

FOR PUBLICATION

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

COMMONWEALTH OF THE
NORTHERN MARIANA ISLANDS,

Plaintiff,

v.

WILFREDO A. IMPERIAL, JR.

Defendant.

) Criminal Case No. 11-0290
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FINDINGS OF FACT
CONCLUSIONS OF LAW
AND ORDER REGARDING
COMPETENCY

I. INTRODUCTION

THIS MATTER came before the Court on Defendant’s Motion to Determine Competency. Hearings began on May 15, 2012 at 1:30 p.m. and concluded on May 24, 2012 at 5:15 p.m. Assistant Attorney General Shelli L. Neal represented the Commonwealth. The Defendant Wilfredo A. Imperial, Jr. (“Defendant”) appeared with his counsel, Chief Public Defender Adam C. Hardwicke and Assistant Public Defender Daniel T. Guidotti. Matthew Holley appeared on behalf of Northern Mariana Protection & Advocacy Systems (“NMPASI”). Based on a thorough review of the testimony and relevant law, the Court now issues these findings of fact and conclusions of law, consistent with 6 CMC § 6612(h).¹

II. FACTUAL & PROCEDURAL BACKGROUND

On November 23, 2011 the Commonwealth charged Defendant with various crimes related to his alleged sexual abuse of a boy under the age of thirteen at the time, the most serious charges were two counts of Sexual Assault of a Minor in the First Degree, in violation of 6 CMC § 1306(a)(1) and two counts of Incest in violation of 6 CMC § 1311(a)(3).

¹ This provision entitles the defendant, after an incompetency hearing a right to “[a] decision based on the evidence, with written findings of fact and conclusions of law.” 6 CMC § 6612(h).

1 On December 7, 2011 Defendant's counsel requested that Defendant undergo a competency
2 evaluation pursuant to 6 CMC § 6606(a).² The Court appointed Dr. Reinhold Meister to conduct a
3 competency evaluation. On January 31, 2012, Defendant's counsel submitted Dr. Meister's completed
4 competency evaluation to the Court and moved the Court, pursuant to 6 CMC § 6607(a), to set a
5 competency hearing.

6 On May 15, 2012,³ the Court began a hearing to determine competency which ended on May
7 24, 2012. At the hearing, the Court heard evidence regarding the qualifications of Dr. Meister and Dr.
8 Judith Avery. Based on Dr. Meister's testimony and his curriculum vitae, the Court concluded that Dr.
9 Meister possesses the appropriate knowledge, skill, experience, training, and education to provide his
10 expert opinion as to Defendant's competency to stand trial.⁴ After hearing testimony as to Dr. Judith
11 Avery's qualifications, the Court declined to qualify her as an expert.⁵

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16 ²“At any time before the commencement of the trial, either party may make a motion for a hearing on the defendant's
competency to be proceeded against . . . Thereupon, the court shall suspend all proceedings in the criminal prosecution and
order a psychiatric examination pursuant to 6 CMC § 6604.” 6 CMC § 6606(a).

17 ³ Although a hearing was initially set for February 14, 2012, the matter was continued twice for good cause, and the Court
18 did not hear testimony until May 15, 2012.

19 ⁴ In assessing whether Dr. Meister was qualified to be an expert in the field of forensic psychology, the Court applied NMI R.
Evid 702. The Commonwealth, after cross-examination did not object to his qualification as an expert.

20 ⁵ The Court concluded that Dr. Avery, the Commonwealth's proposed expert, was not qualified to offer expert opinion as to
21 Mr. Imperial's competency to stand trial. The Court based its ruling on the principals enunciated in *Daubert v. Dow Merrill*
Pharmaceuticals, 509 U.S. 579 (1993), as codified in NMI R. Evid. 702. The Court concluded that while Dr. Avery is
22 clearly qualified as an advanced practice nurse, her training and education is inadequate to render a forensic opinion
23 regarding legal competency to stand trial. She has no formal training in psychology. In her testimony, she blurred the
distinction between a general or “informal” competency determination which might be made for one purpose such as
determining if someone can live independently, and a competency to stand trial determination which answers a distinctly
different legal question. The Court was particularly concerned that she could not name the competency instrument which she
had used, but that she had simply “googled” it. Thus, any opinion she could offer regarding Mr. Imperial's competency
would not be based on reliable principles, reliably applied.

1 **III. FINDINGS OF FACT**

2 Based on testimony adduced during the course of the competency hearing, which spanned six
3 days, and the exhibits admitted into evidence, the Court relying on that record, now finds the following:

4 **A. QUALIFICATIONS – DR. MEISTER**

- 5 1. Dr. Meister specializes in forensic evaluations
- 6 2. Dr. Meister has offered expert testimony in California state and federal court and federal and
7 Commonwealth Courts of the CNMI.
- 8 3. Dr. Meister is familiar with the American court system. As part of his forensic practice in
9 California, Dr. Meister associated with attorneys in more than 120 cases, and has testified as
10 an expert in court approximately 35 times.
- 11 4. Dr. Meister has testified twice before in the Commonwealth.
- 12 5. Dr. Meister has completed approximately five competency evaluations in this jurisdiction,
13 not counting the present case: In one case, he found the defendant incompetent but opined
14 that he could be made competent with appropriate treatment. In the remaining four cases he
15 opined that the Defendant was competent.
- 16 6. Dr. Meister began practicing as a forensic psychologist in 1997. He testified that he worked
17 under the supervision of forensic practitioners for several years prior to establishing his own
18 practice in forensic psychology.
- 19 7. Dr. Meister has seen at least 4,000 patients in the forensic context, and has conducted more
20 than 500 forensic evaluations in the Commonwealth.
- 21 8. Dr. Meister has an extensive background in the fields of clinical and forensic psychology.
- 22 9. Dr. Meister has a long educational history in the field of clinical psychology: He received a
23 bachelor’s degree in psychology in 1980, a master’s in clinical psychology in 1982, and a
24 Ph.D. in psychology in 1988. He began practicing clinical psychology in the 1980’s.
10. As part of Dr. Meister’s training and education, Dr. Meister learned how to administer and
score a number of evaluation devices, including the Rey’s 15-Item Test and the Georgia
Court Competency Test.

- 1 11. Dr. Meister described a forensic evaluation, as distinguished from a clinical evaluation. In a
2 clinical evaluation the clinician has only one client, the patient. Whereas a forensic evaluator
3 must broaden their view, looking at interviews, testing, credibility, and so forth, with an eye
4 towards serving clients such as the community.
- 5 12. Dr. Meister gave examples for when an examinee would have a secondary motive to
6 manipulate the results of the evaluation. For example, if a person in law enforcement is
7 having an evaluation to determine if they are fit for duty, they might have a motive to “fake
8 good,” so they can get back on the force. In an insurance claim evaluation the claimant has a
9 financial motive to “fake bad.” The forensic examiner needs to exercise judgment in this
10 context.
- 11 13. Dr. Meister described psychological testing methods used to determine malingering, in other
12 words, to determine if someone is “faking good,” or “faking bad.”

11 **B. COMPETENCY TO STAND TRIAL**

- 12 1. Dr. Meister was appointed by this Court to conduct a competency evaluation.
- 13 2. Dr. Meister conducted a forensic competency evaluation of Defendant on January 20, 2012,
14 and a written report of his findings was filed with the Court.
- 15 3. Dr. Meister’s interview with Defendant lasted more than one hour and less than two hours.
- 16 4. In preparing for his interview with Defendant, Dr. Meister: reviewed a CGC Authorization
17 for Release of Information signed by Defendant, as well as Defendant’s CHC admission and
18 medical treatment notes from 2002 to 2011. He also interviewed the Defendant and
19 conducted psychological testing.
- 20 5. Dr. Meister testified that he did not need any additional information in order to form an
21 expert opinion as to Defendant’s competency.
- 22 6. Dr. Meister’s report concludes that Defendant is currently incompetent to stand trial because
23 “[h]e is unable to assist his attorney adequately in his own defense.” (Ex. A at 5.) His
24 testimony reflects the same opinion.
7. Dr. Meister’s report noted that Defendant “has no appreciation of penalties, understanding
of procedures, nor does he seem to have a sense of how to plan legal strategies. He seems to

1 have little appreciation of cooperating with his counsel and did not know his counsel's
2 name." (Ex. A at 4.)

- 3 8. Dr. Meister's testimony is consistent with his opinion in the report.
- 4 9. Dr. Meister described his initial impressions of Defendant. Initially, Defendant and his
5 attorney were there, the process of the evaluation was explained to Defendant and he seemed
6 to understand, but just after Defendant signed a confidentiality waiver permitting Dr.
7 Meister to conduct the competency evaluation, Defendant headed for the door, as though
8 believing that the interview had ended. (See Ex. A at 3.)
- 9 10. Dr. Meister's report indicates that during the interview Defendant appeared to be "poorly
10 orientated to time, person, place and the situation at hand." (Ex. A at 3.)
- 11 11. Dr. Meister testified that Defendant's range of responses to questions did not indicate that he
12 comprehended the questions. For example, when pushed to answer, "yes," or "no," he
13 would, but Defendant was not able to answer more open ended questions with a range of
14 responses which would indicate comprehension.
- 15 12. Dr. Meister noted that at the beginning of the interview Defendant was asked to remember
16 three very simple words. Later Dr. Meister asked him to tell him the three words, and
17 Defendant was unable to do it.
- 18 13. Dr. Meister testified that he conducted the Rey 15-Item Test to determine whether
19 Defendant was faking any symptoms of mental illness. Dr. Meister testified that malingering
20 is an important area of inquiry for a forensic psychologist because a patient may be
21 motivated to lie about his or her mental status in order to avoid criminal prosecution.
- 22 14. Dr. Meister testified that the Rey test is scored on a scale of zero to fifteen, and that
23 malingering patients often score very low, one, or even zero.
- 24 15. Dr. Meister testified that Defendant scored six out of fifteen on the Rey test. Dr. Meister
further testified that although a six would be low for a patient with normal functioning, a
score of six was appropriate for Defendant given his current level of impaired mental
functioning, exhibited throughout the interview. Defendant's score did not indicate he was
"faking bad," if anything, he was trying to please, to get through the test.

- 1 16. Dr. Meister testified consistent with his report that Defendant suffers from some sort of
2 cognitive impairment possibly dementia. He opined that Defendant has a cognitive
3 condition that impairs higher level “executive functioning” required for (1) complex
4 planning and decision-making; (2) correcting mistakes; and (3) reactions to difficult
5 situations.
- 6 17. Defendant was able to read words at a sixth or seventh grade reading level but was unable to
7 articulate the meaning of individual words.
- 8 18. Dr. Meister’s report and testimony indicate that Defendant apparently completed the 7th
9 grade in special education and received poor grades. Two previous reports concerning the
10 Defendant indicate that Defendant may have attended or completed 11th grade at Marianas
11 High School.
- 12 19. Dr. Meister testified that Defendant would “echo” words spoken to him. The Doctor opined
13 that this echolalia (copying the last words the examiner utters, with a raised inflection as if it
14 was a question) likely functions to cover up his lack of comprehension and may be a “soft
15 sign” for a neurological disorder. (*See* Ex. A at 3, 5.)
- 16 20. Counsel for the Commonwealth represented that Defendant speaks Chamorro.
- 17 21. When asked if the echo could be a response to not understanding English, Dr. Meister
18 testified that echolalia, is a “deep structural linguistic principle,” which would appear in any
19 language which Defendant speaks.
- 20 22. Defendant was unable to identify similarities between yellow and green, a knife and a fork,
21 and other word pairs.
- 22 23. Dr. Meister testified that he administered the Georgia Court Competency Test (GCCT) to
23 Defendant.
- 24 24. Defendant showed significant problems with GCCT the test: he could not point out where
the judge or jury sat in the courtroom; he could not say what his lawyer, the judge, or jury
did; and he could not relate any courtroom procedures.

1 25. Dr. Meister noted that even after he tried to teach some basic things to Defendant, about the
2 layout of a courtroom, a few minutes later, Defendant was unable to get the right answer, to
3 a question such as, “Where does the judge sit?”

4 26. Dr. Meister testified that Defendant scored a two out of twenty and “flunked that by a mile.”

5 27. Dr. Meister testified that Defendant did have some comprehension of why he was in prison.
6 He testified that he asked something like, “Why are you here in prison?” and Defendant
7 responded indicating sex with a thirteen-year-old, but denied any wrongdoing.

8 28. Dr. Meister testified that he did not make a clinical diagnosis, in this case, because he did
9 not have enough information for a diagnosis. He also testified that a clinical diagnosis was
10 not needed in order to determine competency.

11 29. Dr. Meister testified that he never discussed anything substantive about the evaluation with
12 the Public Defender’s Office before doing the evaluation, and no one pushed him to give a
13 certain result.

14 **B. LIKELIHOOD OF REGAINING COMPETENCY**

15 1. Dr. Meister’s competency evaluation report opines that “[Defendant’s] cognitive ability and
16 capacity make him un-remediable with regard to adequately aiding in his own defense.” (Ex.
17 A at 5.)

18 2. Dr. Meister also indicated that with more testing and more information including other
19 historical records, it was possible that he would change his opinion as to Defendants
20 condition. Dr. Meister testified that he did not know if more testing and treatment would
21 render Defendant remediable.

22 3. A Supplemental Security Income (“SSI”) report of Defendant conducted by Dr. Meister in
23 2009 came to light during the hearings.⁶ Dr. Meister testified that he reviewed the report
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⁶ During the competency hearings, NMPASI’s attorney contacted the Social Security Administration offices on Guam to see whether Mr. Imperial was receiving Supplemental Security Income. On May 18, 2012 the SSA office on Guam faxed a copy of a disability evaluation conducted by Dr. Meister in 2009. Dr. Meister explained that, pursuant to SSA regulations, he was not permitted to keep copies or records of SSI reports or any information gathered in conjunction with production of the report. He also noted that he had conducted more than one-hundred forensic evaluations of various types since 2009, and he simply did not remember seeing Mr. Imperial. The SSI report is marked as “Exhibit D.”

1 which indicated that Dr. Meister believed that Defendant was “significantly cognitively
2 impaired,” in 2009 and that Defendant was then suffering from auditory hallucinations, and
3 was diagnosed as schizophrenic, “undifferentiated type.” The SSI report also notes that
4 Defendant had limited social skills and that he had apparently not received treatment or
5 diagnosis for any of his mental health issues.

- 6 4. The 2009 report, and Dr. Meister’s testimony reflect that at that time he made what is known
7 as a “deferred diagnosis,” of borderline mental functioning. A deferred diagnosis means that
8 he did not have enough information at that time to make a more definitive diagnosis. (*See*
9 *Ex. D.*)
- 10 5. Dr. Meister testified that both mentally retarded persons and borderline mental functioning
11 patients can be competent.
- 12 6. The Court also unsealed a competency evaluation of Defendant conducted by Dr. Laura Post
13 in 1999 which was part of juvenile case.⁷ In that report, Dr. Post identified symptoms of
14 significant cognitive impairment thirteen years ago. These symptoms include disorientation
15 as to time and place, recall of siblings who did not exist, and severe problems with judgment
16 and insight. She concluded that he was incompetent at that time. (*See Ex. C.*)
- 17 7. Dr. Meister testified that he had a chance to review Dr. Post’s report from 1999.
- 18 8. After having reviewed both of the previous reports, Dr. Meister testified that the three
19 reports support the notion of consistency.
- 20 9. Dr. Meister explained that a certain conditions may render a person consistently
21 incompetent, while others conditions may render a person incompetent at one time, but able
22 to be made competent at a later time.
- 23 10. Dr. Meister testified that a condition such as dementia or other cognitive impairment, as in
24 Defendant’s case, is an example of the type of condition which can be consistent over time.

⁷ Dr. Meister’s 2009 SSI report contained a reference to a competency evaluation conducted by Dr. Laura Post. On May 23, 2012, the Court inquired into the Court’s own records and learned that Dr. Post’s report was prepared when Mr. Imperial was seventeen, for juvenile criminal cases 98-0406 and 98-0437. Mr. Imperial’s attorney, his parents, and the Court consented to open Mr. Imperial’s juvenile file for the limited purpose of examining Dr. Post’s 1999 competency evaluation. Dr. Laura Post’s 1999 report is marked as “Exhibit C.”

- 1 11. Dr. Meister testified that schizophrenia can be treated with medication which may or may
2 not be successful. He noted that if Defendant is schizophrenic, treatment could be helpful.
- 3 12. Dr. Meister testified that his recommendation in this case, and Dr. Post's recommendation in
4 1999 are consistent. When pressed to clarify, he explained that both his and Dr. Post's
5 reports suggest severe mental health issues, which may be permanent. The difference is that
6 while his opinion is that Defendant currently is not remediable, Dr. Post, in 1999 opined that
7 while Defendant's condition may be permanent, more testing could be done which may
8 show otherwise. He also noted that the reports are consistent in the sense that both of the
9 examiners advocate further psychological testing of Defendant.
- 10 13. Dr. Meister testified that if required by the Court he could always do more testing which
11 could lead to a diagnosis.
- 12 14. Dr. Meister testified that his role is limited by the Court appointment to the determination of
13 competency but as a clinician he would like to see Defendant receive treatment.
- 14 15. Dr. Meister indicated that while he is not a psychiatrist with specialized knowledge in
15 treating patients with medication. If he reached a diagnosis in a particular case for which
16 medication is warranted he would refer the patient to a psychiatrist for appropriate
17 treatment.
- 18 16. Dr. Meister testified that a competency evaluation should rely on information gained as
19 close to a trial as possible, within a few months, because if a person has a problem that
20 fluctuates they may deteriorate even during a trial.
- 21 17. Near the end of Dr. Meister's testimony, after having viewed both of the previous reports by
22 himself and Dr. Post. Ms. Neil asked him: "Continued diagnostics and treatment could result
23 in Defendant being competent at some point?" Dr. Meister responded that, "Well, one of the
24 . . . hallmark signs for incompetence is certainly chronicity—in other words that he has a
chronic condition that was already alluded to by his father, in terms of at fifteen years of age
talking to himself, acting very odd and that was reconfirmed with Dr. Post was reconfirmed
in 2009 again with me, so it sounds like there is a very strong likelihood of a continuing,
chronic, mental health problem."

1 18. Ms. Neil asked, “Meaning the hallucinations?” Dr. Meister responded, “And that suggests, it
2 includes hallucinations and also what I spoke to the other day that is the issue of dementia
3 um so with diagnostics we could further determine what he requires for treatment and then
4 go for whatever treatment is appropriate.”

5 19. In response to a question about treatment or testing for dementia, Dr. Meister testified that
6 “[dementia] goes to the issue of echolalia, the potential seizure activity that he’s had, and the
7 possible lesions he might have on his brain—that is sort of a wide open question still.”

8 **IV. CONCLUSIONS OF LAW**

9 The Court must address whether (1) Defendant is presently competent; and (2) whether he is
10 likely to regain competency within the statutory period.

11 “The burden of proving incompetency is on the party asserting it and shall be proved by a
12 preponderance of the evidence.” 6 CMC § 6607(b). In this case, Defendant bears the burden of proof.

13 **A. COMPETENCY TO STAND TRIAL**

14 First, the Court will address whether Defendant is presently competent to stand trial. It is well
15 settled that the trial of an incompetent person violates due process. *See Cooper v. Oklahoma*, 517 U.S.
16 348, (1996). The Court may not criminally proceed in this case until or unless the defendant is found
17 legally competent. 6 CMC § 6603. Courts enjoy broad discretion in making competency
18 determinations. *See e.g., United States v. DeCoteau*, 630 F.3d 1091, 1096 (8th Cir. 2011) (affirming
19 trial court’s decision to credit on expert’s testimony over another).

20 “The standard for determining competency at trial and sentencing is whether the defendant has
21 sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding
22 and whether he has a rational as well as a factual understanding of the proceedings against him.” 6 CMC
23 § 6603(a).

1 There is no Commonwealth authority interpreting this standard. However, the Commonwealth
2 standard comes directly from the landmark Supreme Court case, *Dusky v. United States*, where the
3 court, interpreting the then existing federal statute said “it was not enough for the trial judge to merely
4 find the defendant was oriented to time and place and had some recollection of events, but the test must
5 be whether he has sufficient present ability to consult with his lawyer with a reasonable degree of
6 rational understanding—and whether he has a rational as well as factual understanding of the
7 proceedings against him.” 362 U.S. 402, 403 (1960) (internal citations omitted).⁸ Subsequently, in
8 *Drope v. Missouri*, the Supreme Court held that the defendant must be able “to assist in preparing his
9 defense.” 420 U.S. 162, 171 (1975).

10 In this case, Dr. Meister testified the Defendant was not faking any symptoms. He testified that
11 although no diagnosis was reached he had enough information to form his opinion as to competency.
12 Dr. Meister testified extensively that Defendant has problems with “executive functioning” based on
13 cognitive impairment. Defendant’s impairment is extreme, and as a result his ability to plan and use
14 good judgment is lacking. The testimony demonstrates that his condition will significantly impede his
15 ability to meaningfully assist in his defense. Currently, Defendant is unable to make decisions affecting
16 his basic rights, such as whether or not to plead guilty. Based on Dr. Meister’s testimony and report,
17 Defendant’s ability to communicate with his attorney—to offer meaningful information related to his
18 defense, to suggest witnesses who may appear on his behalf—is also significantly impaired by his
19 condition. Thus, Defendant lacks the present ability to consult with his lawyer with a reasonable degree
20 of understanding or assist in his defense.

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23 ⁸ While states are free to adopt more elaborate standards, the “Dusky Standard” comports with Due Process. *Godinez v.*
24 *Moran*, 509 U.S. 389, 402, (1993). That states and the CNMI have all adopted the same basic standard. *Tilden*, 988 S.W.2d
568, 571-572 (Mo. Ct. App. 1999) (“The Dusky standard has been adopted in all the states of the union.”).

1 Dr. Meister’s report and testimony reflect that Defendant showed significant comprehension
2 problems regarding basic courtroom layout, and the roles and functions of courtroom participants.
3 Defendant’s memory and cognitive difficulties prevented him from learning even very basic information
4 about the court during his interview with Dr. Meister. For example, he was unable to identify the role or
5 location of the judge, even after Dr. Meister attempted to educate him. Dr. Meister’s testimony reflects
6 that Defendant did very poorly on the GCCT, which is designed to evaluate his comprehension of basic
7 courtroom procedure. During his interview, Defendant was also poorly orientated as to “time, person,
8 place and the situation at hand.” (Ex. A at 3). Thus, Defendant lacks a basic factual and rational
9 understanding of the proceedings against him.

10 Consequently, the Court finds by a preponderance of the evidence that Defendant lacks sufficient
11 present ability to consult with his lawyer with a reasonable degree of rational understanding—and lacks
12 a rational as well as factual understanding of the proceedings against him.

13 **B. LIKELIHOOD OF REGAINING COMPETENCY**

14 Next, the Court must address whether or not defendant is likely to become competent within a
15 statutorily proscribed period. Once competency becomes an issue the Court must appoint an expert who
16 will report on the Defendant’s mental condition. 6 CMC § 6606(a); 6 CMC § 6604(b). Pursuant to 6
17 CMC § 6604(e):

18 On recommendation of a psychiatrist and for good cause, after notice to
19 the defendant and an opportunity to be heard, the court may order the
20 defendant committed to an evaluation facility for observation and
21 examination as it may designate for a period not to exceed 14 days. . . A
22 full report of any such care and treatment shall be included in the report
23 required under subsection (g) of this section.

24 Title VI of the Commonwealth Code, Section 6607 lays out the procedure for incompetency
hearings. The statute provides in relevant part, that after a hearing:

If the court finds that a defendant who has not yet been found guilty on the
pending charge is incompetent to be proceeded against but that there is a

1 substantial likelihood that he will regain his competency within 90 days,
2 the court shall order him committed to an evaluation facility or a treatment
3 facility for custody, care and treatment up to 30 days consistent with the
4 patients rights.

5 6 CMC § 6607(d).

6 If instead:

7 [A]t any time the court determines that the defendant is incompetent to
8 stand trial . . . and that there is no substantial likelihood that he will regain
9 his competency in the [statutory period] the court, upon its own motion or
10 upon motion of either party, and after reasonable notice to the other party
11 and an opportunity to be heard, shall order the unconditional release of
12 defendant and shall, . . . dismiss, the pending indictment, information or
13 other criminal charges.

14 6 CMC § 6607(g).

15 Where a court lacks sufficient information to render a decision regarding likelihood of regaining
16 competency, it may be appropriate to hold additional proceedings or require further evaluations
17 regarding this issue. *See CNMI v. Juan Taitano Castro*, Criminal Case No. 00-0164D (Super. Ct.
18 August 21, 2000) (Order Re: Competency Determination).

19 To meet his burden, Defendant here must show by a preponderance of the evidence that “there is
20 no substantial likelihood that he will regain competence,” within ninety days. 6 CMC § 6607(d); 6 CMC
21 § 6607(b). Whether Defendant can become competent with treatment, as a practical matter depends on
22 the type of impairment from which he suffers. Schizophrenics, bi-polars, and others with similar
23 conditions are generally amendable to treatment with psychotropic medication which may relieve their
24 symptoms sufficiently to become competent. *See e.g., United States v. Weston*, 260 F. Supp. 2d 147, 155
(D.D.C. 2003) (granting government’s motion to extend antipsychotic medication to delusional
incompetent defendant for a year where there was a substantial probability that defendant would regain
competency). Where a defendant suffers from cognitive impairment, treatment may be less applicable.
See State v. Smith, 982 So. 2d 756, 758 (Fla. Dist. Ct. App. 4th Dist. 2008) (“mental retardation and

1 autism are typically lifelong conditions, whereas mental illness may be a condition more amenable to
2 treatment.”).

3 In this case, the Court heard some testimony regarding whether Defendant, after further
4 psychological testing, and appropriate treatment could become competent. The Court recognizes that
5 Dr. Meister’s current opinion is that Defendant is “un-remediable.” Notwithstanding his opinion, Dr.
6 Meister also testified that given further testing and treatment it was possible that his opinion would
7 change. He testified that he did not know what the outcome of treatment would be in Defendant’s case.

8 The Court heard testimony that some of the conditions that Defendant may be suffering from are
9 treatable. Dr. Meister testified that he generally does not offer a clinical diagnosis in his forensic reports
10 if he does not have enough information to make one. A recommendation to the Court can be given
11 without a diagnosis. Dr. Meister’s did not render a clinical diagnosis in his report for this case. The
12 Court is mindful that while a diagnosis may not be necessary for Dr. Meister to render his opinion,
13 further testing including a clinical diagnosis would be extremely helpful for the Court as to the issue of
14 whether Defendant can be made competent. For example, if Defendant is schizophrenic, and that
15 condition is presently affecting his ability to become competent, medication may be helpful in restoring
16 competence. Further, if Defendant has borderline mental functioning or mental retardation, these
17 conditions would not necessarily render him incompetent. As far as his present cognitive difficulties—
18 which Dr. Meister indicated may be dementia—Dr. Meister testified that Defendant’s possible dementia
19 clinically, is “a wide open question still.” The Court did not hear any evidence regarding what, if any,
20 treatment may be helpful if Defendant suffers from dementia.

21 Without a diagnosis, it is not clear what Defendant presently suffers from, and as a result, the
22 issue of treatment is obscured. The likely outcome of treatment is unclear in part because several
23 different past and present conditions were explored in the testimony, but no current diagnosis was
24 rendered. Based on the testimony, the probable effects of treatment on Defendant’s present

1 incompetence are unknown. Further, there is no evidence in the record which would tend to indicate
2 how long various treatment approaches may take. Moreover, the evidence demonstrates that
3 Defendant's present difficulties and therefore any potential treatment options are complex issues.

4 There is no question that the treatment of mental illness requires specialized knowledge,
5 education and skill. Dr. Meister testified that he is not a psychiatrist and cannot speak specifically to the
6 effects of medication—one possible approach which may be helpful for the Defendant. Dr. Meister also
7 readily advocated for more testing and ongoing care and treatment in Defendant's case. Dr. Meister's
8 opinion as to remediation is based principally on an interview with Defendant which lasted less than two
9 hours, and did not give him enough information from which to render a diagnosis. Furthermore, during
10 the hearing, counsel for the Commonwealth represented that Defendant speaks Chamorro. Dr. Meister's
11 interview was conducted solely in English. In this Court's view, the apparent complexity of
12 Defendant's case, the relatively short interview conducted without a Chamorro interpreter, and the lack
13 of evidence regarding treatment in Defendant's case, warrant further psychological testing to determine
14 whether Defendant's present conditions can be remediated to make him competent within the statutory
15 period.

16 As a result, the Court cannot at this time find that Defendant met his burden to show by a
17 preponderance of the evidence that there is no substantial likelihood that Defendant will regain his
18 competency within ninety days.

19 **V. CONCLUSION**

20 For the aforementioned reasons as to the issue of competency, the Court finds Defendant
21 presently incompetent to stand trial.

22 As to Defendant's likelihood of regaining competency within ninety days—in the interest of
23 making its ruling on a clear and robust record—the Court hereby **STAYS** its decision regarding this
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1 issue, pending further testing and treatment to determine Defendant's likelihood of regaining
2 competency.

3 **VI. ORDER**

4 In light of these findings, on the recommendation of Dr. Meister and for good cause shown, the
5 Court hereby gives notice to the parties of its intent to commit the Defendant to an evaluation facility,⁹
6 or other suitable facility for fourteen days, consistent with 6 CMC 6604(e), where he can be provided
7 with appropriate testing and/or treatment.

8 The Court will appoint one or more experts, pursuant to 6 CMC § 6604(b). The parties shall
9 reach a stipulation as to the expert(s) qualifications prior to appointment. Pursuant to 6 CMC § 6604(e)
10 a report of treatment for the commitment period shall be included in the report required under 6 CMC §
11 6604(g).

12 The court-appointed expert(s) shall include in their report, among other statutory requirements,
13 the Defendant's: (1) diagnoses; (2) appropriate testing and treatment plan; (3) an opinion as to whether
14 or not Defendant is substantially likely to gain competency within ninety days.

15 Following Defendant's commitment, a hearing on the issue of Defendant's likelihood of
16 regaining competency shall be held.

17 A preliminary commitment hearing is set for June 20, 2012 at 1:30 p.m, at which time the parties
18 will be given an opportunity to be heard. The parties shall be prepared to orally brief the court
19 regarding: (1) a suitable evaluation facility; (2) proposed expert(s); and (3) a proposed budget for an
20 expert witness including the estimated cost per hour and amount of time necessary for an expert to reach
21 a clinical diagnosis. All parties are ordered to appear.

22
23 ⁹ Under the relevant statute an "[e]valuation facility means a mental health facility designated by the Director of the
24 Department of Public Health and Environmental Services as suitable for the evaluation, housing, and treatment of the
mentally ill. In order for a correctional institution, facility, or jail to be so designated for persons properly detained there, an
area separated by walls, doors, sight and sound from the rest of the institution must be used for the purpose."

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IT IS SO ORDERED this 13th day of June, 2012.

/s/
Joseph N. Camacho, Associate Judge