

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

UNITED STATES OF AMERICA)
)
v.)
)
STEPHEN L. GALLINARI,)
)
)
Defendant)

Criminal No. 99-47-P-C

**ORDER ON DEFENDANT’S COMPETENCY
TO PARTICIPATE IN CONTINUED PROCEEDINGS**

On August 13, 1999 defense counsel filed a motion for a reevaluation of the competency of defendant Stephen L. Gallinari to participate in continued proceedings against him, requesting that the defendant be transported to an inpatient treatment center for evaluation and treatment. Joint [sic] Motion for Competency Reevaluation (“Reevaluation Motion”) (Docket No. 13). The motion was granted without objection, and the defendant was ordered to submit to an examination. Order Granting Motion for Competency Reevaluation (Docket No. 14).

The defendant was examined by L. Thomas Kucharski, Ph.D., chief psychologist for the Metropolitan Correctional Center operated by the Federal Bureau of Prisons in New York, New York, who issued a report dated September 21, 1999. A competency hearing was held before me on October 25, 1999, with the defendant present and represented by attorney Judith Wohl and the government represented by Assistant United States Attorney Helene Kazanjian. Dr. Kucharski was the sole witness. His resume was introduced as Government’s Exhibit 1, his report as Government’s

Exhibit 2 and a series of Cumberland County Sheriff's Office incident reports, all dated October 20, 1999, as Government's Exhibit 3. All three exhibits were admitted without objection, and defense counsel stipulated to Dr. Kucharski's qualifications.

This marks the third occasion on which this court has considered the defendant's competency to continue participation in proceedings against him. On November 2, 1998 the government filed a motion for a hearing to determine the defendant's competency to stand trial. Government's Motion for a Hearing To Determine the Defendant's Mental Competency To Stand Trial, etc. (Docket No. 4). Following the submission of a psychological report and a mental-competency hearing, the court determined on January 8, 1999 that the defendant was not competent to stand trial and committed him to the custody of the Attorney General for a period of up to four months pursuant to 18 U.S.C. § 4241(d)(1) for treatment and determination whether competency could be restored. Order on Defendant's Competency To Stand Trial (Docket No. 6).

By report dated May 11, 1999 Cynthia Crandall, Psy.D., and Christine Scronce, Ph.D., of the Federal Medical Center in Rochester, Minnesota concluded that following treatment at that facility with involuntarily administered psychotropic drugs the defendant was at that time competent to stand trial. Forensic Evaluation, Discharge Summary, Federal Medical Center, Rochester, Minnesota, dated May 11, 1999, at 8-10, 13-14. On July 26, 1999 the court held a change-of-plea hearing at which it accepted the defendant's guilty plea to the two charges pending against him. Docket Entries dated July 26, 1999; Prosecution Version (Docket No. 12). The instant motion followed, alleging that subsequently, in the course of preparation of the presentence report, the defendant exhibited signs of flagrant psychosis. Reevaluation Motion at 1.

The government bears the burden of proving by a preponderance of the evidence that an

individual is competent “to understand the nature and consequences of the proceedings against him” and “to assist properly in his defense.” 18 U.S.C. § 4241(d); *United States v. Teague*, 956 F.2d 1427, 1431 n.10 (7th Cir. 1992). The test for competency is whether a defendant “has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding — and whether he has a rational as well as factual understanding of the proceedings against him.” *Dusky v. United States*, 362 U.S. 402, 402 (1960) (internal quotation marks omitted); *see also United States v. Pellerito*, 878 F.2d 1535, 1544 (1st Cir. 1989). In the context of a sentencing proceeding a defendant possesses an important panoply of rights that include the right to object to the presentence report; to make a statement on his or her behalf; to present information that might mitigate the sentence; and to seek to withdraw a guilty plea prior to sentencing upon a showing of any fair and just reason. *See generally* Fed. R. Crim. P. 32. “As sentencing approaches and occurs, the defendant’s best interest — and, indeed, the public interest — requires that he be capable of assisting his counsel and his cause.” *Pellerito*, 878 F.2d at 1544.

The government at hearing pressed for a finding of incompetency, while the defendant urged the court to declare him competent to continue the instant proceedings. After careful consideration of the file in this case, the evidence presented at hearing and the testimony of Dr. Kucharski, I find the defendant incompetent for the reasons set forth below.

FINDINGS OF FACT

1. Dr. Kucharski interviewed the defendant on two occasions in September 1999 for a total of approximately one hour and reviewed previously prepared competency reports regarding the defendant.

2. Dr. Kucharski found that the defendant suffers from schizophrenia of a paranoid type

and has a history of chronic substance abuse. In Dr. Kucharski's view, the defendant currently possesses no rational understanding of the proceedings against him, as evidenced by his belief that the proceedings are not real but rather part of a governmental scheme to investigate the existence of organized crime. The defendant further suffers from severe delusions — for example, he believes that certain individuals, apparently including his mother and his attorney, are imposters whose identities have been assumed by aliens or other beings and that there are two parallel governments and two parallel court systems. In Dr. Kucharski's opinion, these delusions would intrude directly into the defendant's thinking process regarding continued court proceedings against him. The defendant's thinking currently is disorganized, and he displays impulsive and disruptive behavior. The defendant is at this time unable to engage in allocution in a sentencing proceeding or to assist counsel in framing defense strategy.

3. The defendant is considered dangerous in view of his history of threatening and terrorizing individuals, including his mother, and of aggressive behavior while incarcerated, including a serious assault against a fellow inmate in the Cumberland County Jail on October 20, 1999.

4. Commencing on February 22, 1999 the defendant was treated involuntarily at the Federal Medical Center in Rochester, Minnesota, initially with injections of the psychotropic drug Haliperidol and then, as he became more cooperative, with the oral psychotropic drug Risperidone. These treatments restored the defendant to mental competency; however, he subsequently decompensated, most likely as a result of non-compliance with the regime of oral medication following his discharge from the Rochester facility. His psychosis is continuing and possibly even worsening.

5. In Dr. Kucharski's view, the defendant's competency to continue with the instant proceedings could be restored if he were to resume treatment with appropriate medications.

6. Dr. Kucharski recommended that the defendant be committed to the custody of the Attorney General pursuant to 18 U.S.C. § 4241(d) in order to restore his competency to appear for sentencing, specifically recommending that for security reasons the defendant be committed to the Federal Medical Center in Springfield, Missouri.

7. Dr. Kucharski further recommended that to ensure the defendant's ongoing competency he be ordered to continue receiving prescribed treatment until such time as proceedings against him are concluded.

On the basis of the foregoing, I am satisfied by a preponderance of the evidence that the defendant is currently suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense. Accordingly, the defendant is hereby committed forthwith to the custody of the Attorney General to hospitalize him for treatment in a suitable facility (preferably the Federal Medical Center in Springfield, Missouri or such other facility as is equipped to handle potentially dangerous persons) for a reasonable period of time, not to exceed four (4) months, to determine whether there is a substantial probability that in the foreseeable future the defendant will attain the capacity that will permit the instant matter to proceed. 18 U.S.C. § 4241(d)(1). It is further ordered that if the defendant is restored to competency, he shall continue to receive such treatment, including without limitation administration of medication by injection, as is prescribed by the Federal Bureau of Prisons' treatment staff until such time as the charges pending against him have been disposed of in accordance with law. 18 U.S.C. § 4241(d)(2)(B). Further

criminal proceedings in this matter, including preparation of a presentence report, are stayed in the interim.

So ordered.

Dated this 26th day of October, 1999.

David M. Cohen
United States Magistrate Judge