

NORTH CAROLINA

FILE NO(S):

_____ COUNTY
_____ Division

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

THE STATE OF NORTH CAROLINA)
)
)
Vs.)
)
)
_____,)
Defendant.)

ORDER
Supplemental Order Regarding
Commitment to Central Regional
Hospital

THIS MATTER COMING ON BEFORE THE COURT on _____, 2014 before the Hon. _____ on the parties' Motion regarding defendant's ability to proceed to trial under NCGS 15A-1001, *et. seq.*; **AND IT APPEARING** that the State is represented by _____ and Defendant is represented by Richard Wells of the Public Defender's Office; **AND IT APPEARING** that defendant was present in court; **AND IT APPEARING** the Court has considered the following: (1) Testimony of Dr. _____ of Central Regional Hospital (CRH); (2) Testimony of Dr. _____ of CRH; (3) Written CRH Forensic Reports from Dr. _____ dated _____ and _____; (4) Written CRH Forensic Report from Dr. _____, PhD dated _____; (5) Evidence of the alleged crimes as summarized by the prosecution; (6) Defendant's testimony; and (7) arguments of counsel. **BASED UPON** the evidence presented and arguments submitted, the Court enters the following order.

FINDINGS OF FACT

1. Defendant is age __ and has a well-documented history of having low mental functioning. Evidence of record suggests that Defendant's cognitive deficits are due (at least in part) to a lack of oxygen at the time of his birth. During his life, defendant has been given IQ tests which disclose the following: Full-scale IQ of __ (DATE); Full-scale IQ of __ (DATE); and Full-scale IQ of __ (DATE). Defendant's low IQ places him in the mild to moderate range of intellectual disability.
2. Evidence presented indicates that defendant has lived, predominately, in a supervised or group home setting throughout his life. During a brief period he lived on his own as an adult, however he was unable to care properly for himself as he was reportedly living without utilities or food.
3. The Hon. _____ initially determined that defendant was incapable of proceeding to trial and defendant was involuntarily committed to CRH on DATE. After his commitment, defendant took part in both Group and Individual Education in an effort to raise defendant to a level where he would be capable of proceeding to trial. Despite these

efforts, Dr. _____ opined that defendant was incapable of proceeding to trial and that it was her medical opinion that he was non-restorable to competency. In brief summary, Dr. _____ indicated that defendant's cognitive reasoning was concrete and child-like and that he lacked the ability to undertake much abstract reasoning. While defendant is able to parrot back court-related information, Dr. _____ indicates he lacks the ability to understand, and adequately take part in, the court process. Dr. _____ indicated it was rare to see an IQ as low as defendant's and she further indicated defendant was one of a very small number of patients she has ever diagnosed as non-restorable.

4. Defendant testified and was examined by the Court. While it appeared defendant tried to answer all questions posed him, defendant's responses were child-like. Defendant was unable to identify the prosecutor despite being present throughout this hearing.
5. Based upon the evidence presented, the Court finds defendant suffers from a mental defect or illness under NCGS 15A-1001. The Court finds that defendant's mental condition, while perhaps incrementally ameliorated by education, is likely permanent.
6. The Court finds and concludes that defendant's mental condition prevents defendant from adequately understanding the nature and object of the proceedings; from comprehending his situation in reference to the proceedings; and from assisting his counsel in a rational or reasonable manner.
7. It appears to the satisfaction of the Court, based upon the testimony of Dr. _____ and other evidence of record, that defendant will not gain capacity to proceed. Therefore, the Court herein dismisses these charges without prejudice pursuant to NCGS 15A-1008(a)(1).
8. The Court notes that defendant is before the Court on criminal charges of _____ (violent crimes) where the evidence indicates defendant attempted to sexually assault two female employees at a retail store during business hours. Defendant's conduct endangered and caused harm to the victims. Defendant was living in a group home; however he was alone and without supervision at the time of the incident.
9. Under NCGS §§ 15A-1003 and 122C-231, et. seq., the Court finds that defendant is mentally ill and is dangerous both to himself and others. The Court finds and concludes that defendant should be involuntarily committed.
10. Because this matter is dismissed, this ends the criminal prosecution. Therefore, Central Regional Hospital (CRH) shall not return defendant to the jail under NCGS 15A-1004. CRH shall consider this involuntary commitment to be one under NCGS 122C for persons who are dangerous to themselves or others.
11. The Court finds and concludes that Defendant needs a legal guardian. Prior to his release from hospitalization, Central Regional Hospital (CRH) should pursue the process for assigning a legal guardian to Defendant. Before his release from CRH, CRH shall also explore a physical placement for Defendant which will keep both him and the public safe. See NCGS § 15A-1004(c) & (e).

CONCLUSIONS OF LAW

1. Defendant has a severe mental illness or defect under NCGS § 15A-1001.
2. Defendant's mental illness or defect prevents defendant from adequately understanding the nature and object of the proceedings; from comprehending his situation in reference to the proceedings; and from assisting his counsel in a rational or reasonable manner.
3. It appears to the satisfaction of the Court that defendant will not gain capacity to proceed. Therefore, the Court herein dismisses these charges without prejudice pursuant to NCGS § 15A-1008(a)(1).
4. Defendant's mental illness or defect makes him dangerous both to himself and others and defendant should be involuntarily committed.
5. Because this matter is dismissed, this ends the criminal prosecution. Therefore, Central Regional Hospital (CRH) shall not return defendant to the jail under NCGS § 15A-1004. CRH shall consider this involuntary commitment to be one under NCGS § 122C for persons who are dangerous to themselves or others.
6. As is usually done in commitment cases under NCGS § 15A-1003, the Court enters a standard Involuntary Commitment Order using the AOC form **AOC-SP-304A**. However, to the extent there is any conflict between the AOC-SP-304A Order and this Supplemental Order, the terms of this Supplemental Order shall control.

WHEREFORE, the Court orders the following:

1. Defendant is not capable of proceeding to trial and will not gain capacity to proceed.
2. The Court herein dismisses these charges without prejudice pursuant to NCGS § 15A-1008(a)(1).
3. Defendant shall be Involuntarily Committed to Central Regional Hospital (CRH). The _____ County Sheriff shall transport defendant to CRH pursuant to the terms of the standard AOC-SP-304A Order which is also filed today.
4. To the extent there is any conflict between the AOC-SP-304A Order and this Supplemental Order, the terms of this Supplemental Order shall control.
5. Because this matter is dismissed, this ends the criminal prosecution. Therefore, Central Regional Hospital (CRH) shall not return defendant to the jail under NCGS § 15A-1004. CRH shall consider this involuntary commitment to be one under NCGS § 122C for persons who are dangerous to themselves or others.
6. The Court finds and concludes that Defendant needs a legal guardian. Prior to his release from hospitalization, CRH should pursue the process for assigning a legal guardian to

Defendant. Before his release from CRH, CRH shall also explore a physical placement for Defendant which will keep both him and the public safe.

This the ____ day of _____, 2014.

Hon. _____

Acceptable as to form:

_____, Asst. District Attorney

Richard Wells, Asst. Public Defender