

FOR PUBLICATION

1 IN THE SUPERIOR COURT
2 OF THE
3 COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

4 COMMONWEALTH OF THE)
5 NORTHERN MARIANA ISLANDS,)

) Criminal Case No. 11-0290

6 Plaintiff,)

) SECOND FINDINGS OF FACT

) AND CONCLUSIONS OF LAW

7 v.)

) REGARDING COMPETENCY AND

) ORDER DISMISSING CHARGES

8 WILFREDO A. IMPERIAL, JR.)

9 Defendant.)

10 I. INTRODUCTION

11 **THIS MATTER** came before the Court August 1, 2012 for a status conference and hearing
12 regarding competency. Defendant Wilfredo A. Imperial (“Defendant”) appeared with his counsel Chief
13 Public Defender Adam C. Hardwicke and Assistant Public Defender Daniel T. Guidotti. Attorney
14 Matthew Holley from the Northern Mariana Protection & Advocacy Systems (“NMPASI”) also
15 appeared. The Commonwealth was represented by Assistant Attorney General Shelli L. Neal. Based
16 on the testimony and relevant law the Court now renders these findings of fact and conclusions of law,
17 consistent with 6 CMC § 6612(h).¹

18 II. FACTUAL AND PROCEDURAL BACKGROUND

19 On November 23, 2011 the Commonwealth charged Defendant with various crimes related to
20 his alleged sexual abuse of a boy under the age of thirteen at the time, the most serious charges were
21

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

1 two counts of Sexual Assault of a Minor in the First Degree, in violation of 6 CMC § 1306(a)(1) and
2 two counts of Incest in violation of 6 CMC § 1311(a)(3).

3 On December 7, 2011 Defendant's counsel requested that Defendant undergo a competency
4 evaluation pursuant to 6 CMC § 6606(a).² The Court appointed Dr. Reinhold Meister, PHD³ ("Dr.
5 Meister") to conduct a competency evaluation. On January 31, 2012, Defendant's counsel submitted
6 Dr. Meister's completed competency evaluation to the Court and moved the Court, pursuant to 6 CMC
7 § 6607(a), to set a competency hearing. On April 2, 2012 the parties came before the Court and
8 Defendant orally moved the Court to declare Defendant incompetent based on Dr. Meister's report. On
9 April 5, 2012 the matter was continued until May 15, 2012.

10 On May 15, 2012, the Court began a hearing to determine competency which ended on May 24,
11 2012. On May 22, 2012 Defendant through his counsel moved the Court to find Defendant incompetent
12 and determine an appropriate release plan. During the course of the hearing Defendant through his
13 counsel moved the Court to find Defendant incompetent several times and argued that Defendant is not
14 likely to regain competency within the statutory period. On June 13, 2012 the Court issued a decision
15 finding Defendant presently incompetent, and ordering a 14-day commitment, testing and treatment to
16 determine his likelihood of regaining competency. On June 21, 2012 Dr. Jeremy Richards, MD⁴ ("Dr.
17 Richards") conducted a Clinical Psychiatric Assessment, indicating among other things that the
18 Commonwealth Health Center's Acute Psychiatric Ward ("CHC") would be able to house and treat
19 Defendant for a 14-day court-ordered commitment under certain conditions (Ex. F at 7).

21 ²"At any time before the commencement of the trial, either party may make a motion for a hearing on the defendant's
22 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).

23 ³ Dr. Meister is a forensic psychologist. Extensive testimony was taken regarding his qualifications as an expert in this case.
See *Commonwealth v. Imperial*, Crim. No. 11-0290C (NMI Super. Ct. June, 13 2012) (Findings of Fact Conclusions of Law
and Order Regarding Competency at 3-4).

24 ⁴ Dr. Richards is the Psychiatry Department Chair and Director of Medical Affairs for CHC.

1 On July 2, 2012 Defendant was transported to CHC for commitment. Dr. Richards was
2 Defendant's attending physician during his stay at CHC and supervised Defendant's treatment. On July
3 16, 2012 The Department of Corrections ("DOC") transported the Defendant back to DOC. On July 24,
4 2012 the Court received a psychiatric discharge summary by Dr. Richards.

5 On July 30, 2012 Dr. Meister conducted another competency evaluation focused on the issue of
6 whether Defendant's mental state had changed, and whether he was likely to become competent with
7 continued treatment. Dr. Meister based his evaluation on the following information which had not been
8 available for his previous evaluation conducted on January 12, 2012: (1) Psychiatric Competency
9 Evaluation by Laura Post, MD from January 13, 1999; (2) Social Security Disability Evaluation by Dr.
10 Meister from August 20, 2009; (3) Clinical Psychiatric Assessment by Dr. Richards from June 21,
11 2012⁵; (4) Psychiatric Discharge Summary by Dr. Richards from July 24, 2012⁶; and (5) A second face-
12 to-face forensic evaluation with Dr. Meister and the assistance of a Chamorro translator on July 30,
13 2012.⁷ Based on Dr. Meister's review of the documents, his interview with Defendant and two
14 psychological tests, he rendered the opinion that "Mr. Imperial is incompetent to stand trial on this
15 present day, July 30, 2012. The likelihood of any cognitive improvement over the next 90 days, or over
16 the next several years is remote and highly unlikely. Instead, his prognosis remains stable, poor, and
17 chronic." (Ex. H at 3.)

18 On August 1, 2012 Dr. Richards and Dr. Meister testified regarding Defendant's condition and
19 their respective reports. After the close of evidence Defendant through his counsel moved the Court to
20 dismiss the charges and release him pursuant to 6 CMC § 6607(g).

21
22 ⁵ Pursuant to Court's order this report was submitted directly to the Court. It has been marked as "Exhibit F."

23 ⁶ Pursuant to the Court's order this report was submitted directly to the Court. It has been marked as "Exhibit G."

24 ⁷ Pursuant to the Court's order this report was submitted directly to the Court. It has been marked as "Exhibit H."

1 **III. FINDINGS OF FACT**

2 Based on testimony at the August 1, 2012 hearing, two clinical reports, and one forensic report,
3 the Court relying on the extensive record in the case⁸ now finds the following:

- 4 1. Defendant’s cognitive functioning has not improved since his competency evaluation on
5 January 12, 2012. (Ex. H at 1.)
- 6 2. Defendant was treated for psychosis which has not improved. (Ex. G at 1.)
- 7 3. During his second evaluation with Dr. Meister Defendant continued to demonstrate little
8 understanding of his examiner’s questions. (Ex. H at 2.)
- 9 4. With the aid of a Chamorro translator Defendant continued to “parrot” information. The
10 translator reported to Dr. Meister that when Dr. Meister would re-state a question,
11 Defendant would either parrot several words back, and /or change his answer from yes to no,
12 or no to yes. (*Id.*)
- 13 5. Defendant did not score within normal limits of the “Bender-Gestalt Test,” a neurological
14 screening test. This evidence supported a hypothesis of “neurological deficits and possibly a
15 structurally compromised brain condition.” (*Id.*)
- 16 6. Defendant continues to have “significant and debilitating cognitive problems that include
17 executive functioning.” (*Id.* at 1, 3.)
- 18 7. Dr. Meister’s report notes that “Regardless of etiology, (DNA/congenital or dementia due to
19 subsequent incidents of brain trauma), **he is not remediable.**” (*Id.*)
- 20 8. Dr. Meister’s clinical impression is that “Wilfredo has shown a remarkably **consistent**
21 **deficiency of functioning**. His condition is **chronic with a poor prognosis**. The likelihood
22 of remediation of his psychosis with medication treatment is remote. The **likelihood of**
23 **remediation through counseling, training, or medication for his present level of cognitive**
functioning is even more unlikely. (Ex. H at 3.)
- 24 9. Dr. Meister’s forensic impression is that “Mr. Imperial is incompetent to stand trial on this
present day, July 30, 2012. **The likelihood of any cognitive improvement over the next 90**

⁸ Findings in this Court’s competency order, *Commonwealth v. Imperial*, Crim. No. 11-0290C (NMI Super. Ct. June, 13 2012) (Findings of Fact Conclusions of Law and Order Regarding Competency at 3-10) are incorporated herein by reference.

1 *days, or over the next several years is remote and highly unlikely. Instead, his prognosis*
2 *remains stable, poor, and chronic.” (Id.)*

3 10. Dr. Meister’s testimony also reflects his opinion that Defendant’s condition is chronic and
4 he is not likely to become competent.

5 11. Dr. Meister’s testimony and his report are credible, and his testimony is consistent with his
6 report.

7 12. Dr. Richards provided two clinical reports regarding Defendant.

8 13. Dr. Richards assessed Defendant’s thought process as “concrete, poor spontaneity, slow
9 processing,” and assessed his insight as “severely impaired.” (Ex. F at 4.)

10 14. Dr. Richards’ assessment indicates that Defendant’s prognosis was poor. (*Id.* at 6.)

11 15. Dr. Richards’ discharge summary indicates that Defendant was treated for psychosis showed
12 no improvement for the duration of his hospitalization. (Ex. G at 1.)

13 16. Dr. Richards’ discharge summary indicates that upon discharge Defendant’s judgment
14 “follows concrete rules,” and his insight is “impaired.” (*Id.* at 1.) Dr. Richards’ elaborated
15 in his testimony explaining that concrete thinking means Defendant has difficulty with
16 abstract thinking and executive functioning necessary for problem-solving.

17 17. Dr. Richards testified that Defendant is seriously impaired and that he has specific deficits in
18 executive functioning.

19 18. *When asked if Defendant would improve within 90 days Dr. Richards responded “No.*
20 *This is long-term, we are talking years.”*

21 19. Dr. Richards’ testimony and reports are credible, and his testimony is consistent with his
22 reports.

23 **IV. CONCLUSIONS OF LAW**

24 The issue is whether Defendant is substantially likely to become competent within the statutorily
proscribed period. The Defendant bears the burden of proof by a preponderance of the evidence. 6
CMC § 6607(b).

After a competency hearing,

1 If the court finds that a defendant who has not yet been found guilty on the
2 pending charge is incompetent to be proceeded against but that there is a
3 substantial likelihood that he will regain his competency within 90 days,
the court shall order him committed to an evaluation facility or a treatment
facility . . .

4 6 CMC § 6607(d).

5 If instead:

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

10 6 CMC § 6607(g).

11 Thus, where a defendant is (1) incompetent to stand trial; and (2) there is no substantial
12 likelihood that he will become competent—the statute requires the Court to order his unconditional
13 release and dismiss any pending charges against him. *Id.* Defendant here has shown that he is
14 incompetent. *Commonwealth v. Imperial*, Crim. No. 11-0290C (NMI Super. Ct. June, 13 2012)
15 (Findings of Fact Conclusions of Law and Order Regarding Competency at 10-12, 15). To meet his
16 burden on the issue of remediation Defendant must show it is “more likely than not” that “there is no
17 substantial likelihood that he will regain competence,” within ninety days. *Id.; In re J.J.C.*, 2000 MP 8 ¶
18 11.

19 In this case, the Court previously found the Defendant presently incompetent based on his poor
20 executive functioning related to cognitive impairment. The Court now has the benefit of several new
21 reports and testimony regarding Defendant’s ability to become competent in the future. Dr. Meister’s
22 recent report and testimony reflect his expert opinion that Defendant’s chance of improving within 90
23 days is “remote and highly unlikely.” The Court relies on this opinion. The same challenges which
24 render Defendant presently incompetent are likely to continue. Defendant continues to exhibit poor

1 insight. His judgment continues to lack the type of analytical thought process or “executive
2 functioning” required for competency. Dr. Meister’s report indicates that Defendant’s prognosis
3 remains “stable, poor, and chronic.” Dr. Richards, Defendant’s attending psychiatrist for his 14-day
4 treatment, offered a clinical opinion which also reflects that Defendant has a poor prognosis. Dr.
5 Richards’ testimony also indicates that Defendant has little chance of regaining competency. He
6 testified that he would not expect to see improvement in Defendant within 90 days. Instead he described
7 Defendant’s condition as “long-term.” Defendant’s history and present status demonstrate that he is not
8 getting “better,” in terms of his competency to stand trial, nor is he likely to get better within the
9 statutory period of time.

10 For the aforementioned reasons Court finds that there is no substantial likelihood that Defendant
11 will regain his competency within 90 days.

12 **V. ORDER**

13 In light of these findings the Court hereby orders Defendant’s unconditional release and
14 dismisses the criminal charges against him. Nothing in this Order prohibits the Commonwealth from
15 filing any available civil commitment proceedings.⁹

16 **IT IS SO ORDERED** this 3rd day of August, 2012.

17
18
19 /s/
20 _____
Joseph N. Camacho, Associate Judge

21
22
23 _____
24 ⁹ 6 CMC § 6607(g) provides “An order of unconditional release pursuant to this section does not bar commencement of any available civil commitment proceedings.”