

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

COMMONWEALTH OF THE
NORTHERN MARIANA ISLANDS,

Plaintiff,

vs.

EDWARD ESIWILY,

Defendant.

CRIMINAL CASE NO. 01-0404C

**ORDER DISMISSING
CRIMINAL CHARGES**

I. BACKGROUND

Defendant EDWARD ESIWILY (hereinafter ESIWILY) was arrested September 14, 2001 for alleged incidents occurring in various local poker establishments. Pursuant to this Court's September 27, 2001 Order, ESIWILY was ordered to report to Dr. Laura Post to undergo a psychiatric / competency evaluation. Dr. Post submitted a psychiatric competency evaluation in which she stated that ESIWILY is "not competent to be proceeded against" (The Report, p. 4).

in response, ESIWILY moved this Court to dismiss the pending criminal information and to release him from custody. Pursuant to 6 CMC § 6607, the Court ordered a competency hearing to be held on October 16, 2001 at 2:30 p.m. Assistant Attorney General Dave Walsh, Esq., appeared on behalf of the Government at the competency hearing. Public Defender Jeff Moots, Esq., appeared on behalf of Defendant ESIWILY.

FOR PUBLICATION

Order Dismissing Charges - EDWARD ESIWILY

II. DISCUSSION

Pursuant to 6 CMC § 6603 (a), “The standard for determining competency at **trial** and sentencing is whether the 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 a factual understanding of the proceedings against him.” The burden of proving incompetency is **on** the party asserting it and shall be proved by a preponderance of the evidence. 6 CMC § 6607 (b).

Here, ESIWILY does not appear to be competent because Dr. Post submitted a psychiatric competency evaluation in which she stated that ESIWILY is “not competent to **be** proceeded against” and that it is “highly unlikely he can be brought to competency through any combination of clinical interventions.” (The Report, p. 4). Dr. Post goes on to state, “Mr. Esiwily does not have sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding, and he does not have a factual understanding of the proceedings against him.” (The Report, p. 4). Dr. Post confirmed her written statements during her testimony at the competency hearing.

The preponderance of the evidence standard is defined as “evidence which is of greater weight or more convincing than **the** evidence which is offered in opposition to it; that is, evidence, which as a whole shows that the fact sought to be proved is more probable than not.” In re Estate of Barcinas, 4 N.M.I. 149, 4 N.M.I. 154 (1994) citing BLACKS LAW DICTIONARY 1182 (6th ed. 1990).

The Government examined Dr. Post but did not present any evidence of its own contradicting Dr. Post’s testimony or her written report. Arguments of counsel can not be considered as evidence. Accordingly, ESIWILY met his burden because the government did not present **any** evidence “which is of greater weight or more convincing than the evidence which is offered in opposition to it” Id. at 149,154.

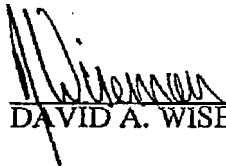
Since this **Court** had determined that Defendant’s burden of proving incompetency has been met, the Court is now bound by 6 CMC § 6607 (g) which states in relevant part:

If at any time the court determines that the defendant is incompetent to stand trial or be sentenced and that there is no substantial likelihood that he will regain his competency. . . the court. . . shall order the unconditional release of defendant and shall, if before conviction, dismiss, the pending indictment, information or other criminal charges

6 CMC §6607 (g).

Accordingly, this Court ORDERS the unconditional release of Defendant ESIWILY and the dismissal of the pending criminal charges. In closing, it should be noted that the Government is not without recourse. The Commonwealth has statutes in effect allowing for the civil commitment of individuals who satisfy certain conditions.

So ORDERED this 25th day of October 2001.



DAVID A. WISEMAN, Associate Judge