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February 13, 2023

The Honorable Referee Borer  
The Honorable Judge Dayton Klein  
Hennepin County District Court  
300 South Sixth Street  
Minneapolis, MN 55487

**Re: Rodrick Carpenter**  
**MNCIS Case No. 27-CR-20-12499, 27cr20-27550, 27cr22-14541 and 27cr22-15358**

Judicial Officers Borer and Dayton Klein:

I write on behalf of Mr. Carpenter in order to address and respond to the letter dated February 3, 2023 and signed by Judge Dayton Klein. This matter is currently set before Referee Borer for February 13, 2023 at 1:30 pm on the R. 20 Calendar.

First, Judge Dayton Klein includes case number 27cr20-12499 in its heading and presumably the comments by the court in the aforementioned letter are impacted by that case. It should not have been included as it was dismissed upon motion of Heidi Johnston, Assistant Minneapolis City Attorney on or about December 20, 2022.

Second, Judge Dayton Klein lists a conditional release order from August 5, 2022 and asserts the following in relevant parts:

Most recently, on August 5, 2022, Chief Judge Toddrick Barnette ordered Mr. Carpenter to be conditionally released With bail set at \$60,000 without conditions and \$30,000 with various conditions. One of those conditions included cooperating with commitment in case 27-MI-I-PR-22-969. See Conditional Release Order dated August 5, 2022, Court File No. 27-CR-22-15358, Index No. 6.

The August 5<sup>th</sup> CR order, does not include an order of cooperation with commitment of 27mhpr22-969. The Commitment order was not initiated until August 29, 2022 and the CR order cites no commitment order. *See Attached.*

Third, while Judge Dayton Klein's correspondence lists some of Mr. Carpenter's history on the criminal matters, it omits other relevant information to include; (a) Mr. Carpenter came into custody on August 3, 2022, (b) Mr. Carpenter was found

incompetent on August 16, 2022, (c) Mr. Carpenter was committed as MI on September 12, 2022 pursuant to 27mhpr22-969, and (d) Mr. Carpenter remained in the jail, without prompt transfer in violation of Minn. Stat. sec. 253B.10 until he was transferred to AMRTC on or about December 16, 2022. Mr. Carpenter's statutory 48 hour prompt transfer right was violated by three months, or a minimum of 2,160 hours.

Fourth, Judge Dayton Klein's correspondence requests AMRTC to address compliance with the August 5, 2022 CR order and seeks whether there is an update to Mr. Carpenter's competency status, proposed plan and security concerns. It is worth noting that the progress report dated February 1, 2023 is the standard reduction of custody notice provided by DHS. The notice provided that a provisional discharge was being sought with a release to an IRTS – an Intensive Residential Treatment Service Program.

Fifth, there was no request by the state seeking a hearing to review the reduction of custody.

Sixth, the court, sua sponte, in its February 3, 2023 correspondence sought to change Mr. Carpenter's custody status, inconsistent with the professionals recommendations of an IRTS;

In the event AMRTC cannot continue to house Mr. Carpenter, we are requesting that he be returned to the custody of the Hennepin County Public Safety Facility Where he is subject to the Conditional Release Order dated August 5, 2022.

Seventh, the Findings of Fact and Order filed by Judge Janzen on August 16, 2022 is instructive on these issues, as it states in part:

11. The criminal conditions of release remain in effect until placement at an appropriate facility can occur.

The court has relied on DHS to sort out the appropriate placement for Mr. Carpenter, and thus one can read this language to note that when the professionals seek a movement from the jail to the hospital, and that is an appropriate facility - the CR conditions no longer need to remain in place. And while the commitment order requires the notice to the parties, and notes the right to request a hearing, Judge Janzen's order states in relevant part:

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. (emphasis added)

Eighth, the court cites no law to authorize a sua sponte halting of a reduction of custody when the treating professionals are making a recommendation for the provisional discharge. The potential harm to Mr. Carpenter is great, in that if a bed were available and he were to lose that bed, he would remain confined for longer

than is necessary to meet his needs related to the MI civil commitment. The danger in a court sua sponte halting a reduction of custody and provisional discharge, is that the court may not be aware of many facts that justify the release to the community. To include:

- (a) Mr. Carpenter has a zero criminal history score,
- (b) 27cr21-27550 – Ct 01- Felony Terroristic Threats/ Ct 02 – GM – pistol in public without a permit; the alleged offense date is December 26, 2020, more than two years ago and as of February 14, 2023, he is entitled to a minimum of 330 days of jail credit. The presumptive sentence for ct. 01 is 1 year and 1day STAYED, and Ct 02 – must be dismissed, pursuant to MRCP 20.01, subd. 8, (2) in relevant part “ If a notice has been filed, the charges must be dismissed when the defendant would be entitled under these rules to custody credit of at least one year if convicted.”
- (c) 27cr22-15358 – GM Ass 4; the alleged offense is from July 23, 2022 and Mr. Carpenter is entitled to 206 days of jail credit as of February 14, 2023.
- (d) 27cr22-15358 – Ct. 01 Burglary in the First Degree/ Ct. 02 – Theft of a Motor Vehicle; the alleged offense date is August 3, 2022 and he is entitled to 196 days of confinement credit between the jail and commitment confinement as of February 14, 2023. The presumptive sentence on count 21 months stay, and count 2 is a presumptive 1 year and 1 day stay.
- (e) Mr. Carpenter’s history related to incompetency on these matters, using 27cr20-27550 history, includes consecutive incompetency findings on April 6, 2021, December 14, 2021, and August 16, 2022. The most recent opinion offered in a filing from February 10, 2023 is that Mr. Carpenter remains incompetent.

Ninth, to even consider a return to the jail as Judge Dayton Klein’s correspondence instructs, is quite concerning, in light of Mr. Carpenter’s apparent stabilization, the prior three months of violating Mr. Carpenter’s statutory prompt transfer rights while he sat in jail awaiting his transfer to the hospital, and his jail credit against pending matters. He has been confined much longer than anyone else would have been with these charges and a 0 criminal history score.

Tenth, Judge Dayton Klein’s instruction to return Mr. Carpenter to the jail is in violation of Mr. Carpenters due process and constitutional rights, both the United State and Minnesota Constitution. The return to jail order and confinement would not in any way be reasonably expected to restore Mr. Carpenter to competency.

Pretrial commitment is “a significant deprivation of liberty that requires due process protection.” *Addington v. Texas*, 441 U.S. 418, 426 (1979). The Due Process Clause provides, “No state shall...deprive any person of life, liberty, or property, without due process of law.” U.S. Const. amend XIV, § 1; *see also* Minn. Const. Art. 1, § 7. Thus, the government must have “a constitutionally adequate purpose for [pretrial] confinement.” *O’Connor v. Donaldson*, 422 U.S. 563, 574 (1975). In *Jackson v. Indiana*, the Supreme Court held that an incompetent defendant’s substantive due process rights are implicated when they are being held in pretrial detention. 406

U.S. 715, 738 (1972). There, the Court determined that “due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed.” *Id.*; see also *Matter of Opiacha*, 943 N.W.2d 220, 226 (Minn. App. 2020) (citing this quoted language in *Jackson*).

If the nature of an incompetent defendant’s confinement is not reasonably related to restoring competency, their continued detention violates due process. *Jackson*, 406 U.S. at 738. Minnesota courts have yet to flush out what *Jackson*’s due process language requires for incompetent defendants. However, this issue has been well-litigated in other state courts, as well as in federal court. In interpreting *Jackson*, courts have determined that “[h]olding incapacitated criminal defendants in jail for weeks or months violates their due process rights.” *Or. Advocacy Ctr v. Mink*, 322 F.3d 1101, 1122 (9th Cir. 2003). Thus, the Fourteenth Amendment requires the “prompt transfer” of incompetent defendants to facilities that can adequately address the root of their incompetency. *Geness v. Cox*, 902 F.3d 344 (3d Cir. 2018). Under *Jackson*, “No matter how short the duration of the detention, if the *nature* of the confinement is not reasonably related to the government’s purpose of accurately evaluating the individual defendant’s potential to attain competency, the detention is unconstitutional.” *Carr v. State*, 815 S.E.2d 903, 912 (Ga. 2018) (emphasis in original).

The “particular crime with which a defendant is charged” cannot determine the length or nature of pretrial confinement. *Id.* at 915. Instead, “it is his particular mental condition that affects whether his commitment is reasonably related to the goal of accurately evaluating his likelihood of attaining competency so he can be tried.” *Id.* However, where it is clear from the outset a defendant is unlikely to be restored to competency, “commitment serves no legitimate purpose at all, and so does not justify the deprivation of the defendant’s liberty.” *Id.* at 916

This filing is in objection to the court’s February 3, 2023 correspondence and defense counsel wants to be heard further on the record for lifting the criminal bail on February 14, 2023, so it will not be a barrier to release to community as recommended by the professionals. Please advise if you have any questions or concerns.

Sincerely,

/s/

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cc: Robert Sorensen, Assistant Hennepin County Attorney  
Christopher Nippoldt, Assistant Hennepin County Attorney  
Elizabeth Rosholt Winden, Commitment Panel