

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	: NO. CR – 1322 – 2002
	:
vs.	: CRIMINAL DIVISION
	:
MARK D. TANNER,	: Competency Determination
Defendant	: Reinstatement of Sentence

OPINION AND ORDER

Before the Court is the Superior Court’s directive to determine whether Defendant was competent to stand trial in August 2003, the matter having been remanded by Order of that Court dated February 27, 2007. A pre-trial motion for competency examination was denied by this Court in April 2003, but on appeal, the Superior Court determined such to be in error, and remanded the matter for the appointment of a psychiatrist to determine Defendant’s competency to stand trial. That appointment was made and Defendant was examined by Frederick Maue, M.D. on April 2, 2008. Defendant was also examined by Timothy Michals, M.D. on May 13, 2008, at the request of the Commonwealth. A hearing at which both psychiatrists testified was then held on September 19, 2008.

A person is deemed incompetent to stand trial when he is “found to be substantially unable to understand the nature or object of the proceedings against him or to participate and assist in his defense.” 50 P.S. Section 7402(a). Dr. Maue was, regrettably, “not able to comment about whether [Defendant] had the capacity to assist legal defense in 2001 or 2002”, but he does indicate that he believes Defendant “would understand the nature of charges that were brought against him and whether he committed such crime”. *See* Defendants’ Exhibit No. 2 at p. 6. Dr. Michals opines that Defendant “had sufficient mental capacity at the time of his trial to understand the nature and objective of the proceedings against him and participate and assist in his defense”, noting that a review of Defendant’s testimony in previous matters “identified that he was able to concentrate and respond to questions that were asked of him with relevant answers”, that “[h]is thinking was organized and goal-directed”, and that “[t]here is no documentation in these records that he had any mental impairment that would interfere with his

understanding of the legal process or to assist in his defense.” See Commonwealth’s Exhibit No. 3 at p. 3.

In the Opinion and Order of April 11, 2003, this Court noted the following:

Defendant did present his own testimony, specifically indicating that he suffered a head injury as a child and has had a history of seizures that continue to date. Defendant testified that he was not a behavior problem in school. He also testified that he does not understand the nature of the charges against him and feels that he needs to be evaluated to determine his competency. With further questioning by the Court, however, it appears Defendant, while mentally below average, did graduate from high school and appears functional in his day-to-day life. While he does live with his mother and it appears he does not take care of his own finances, he was able to answer the Court’s questions satisfactorily, appearing to understand the questions and responding appropriately. He also responded to questions put to him by counsel and, as will be noted below, appears to remember details of the interviews with police last July 2002.

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Agent Leonard Dincher, who, with Agent Stephen Sorage, interviewed Defendant on both occasions, testified that Defendant appeared to understand the questions and gave answers which seemed appropriate based on the questions. He also testified that Defendant did not ask any questions about the waiver of rights form and he appeared to understand his rights.

Considering this Court’s own questioning of Defendant in April 2003, the testimony of Agent Dincher as noted above, and Dr. Michals’ opinion, the Court believes Defendant was competent to stand trial in August 2003.

ORDER

AND NOW, this day of September 2008, for the foregoing reasons, Defendant’s sentence of October 14, 2003 is hereby REINSTATED. The Sheriff of Lycoming County is directed to return Defendant to the appropriate State Correctional Institution at his earliest possible convenience.

BY THE COURT,

cc: DA
PD
Gary Weber, Esq.
Hon. Dudley Anderson
Sheriff

Dudley N. Anderson, Judge