

**IN THE COURT OF COMMON PLEAS, LYCOMING COUNTY, PENNSYLVANIA**

**COMMONWEALTH OF PA**

**: No. MD-206-2018**

**v.**

**:**  
**:**

**A.M.W.**

**: Opinion and Order Affirming**  
**: Incompetency But Denying Dismissal**

**OPINION AND ORDER**

The extent to which this case has wasted judicial time, energy and resources cannot be understated. Indeed, as Henry Miller, a famous American writer said: "The legal system is often a mystery, and we, its priests, preside over rituals baffling to every day citizens."

The rituals performed in this case were many and virtually impossible to understand. Defendant was charged on October 9, 2017 with the offense of retail theft. On October 7, 2017, Defendant was 74 years old, ambulating by the use of an electric wheelchair, living in an eldercare facility and allegedly stole \$33.00 worth of merchandise from Walmart. The defendant had previously been adjudicated to be totally incapacitated by Order of Court, Clinton County, dated June 29, 2017. The court appointed Eldercare Solutions, Inc. as the plenary guardian of Defendant's person and estate.

Concerned, of course that the defendant may be incompetent, his counsel, the Lycoming County Public Defender's office had him evaluated on August 1, 2018. By written report of Dr. Scott Scotilla dated August 16, 2018, Defendant was determined to be incompetent. In an effort to preserve judicial time and resources, the court held a conference with the parties on September 18, 2018. Despite Dr. Scotilla's conclusions and not having an expert of its own, the Commonwealth would not concede that Defendant was incompetent and requested a hearing.

The hearing was eventually held on October 3, 2018. Following the hearing, the court found that Defendant had met his burden of proving that he was substantially unable to understand the nature of the proceedings against him but most importantly that he was substantially unable to participate in his own defense. Defendant suffered from cognitive deficits, as well as a low IQ which precluded him from properly balancing and weighing the risks and rewards associated with plea negotiations. The court had tremendous concerns that Defendant would be unable to participate in his own defense. The court ordered that Defendant be reevaluated in sixty (60) days to determine whether Defendant was incompetent and, more importantly, whether there was any reasonable likelihood that Defendant would regain competency.

Defendant was reevaluated by Dr. Scotilla on January 23, 2019. Dr. Scotilla concluded consistent with his prior report and testimony that Defendant did not meet the minimal criteria necessary for competency to proceed and that there was no change in his functioning since he was previously evaluated in August of 2018. Moreover, Dr. Scotilla concluded that it would be reasonable to expect that Defendant would not regain competency at any point in the future.

Again, and despite Dr. Scotilla's findings, the Commonwealth would not concede that there was no probability that Defendant would attain capacity in the foreseeable future. Accordingly, yet another hearing was scheduled. The hearing was held on April 1, 2019. Following the hearing, the court concluded that Defendant had not regained his competency and that there was no possibility at all that Defendant would attain capacity/competency in the foreseeable future. As to the further handling of the case, the court requested written briefs to address whether the court had authority under

these circumstances to dismiss the charges. The Commonwealth submitted its written brief on April 25, 2019. The defendant submitted his brief on May 29, 2019.

While the fact that the Commonwealth wishes to continue to prosecute Defendant is inexplicable, if not utterly farcical, the court is constrained to concede that it may not dismiss the charges against Defendant at this time.

Once a court determines that there is no probability that a defendant will attain capacity in the foreseeable future, that person must be discharged from criminal detention. 50 P.S. § 7403(d). The stay of the prosecution remains in effect as long as the incapacity persists but may not be in excess of the maximum sentence of confinement that could be imposed for the crime charged or ten (10) years, whichever is less. 50 P.S. § 7403(b),(f).

Once a person is discharged from criminal detention based on no substantial probability of obtaining capacity in the foreseeable future, the defendant must submit to a psychiatric examination every twelve (12) months to determine whether he has become incompetent to proceed to trial. 50 P.S. §7403(g).

Relying on *Commonwealth v. McGargle*, 378 Pa. Super. 559, 549 A.2d 198 (1998), the Commonwealth argues that the Mental Health Procedures Act, 50 P.S. §7403, et al. does not provide statutory authority for dismissal in the event a defendant is declared incompetent and determined to remain incompetent.

Based on *McGargle*, the court is constrained to agree. Simply put, the court does not have the authority at this time to dismiss the charges against Defendant even though Defendant will never regain competence and likely never stand trial.

## ORDER

**AND NOW**, this \_\_\_ day of June 2019, following a hearing, argument and the submission of written briefs, the court DIRECTS that Defendant submit to a psychiatric examination no later than January 22, 2020 to determine whether the defendant has become competent to proceed to trial. 50 P.S. § 7403(g). If the examination reveals that Defendant is incompetent to proceed, the court shall order that Defendant submit to a new competency examination in another twelve (12) months. 50 P.S. § 7403(g). If the examination reveals that Defendant has regained competency to proceed then a hearing shall be scheduled to determine whether Defendant is in fact competent to proceed. 50 P.S. §7403(g).

The court notes, however, that the stay in this matter became effective October 3, 2018. Defense counsel is notified that he may request that the charges be dismissed if Defendant remains incapacitated or incompetent through October 3, 2020. Moreover, this Order does not preclude Defendant from seeking a pretrial factual determination by the court concerning Defendant's criminal responsibility. See *Commonwealth v. Scott*, 396 Pa. Super. 339, 578 A.2d 933 (1990).

BY THE COURT,

\_\_\_\_\_  
Marc F. Lovecchio, Judge

cc: Thomas Burkhart, Esquire (ADA)  
Eric Birth, Esquire, (APD)  
MDJ Gary Whiteman (No. MJ-29302-CR-0000357-2017)  
MH/ID  
Gary Weber (Lycoming Reporter)  
Work File