

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CRIMINAL ACTION
Docket No. CR-14-449

STATE OF MAINE

v.

DECISION AND ORDER

LEROY SMITH III,

Defendant

Before the Court is the State's motion for court authorized treatment pursuant to 15 M.R.S. § 106(3). In May of 2014, the Defendant was charged by indictment with one count of intentional or knowing or depraved indifference murder in violation of 17-A M.R.S. § 201(1)(A) & (B). In January of 2015, the Court found the Defendant not competent to be arraigned or to otherwise participate in any pretrial criminal proceeding. The Defendant was ordered committed to the custody of the Commissioner of Health and Human Services for an appropriate program for observation, care, and treatment pursuant to 15 M.R.S. § 101-B(5). Pursuant to statute, a thirty day competency examination was conducted and a report made to the Court in March of 2015 advising that the Defendant remained floridly delusional with no significant change. Defendant has refused medication to treat his psychiatric illness and other interventions by Riverview staff have been unsuccessful at restoring competency.

However, it was noted that the Defendant willingly took psychiatric medication in connection with the issues relating to sleep and that while taking such medication, the treatment team noted a lack of evident psychosis. The team noted that the medication appeared to lead to better organization of his thoughts. However, Defendant refused to continue with the medication and terminated the treatment. He continues to refuse other suggested medications.

A hearing was held December 2, 2015 on the State's motion. Testifying were Dr. Peter Donnelly, a forensic psychologist, and Miriam Davidson, a psychiatric nurse practitioner. Dr. Donnelly conducted an evaluation of the Defendant and diagnosed a delusional disorder. He indicated that the Defendant understands the process and has the intellect to participate, but his delusional thinking interferes with his ability to cooperate. He noted that the medication, Seroquel, seemed to address his delusional symptoms. The doctor further noted that a person may have delusions and still be competent.

Ms. Davidson, the psychiatric nurse practitioner, described the protocol of Riverview of treatment by use of a clinic review panel to determine when a person may be involuntarily medicated. There is no similar process available on the forensic side unless the individual is dangerous and requires emergency medication for the safety of him/herself and others. She further described that people vary as to responses to medication and that somewhere between six weeks and three to six

months is necessary to determine what the appropriate medication is and the therapeutic dose. She described the side effects from typical medications and atypical medications, wherein the patient is reviewed daily for obvious side effects and those that would appear only from blood testing. She described sedative qualities as the most common side effect of both typical and atypical medication. The treatment team would be aware if such sedation interferes with the Defendant's thought processes.

Ms. Davidson described the administration of Seroquel and that it had a positive effect as to Defendant's delusion, but that the Defendant stopped taking the medication because he did not believe it helped his insomnia. She noted there were no side effects.

Ms. Davidson described the procedure to be utilized if approved by the Court. The medication would be explained to the Defendant and an offer made for him to voluntarily take the medication orally. In the event of refusal, he would be advised of the authority for the administration by hypodermic syringe. She suggested an order authorizing the forced medication for a six month period, recognizing that the appropriate medication could be determined much earlier. She asked for the authority to administer typical and atypical medications depending upon the result and that the Defendant's medical condition would be constantly monitored. She indicated the monitoring by the treatment team would include

Defendant's interactions and conversations with staff. She allowed that the Defendant might still have delusions, but should have the capability of controlling and dealing with those delusions while displaying appropriate thought.

Under the provisions of 15 M.R.S. § 106(2), the Commissioner was advised through its forensic staff that the Defendant is not consenting to treatment and unlikely to be restored to competency without the administration of psychiatric medication over his objection. The Commissioner must assert that there is no basis for involuntarily medicating the Defendant other than to restore the Defendant's competency. Pursuant to 15 M.R.S. § 106(3), the Court must find by clear and convincing evidence that important State interests are at stake in restoring the Defendant's competency, the involuntary medication will significantly further important State interest, the medication proposed is substantially likely to render the Defendant competent and it is substantially unlikely to produce side effects that would significantly interfere with the Defendant's ability to assist defense counsel in conducting the counsel's defense. Further, the involuntary medication is necessary to further important State interest, and that any alternate less intrusive treatments are unlikely to achieve substantially the same results. Finally, the Court must find that the administration of the proposed medication is medically appropriate, and it is in the Defendant's best medical interest in light of the Defendant's medical condition.

It is without debate that the responsibility and accountability for taking the life of another under our criminal justice system is a significant and important State interest. Therefore, the restoration of Defendant to competency furthers the important State interest of establishing the accountability for the underlying homicide through the criminal trial process.

Based upon medical, psychological, and psychiatric testimony, the Court is satisfied that the protocol suggested by the treatment team at the Riverview Forensic Unit is likely to render the Defendant competent to proceed and is unlikely to provide side effects that would significantly interfere with the Defendant's ability to assist defense counsel in conducting the Defendant's defense. The Court is satisfied that the experience of the treatment team and Defendant's previous refusal to accept any medication, particularly psychotropic medication, removes the finding that less intrusive methods are likely to achieve the desired result. The Court further finds that the proposed treatment protocol is medically appropriate while subject to timely monitoring of Defendant's medical condition.

Accordingly, it is the conclusion of the court that the involuntary administration of psychiatric medication to the Defendant, having been found

necessary and appropriate, is to be authorized over the Defendant's objection in order to attempt to restore the Defendant to competency.¹

Based on the aforementioned findings of fact by the Court, the Court Orders the following:

The State's motion to authorize involuntary treatment of the defendant is GRANTED subject to the following:

- Antipsychotic medication as deemed appropriate by Defendant's treating psychiatric and medical team at Riverview Psychiatric Center. Medication may be switched to other medications within this class to maximize beneficial response and minimize side effects. Dosage to be adjusted to obtain best clinical response. Appropriate laboratory work to allow monitoring of medication and potential side effects.
- The team may administer anti-cholinergic medication as deemed appropriate by Defendant's treating psychiatric and medical team at Riverview Psychiatric Center to address potential side effects.
- Medications may be given orally. They may be administered intramuscularly only if the Defendant has refused administration orally, and as deemed appropriate by Defendant's treating psychiatric and medical team at Riverview Psychiatric Center.
- The psychiatric practitioner is to provide progress notes as such pertain to Mr. Smith's treatment at Riverview to the Court. Such notes are to be provided minimally on a weekly basis, but if more frequent notes are created, such will also be provided to the Court, the attorney for the State, and the Defendant's attorneys. Said notes shall detail the type of medication that is being administered to the Defendant, the method of administration, the dosage, and any effect on the Defendant.

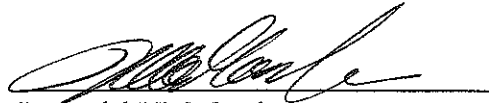
¹ The Defendant cites *Self v. United States*, 539 U.S. 166, in which the Supreme Court of the United States declined to support the involuntary medication of a defendant in the absence of a determination of dangerousness on the part of Mr. Self. The Court distinguishes this case from the present circumstances because of a significant difference in interest of the State wherein Mr. Self was charged with fraud and Mr. Smith is charged murder.

- Forensic Monitoring shall be conducted by State Forensic Services in thirty day increments. State Forensic Services shall inform the Court of such monitoring in a letter summarizing the treatment. This monitoring is to be in addition to reports mandated by Title 15 M.R.S. § 101-D(5).
- A status conference will be held at the first available date in April of 2016 to review the status of Defendant's treatment. Either party may petition the court for earlier review as deemed necessary.

This order shall remain in effect for six months from this date unless vacated by court order following appropriate motion and hearing.

The clerk is directed to incorporate this Order into the docket by reference pursuant to M.R. Civ. P. 79(a).

DATED: 1-5-16



Donald H. Marden
Superior Court Justice