed March 9, 2023, and to release him from the Hennepin County Adult Detention Center without bail, but on conditions. The hearing took place remotely using Zoom video. The Defendant declined to participate in the hearing and was represented by attorney Susan Herlofsky. The State of Minnesota was represented by Minneapolis City Attorney Heidi Johnston.

The matter was referred for hearing to the undersigned district court referee, and based on the referee's recommendations, the Court makes the following:

FINDINGS OF FACT

1. Defendant (date of birth 02/10/1962) was charged in: Court File No. 27-CR-22-13185 with Indecent Exposure/Lewdness (Gross Misdemeanor) arising from an incident alleged to have occurred on July 5, 2022; Court File No. 27-CR-22-14723 with Trespass (Gross Misdemeanor) arising from an incident alleged to have occurred on June 21, 2022; and Court File No. 27-CR-23-5213 with Trespass on Critical Public Service Facilities, Pipeline, Utility (Gross Misdemeanor) arising from an incident alleged to have occurred

on March 8, 2023. The Defendant was charged with other misdemeanor violations that were dismissed by the Court's Order Regarding Competency filed April 13, 2023.

2. The April 13, 2023 Order Regarding Competency determined that the Defendant is presently incompetent to stand trial. The Hennepin County Prepetition Screening Program (PSP) was ordered to conduct a prepetition screening pursuant to the Minnesota Commitment and Treatment Act and make a recommendation either supporting or not supporting civil commitment in a written report to the Hennepin County Attorney within five (5) days of receiving the Order.

3. Rule 20.01 Subd. 6(b) provides in part:

If the defendant is not under civil commitment, the court must issue an order directing the designated agency in the county where the criminal case is filed to conduct prepetition screening pursuant to the Minnesota Commitment and Treatment Act to make a recommendation on whether the defendant should be civilly committed under the Act. The prepetition screening team must prepare and send a written report to the county attorney and social services agency for that county within five days.

4. It is unclear when PPS received the Court's April 13, 2023 Order Regarding Competency. The Court learned at the April 25 hearing, however, that the Hennepin County Attorney did not receive the PPS Report until April 24, 2023. A Petition for Judicial Commitment of the Defendant as a person who poses a risk of harm due to a mental illness and as a chemically dependent person was filed on April 26, 2023, by the County Attorney.
5. If this Court assumes that PPS received the Court's Order on April 13, PPS should have prepared and sent its Report to the County Attorney by April 18.
6. Defendant's Counsel argues that the remedy for a late report by PPS should be removal of the bail requirement resulting in release of the Defendant from incarceration.

7. The Court was not able to find case law holding that the remedy for a Rule 20.01 Subd. 6(b) timing violation is release from custody.
8. Under the facts of this case, the Court declines to amend its Conditional Release Order to allow for release of Defendant from the Adult Detention Center for the following reasons:
 - a. First, it is unclear when PPS received the Court's April 13, 2023 Order. Rule 20.01 Subd. 6(b) is vague as to when the five day period begins to run, however, the Court's Order clearly states the five day period begins to run upon receipt of the Order. If this Court assumes that PPS received the Order on April 13, the Report was due on April 18 and was six days overdue when the County Attorney received the Report on April 24. The Court is also unaware of the reasons for the delayed Report. If the delay was due to the conduct of the Defendant, there may be an argument that there was a legitimate reason for the delay. As to the six day overdue report, the Court finds that a six day delay does not seem unreasonable or unduly prejudicial to the Defendant, particularly since a Petition for Judicial Commitment has been filed.
 - b. The Court also notes that the County Attorney acted quickly to review this matter upon receipt of the PPS Report and filed its Petition for Judicial Commitment on April 26 in Court File No. 27-MH-PR-23-466.
9. In summary the Court recognizes that Respondent has been at the Adult Detention Center since March 8, 2023. The Court also is aware of the cases which stand for the proposition that it violates due process to hold a person found to be incompetent in custody for an extended period of time. In the present case, however, the court does not find that he has been held for an unreasonable period of time, particularly since the County Attorney acted quickly upon receiving the Report from PSP to file the Petition for Judicial Commitment.

ORDER

IT IS ORDERED:

1. The Defendant's Motion to remove the bail requirements imposed by the Court and release him from the Hennepin County Adult Detention Center without bail, but on conditions is DENIED.
2. The conditions of release set forth in the Conditional Release Order filed March 9, 2023, shall remain in effect until the conclusion of the Defendant's civil commitment proceeding.
3. Copies of this Order shall be served upon counsel for the parties including:

Heidi Johnston, Minneapolis City Attorney, Criminal Division;

Christopher Renz, Attorney for Metropolitan Airports Commission;

Shawna Kosel, Assistant Hennepin County Public Defender; and

Susan Herlofsky, Assistant Hennepin County Public Defender.

Order Recommended by:

BY THE COURT:

Referee of District Court

Judge of District Court