

**IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

**COMMONWEALTH OF THE
NORTHERN MARIANA ISLANDS,**)
)
)
 Plaintiff,)
)
 v.)
)
)
 JUAN TAITANO CASTRO,)
)
 Defendant.)
 _____)

Crim. Case No. 00-0164D

**ORDER RE: COMPETENCY
DETERMINATION**

This matter came before the court on August 16, 2000 in courtroom 217A on the motion of Defendant Juan Taitano Castro for competency re-evaluation. Present at the hearing were the Defendant and custodian Pedro Taitano Muna. Wesley M. Bogdan, Esq. appeared on behalf of the Defendant, and Clyde Lemons, Esq. appeared on behalf of the Government. Following the hearing in this matter, the court ruled that the Defendant was not competent to stand trial and ordered the parties to comply with certain guidelines for further proceedings. Consistent with that ruling, the court now issues the following Order.

I. BACKGROUND

In June of 1998, Defendant Juan Taitano Castro was charged by information with one count of assault and battery, one count of sexual abuse of a child and one count of kidnaping of a seven year old [p. 2] girl. The Defendant, who has been diagnosed as schizophrenic, has reported experiencing certain auditory hallucinations. Pursuant to this court's Orders of October 20, 1998 and October 29, 1998, respectively, Dr. Laura Post performed a psychiatric competency evaluation and on January 15, 1999, the court found the Defendant competent to stand trial.

Following the entry of appearance of the Defendant's current legal counsel, the Defendant moved for a second competency evaluation on February 3, 2000, and on February 9, 2000, this court granted the Defendant's request. Following her second evaluation of the Defendant, Dr. Post concluded that the

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Defendant was not competent to proceed. The Government objected to Dr. Post's findings, and on April 19, 2000, asked the court for a hearing prior to making a determination of competence.

On May 10, 2000, this court held a hearing and found the Defendant incompetent to proceed.¹ The court also determined that there was insufficient evidence to determine whether there was a substantial likelihood that the Defendant would regain competency within 90 days. The court therefore ordered the Defendant released to the care and custody of a third party custodian to insure that the Defendant would receive regular weekly treatment and medication at the Commonwealth Health Center and directed Defendant's physicians to provide weekly progress reports to assist Dr. Post in reevaluating the Defendant's competency. The court set a hearing date of July 12, 2000 at which Dr. Post was to submit her re-evaluation. By stipulation of the parties, the competency hearing was rescheduled to August 16, 2000.

A. Statutory Procedure for Determining Competency

Under the law of the Commonwealth and at any time before the commencement of trial, either party to a criminal proceeding may make a motion to determine the defendant's competency to stand trial. 6 [p. 3] CMC § 6006. Once a motion to determine competency has been filed, the law requires the court to suspend all proceedings in the criminal prosecution and order a psychiatric examination. *Id.*²

If at least one psychiatrist concludes that a defendant may be incompetent to be proceeded against, the statute requires the court to make a competency determination. 6 CMC § 6607(a). As the movant, the Defendant bears the burden of establishing that he is not competent to stand trial by a preponderance of the evidence. 6 CMC § 6007(b). Where the court finds a defendant incompetent to be proceeded against, but also determines that there is a substantial likelihood that he will regain his competency within 90 days, the court "shall order him committed to an evaluation facility or a treatment facility for custody, care and treatment up to 30 days consistent with the patient's rights." See 6 CMC § 6007(d). The statute further permits the court to extend the commitment for any number of periods or to order conditional

¹ Specifically, Dr. Post determined that "Mr. Juan Castro does not have sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding, and does not have a factual understanding of the proceedings against him."

² If the court for any reason once proceeds under this section or upon a second or subsequent motion under this section, then the court does not have to suspend the proceedings in the criminal prosecution and again proceed, except upon a showing of good cause or changed conditions. 6 CMC § 6606(c).

release if the defendant is not a danger to himself or others, for a total not to exceed 180 days or one-third the number of days of the maximum period of jail time that could be imposed on sentencing if the defendant were found guilty, whichever is less. 6 CMC § 6006(d).

If, at any time, the court determines that the defendant is incompetent to stand trial and that there is no substantial likelihood that he will regain his competency within the times provided by statute, the court, “upon its own motion or upon motion of either party, and after reasonable notice to the other party and an opportunity to be heard,” is required to order the defendant’s unconditional release. 6 CMC § 6607(g). Should such a determination occur before conviction, the court must also dismiss the pending indictment, information or other criminal charges. *Id.* An order of unconditional release pursuant 6 CMC § 6607(g) will not bar commencement of any available civil commitment proceedings. *Id.*

B. The Competency Re-evaluation

At the outset of the hearing, the Government moved for a continuance to allow it to present expert testimony challenging Dr. Post’s conclusions. Given the procedural safeguards set forth in the Criminal [p. 4] Commitment Act and the fact that this matter has been rescheduled several times,³ the court declined to postpone the hearing but agreed to allow the Government the opportunity to present its witness, provided that the testimony could be obtained forthwith.

Before the court was an affidavit from Defendant’s counsel questioning the Defendant’s ability to understand the nature of the proceedings against him. Counsel further indicated that the Defendant lacked sufficient present ability to consult with his attorney with a reasonable degree of understanding. Defense counsel contended that the Defendant was unable to communicate or respond to even the most simple or basic questions about his legal circumstances or provide any details of the events leading up to his arrest. *See* Affidavit of Wesley Bogdan dated April 28, 2000 at ¶¶ 2-3. Counsel for the Defendant further maintained that the Defendant could not even determine whether he wanted to proceed to trial or work toward a non-trial disposition.

At the hearing on this matter, Dr. Post reported that despite his medication and ongoing treatment, the Defendant continued to experience auditory hallucinations, and that he appeared to be unable to answer key basic questions concerning current events. She further stated that, at the time she examined the

³ P.L. 8-37, codified at 6 CMC § 6001 *et seq.*

Defendant, he appeared to require the assistance of family members to comprehend what was going on, could not explain to her the purpose of the judge, and could not state any of the charges against him. According to Dr. Post, the Defendant 's "cognitive capacity declined concomitant with worsening level of baseline psychosis." The Defendant was unable to appreciate the nature of his legal problems and did not have a factual understanding of the proceedings against him. Dr. Post concluded that the Defendant was not competent to stand trial at this time but was unable to state with any certainty whether he would regain competency within a time certain.

In response to questions from the court, Dr. Post testified that the Defendant did not pose a danger to himself and, in his current custodial situation, did not pose a danger to others. If the Defendant were not sufficiently monitored, however, Dr. Post expressed concern that he might wander from the premises and risk repeating the behavior that prompted these criminal charges.

[p. 5] Based upon the testimony of Dr. Post, the court thus concludes that the Defendant should remain in the custody and care of his third party custodian. Pursuant to 6 CMC § 6606(d), moreover, the court further determines that the Defendant is not competent to be proceeded against at this time. The state of the record is, however, insufficient to determine whether there is a substantial likelihood that the Defendant will regain his competency within the requisite statutory period. The court therefore makes the following

Orders:

ORDER

1. Pursuant to 6 CMC 6007(d), the court finds that the Defendant lacks sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and lacks a factual understanding of the proceedings against him. Accordingly, the court finds the Defendant incompetent to be proceeded against at the present time.
2. Should the Government wish to supplement the record of this proceeding by additional expert testimony to challenge Dr. Post's findings and conclusions, the Government shall provide the court with a report in compliance with 6 CMC § 6604(g) and containing the findings and conclusions of its expert no later than Friday, September 1, 2000.
3. Any expert(s) retained by the Government to report upon the Defendant's mental condition shall be permitted to have reasonable access to the Defendant for the purposes of examination. Copies of any reports, records, documents or information furnished by the Government to its expert shall be provided to the Defendant. Further, any psychiatrist retained by the Government shall have the

right to inspect and make copies of reports and records relating to the Defendant in any facility or institution in which they are located.

4. Should the Government pursue its Objection to Dr. Post's findings and provide the court with a report on or before the date set forth above, then the court shall review the materials and, if necessary, schedule a hearing to re-evaluate the Defendant's competency.
5. This Court initially determined that the Defendant was not competent to stand trial at the hearing of May 10, 2000. The court continues to find the record insufficient to determine whether there is a substantial likelihood that the Defendant will regain his competency. The Court therefore orders the Defendant to remain on conditional release in the care, custody, and supervision of [p. 6] Pedro Titano Muna for a period not to exceed 180 days from its initial determination of competency, or no longer than November 6, 2000, so long as the Defendant is not a danger to himself or others and so long as the Defendant receives regular weekly treatment on an out-patient basis through the Psychiatric Medications Clinic at CHC from Dr. Bottone.
6. Pursuant to 6 CMC § 6606(a), the court orders the parties to file status reports updating the court on the Defendant's mental condition on or before Friday, September 29, 2000. Dr. Bottone shall continue to remit weekly progress reports to Dr. Laura Post by facsimile to assist Dr. Post in making a re-evaluation of the Defendant's competency to stand trial.
7. On or before October 6, 2000, Dr. Post shall submit to this court and to counsel a re-evaluation of the Defendant's competency to stand trial. Dr. Post's re-evaluation shall specifically address the issue of whether there is a substantial likelihood that the Defendant will regain his competency within the period ending on November 6, 2000.
8. Following these submissions, the court shall issue such further orders as may be necessary.

So ORDERED this 21 day of August, 2000.

/s/ Timothy H. Bellas

TIMOTHY H. BELLAS, Associate Judge