

1 2. The second examination was conducted on Feb. 24, 2003. After this examination, Dr. Gutowski
2 concluded that Mr. Ngeskebei, while still clearly troubled, was capable of understanding the
3 proceedings and of assisting his attorney in his defense. This report notwithstanding, the Court
4 remained unconvinced that Mr. Ngeskebei was truly competent to stand trial. Therefore, the Court
5 ordered a third evaluation.

6 3. The third evaluation was conducted on May 5, 2003 by Dr. Gutowski and Dr. Anthony Bottone,
7 with Dr. Gutowski writing the report. The doctors concluded that Mr. Ngeskebei's mental
8 functions had declined significantly since he was last examined and that he was no longer competent
9 to stand trial. However, Dr. Gutowski noted that Mr. Ngeskebei's decline might be due to failure
10 to provide him with adequate medication for his condition. (The Division of Corrections had
11 apparently not been providing the medication prescribed). Therefore, the Court ordered a fourth
12 evaluation, with the provision that Mr. Ngeskebei be provided with all necessary medical treatment.

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14 4. At the Sept. 24th hearing, Dr. Gutowski presented his report on this fourth evaluation. He
15 concluded that Mr. Ngeskebei was not currently competent to stand trial and likely would not
16 become competent within 90 days even with provision of appropriate medication and treatment.

17 **CONCLUSIONS OF LAW**

18 Before a criminal defendant can be brought to trial, he must be competent. In the Commonwealth,
19 a defendant is competent to stand trial if he "has sufficient present ability to consult with his lawyer with a
20 reasonable degree of rational understanding and . . . has a rational as well as a factual understanding of the
21 proceedings against him." 6 CMC § 6603(a). A person who is not competent cannot be made to stand
22 trial. 6 CMC § 6603(b). Where a court has entered an initial finding that there is reasonable cause to
23 believe that a defendant is not competent, it may then order the defendant committed to a psychiatric facility
24 for evaluation. 6 CMC § 6604(e). After considering the results of this evaluation and other evidence that
25 might be presented, the court must decide whether the defendant has been proved incompetent by a
26 preponderance of the evidence. If so, the court must then consider whether there is a substantial likelihood
27 that the defendant could be made competent within 90 days. 6 CMC § 6607. If so, the Court must order
28 the defendant to receive another, more extensive period of psychiatric treatment and evaluation. 6 CMC

1 § 6607(d). If not, the court must immediately discharge the defendant. 6 CMC § 6607(g).

2 In this instant case, the most recent report provided to the Court by Dr. Gutowski indicates that
3 Mr. Ngeskebei is still not competent to stand trial. Furthermore, when called to the stand to give testimony
4 during the hearing, Dr. Gutowski stated that it was his opinion that Mr. Ngeskebei was unlikely to become
5 competent to stand trial within 90 days, even with proper medication. Therefore, the Court has no choice
6 but to discharge Mr. Ngeskebei immediately. The pending information must be and is DISMISSED.

7 The Court recognizes that Mr. Ngeskebei might still be a danger to the community. Furthermore,
8 the Court recognizes that Mr. Ngeskebei could benefit from psychiatric treatment. However, the Court
9 lacks the power to order Mr. Ngeskebei into treatment *sua sponte* and the government has not filed a
10 petition asking for civil commitment. (Based on the testimony presented at the Sept. 24th hearing, the
11 Government should have known that Mr. Ngeskebei's release was imminent). Therefore, the Court hopes
12 that the Government, Mr. Ngeskebei's family, or some other responsible party will avail themselves of the
13 CNMI's Involuntary Civil Commitment statute, 3 CMC §§ 2501, *et seq.* This would both protect the
14 public and insure that Mr. Ngeskebei gets necessary medical treatment. However, absent a petition to
15 commit Mr. Ngeskebei and in accordance with 6 CMC § 6607(g), defendant must be and shall be
16 released from custody immediately and without condition.

17 SO ORDERED this 2nd day of October, 2003.

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20 /s/
JUAN T. LIZAMA, Associate Judge