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1 **FOR PUBLICATION**

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4 **IN THE SUPERIOR COURT**
5 **FOR THE**
6 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

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8 **COMMONWEALTH OF THE**
9 **NORTHERN MARIANA ISLANDS,**

10 Plaintiff,

11 vs.

12 **JOSE ALBERT SANTOS,**

13 Defendant.

) **CRIMINAL CASE NO. 14-0112B**

) **ORDER FOLLOWING COMPETENCY**
) **HEARING: FINDING DEFENDANT**
) **SANTOS COMPETENT TO STAND**
) **TRIAL**

14 **I. INTRODUCTION**

15 **THIS MATTER** came before the Court for a *Daubert* and competency hearing on
16 December 16 and 29, 2016, in Courtroom 205A. The Commonwealth was represented by
17 Assistant Attorney General Shannon Foley. Defendant Jose Albert Santos (“Defendant”) was
18 present and represented by Assistant Public Defender Michael Sato. The Court heard
19 testimonies from two expert witnesses: (1) The Commonwealth presented Dr. Dennis Donovan
20 whom the Court qualified as an expert in Clinical and Forensic Psychology; (2) The Defendant
21 tendered Dr. Martin Blinder whom the Court qualified as an expert in Forensic Psychiatry.
22 Both experts appeared via Skype at the December 16 hearing, however, due to technological
23 difficulties, the Court allowed Dr. Donovan to appear telephonically at the December 29
24 hearing. In addition to these two expert witnesses, the Defendant offered Brendalisa Santos-
25 Aguon, Defendant’s sister and third-party custodian, to provide additional testimony.
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1 Based on a review of the parties' filings, oral arguments, and applicable law, the Court
2 now issues the following Order.

3 **II. BACKGROUND**

4 On October 29, 2014, the Commonwealth filed an Information, charging Defendant
5 with the following counts: (1) three counts of Sexual Abuse of a Minor in the Second Degree,
6 in violation of 6 CMC § 1307(a)(1); and (2) two counts of Disturbing the Peace, in violation of
7 6 CMC § 3101(a). The above-mentioned charges stem from separate incidents involving
8 Defendant allegedly committing unlawful sexual acts against a minor child, identified as J.C.
9 (dob 3/31/1999).
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11 On February 24, 2016, for good cause, the Court granted Defendant's motion to obtain
12 a qualified psychiatrist and approved Dr. Blinder to perform a psychiatric evaluation on
13 Defendant. On February, 2016, Dr. Blinder performed a psychiatric mental competency
14 examination of Defendant. In a report, dated March 10, 2016, Dr. Blinder diagnosed Defendant
15 with "Encephalopathy, e.g., organic brain disease" and "Mental retardation." Dr. Blinder
16 concluded and opined that Defendant is not mentally competent to proceed with trial.
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19 On April 29, 2016, the Commonwealth petitioned the Court for a second opinion as to
20 Defendant's competency to proceed with trial. The Commonwealth also directed the Court to
21 set a competency hearing pursuant to 6 CMC § 6607(a). Pursuant to 6 CMC § 6607(a), the
22 Court ordered a competency hearing and directed the Commonwealth to submit a report from
23 the Commonwealth's expert. The Commonwealth obtained Dr. Donovan. Dr. Donovan
24 performed psychological examinations on Defendant on June 14 and 15, 2016. In his report,
25 Dr. Donovan opined that Defendant suffers from significant hearing loss that may be
26 responsible for a wide range of functional and language related deficits, but concluded that
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1 Defendant did not appear to have cerebral deficits across the board nor is he mentally retarded.

2 Dr. Donovan ultimately found that Defendant is competent to proceed with trial.

3 The Court held a *Daubert* and competency hearing on December 16 and 29, 2016,
4 qualifying Dr. Blinder and Dr. Donovan as experts in their field of training. Oral arguments by
5 the parties concluded on January 24, 2017.
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7 III. LEGAL STANDARD

8 At any time before the commencement of trial, either party to a criminal proceeding
9 may make a motion to determine the defendant's competency to stand trial. 6 CMC § 6006(a).

10 Once a motion to determine competency has been filed, the court shall suspend all proceedings
11 in the criminal prosecution and order a psychiatric examination pursuant to 6 CMC § 6604. *Id.*

12 If at least one psychiatrist concludes that a defendant may be incompetent to be proceeded
13 against, the court shall make a competency determination "within 10 days after notice to the
14 court verified by the psychiatrist, unless the court, for good cause, orders the issue tried at a
15 later date." 6 CMC § 6607(a).
16

17 As the moving party, the Defendant bears the burden of establishing that he is not
18 competent to stand trial by a preponderance of the evidence. 6 CMC § 6007(b). "The
19 preponderance of the evidence standard requires the Court to determine that the existence of
20 the fact is more probable than its nonexistence." *United States v. Deruiter*, 2015 U.S. Dist.
21 LEXIS 176591, *47 (M.D. Fla. 2015). The standard for determining competency is "whether
22 the defendant has sufficient ability to consult with his lawyer with a reasonable degree of
23 rational understanding and whether he has a rational as well as factual understanding of the
24 proceedings against him." 6 CMC § 6603(a); see *Commonwealth v. Camacho*, 2002 MP 22 ¶¶
25 9-10 ("The pertinent standard is whether the evidence as a whole raises a [']bona fide doubt[']
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1 as to a defendant's competence to stand trial. A bona fide doubt exists when there is substantial
2 evidence that the defendant lacks [']sufficient present ability to consult with his lawyer with a
3 reasonable degree of rational understanding.[']"). In other words, "the competency standard
4 requires the Court to find that the defendant is presently suffering from a mental disease or
5 defect rendering him mentally incompetent to the extent that he is unable to (1) understand the
6 nature and consequences of the proceedings against him; and (2) properly assist in his
7 defense." *Deruiter*, 2015 U.S. Dist. LEXIS at *49 (internal quotation and citation omitted).

9 Where the court finds a defendant competent to be proceeded against, the proceedings
10 shall be resumed. 6 CMC § 6603(b). However, where the court finds a defendant incompetent
11 to be proceeded against, but also determines that there is a substantial likelihood that he will
12 regain his competency within 90 days, the court "shall order him committed to an evaluation
13 facility or a treatment facility for custody, care, and treatment up to 30 days consistent with the
14 patient's rights." 6 CMC § 6007(d). Additionally, if at any time the court determines that the
15 defendant is incompetent to stand trial and that there is no substantial likelihood that he will
16 regain competency, the court, "upon its own motion or upon motion of either party, and after
17 reasonable notice to the other party and an opportunity to be heard," is required to order the
18 defendant's unconditional release. 6 CMC § 6007(g).

21 IV. DISCUSSION

22 The Court considers the expert testimonies of Dr. Blinder and Dr. Donovan:

23 a. Expert Testimony

24 i. Dr. Blinder's Testimony and Underlying Psychiatric Examination Report

25 From the outset, the Court acknowledges Dr. Blinder's commitment to providing
26 professional psychiatric examinations in the Commonwealth. The Court recognizes that Dr.
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1 Blinder has serviced not only our courts for many years, but has primarily been the go-to
2 psychiatric evaluator for our Commonwealth's Public Defender Office. Dr. Blinder's
3 recommendations and expert opinion have been accepted numerous times by our courts. The
4 Court has no doubt as to his proficiency as a forensic psychiatrist and had no concern
5 qualifying him as Defendant's expert witness.
6

7 At the competency hearing, Dr. Blinder testified primarily to his psychiatric
8 examination report finding Defendant incompetent to proceed with trial. Dr. Blinder testified
9 that as part of his examination of Defendant, he reviewed the records on file consisting of the
10 underlying police report, the Information charging Defendant with three counts of sexual abuse
11 of a minor in the second degree and two counts of disturbing the peace, and an October 2014
12 incident involving Defendant and another minor child. Dr. Blinder also reviewed Defendant's
13 past history by interviewing Defendant and his sister, who were unaware of any existing
14 mental illnesses that Defendant might be suffering from. Dr. Blinder did discover, however,
15 that Defendant has suffered from significant hearing loss since childhood, which has affected
16 his ability to communicate effectively. Dr. Blinder conducted a mental status examination of
17 Defendant, which consisted primarily of an assessment of Defendant's perception, mentation,
18 affect, and behavior. Dr. Blinder's finding suggests that although Defendant's results in the
19 three areas of assessment: perception, affect, and behavior did not exhibit a show for concern,
20 Defendant suffered from poor mentation, which he determined was deficient. In finding that
21 Defendant had poor mentation, Dr. Blinder assessed that Defendant is unable to distinguish the
22 role of his lawyer, the duties of the prosecution, and the functions of the judge and jury.
23 Ultimately, Dr. Blinder diagnosed Defendant as suffering from encephalopathy, e.g., organic
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1 brain disease, and mental retardation. Dr. Blinder concluded that Defendant was incompetent
2 to proceed with trial.

3 ii. Dr. Donovan's Testimony and Underlying Psychological Evaluation

4 The Court welcomed the testimony of Dr. Donovan, a forensic and clinical
5 psychologist from the state of Hawai'i. Although Dr. Donovan has recently extended his
6 services to the Commonwealth, his background as a consultant to the Hawai'i courts and
7 corrections branch in adult mental health have made a great impression upon this Court. Dr.
8 Donovan's extensive educational background and licensure in clinical and forensic psychology
9 is well recognized and received by all of the Hawai'i courts. The Court has no doubt that Dr.
10 Donovan is competent and qualified to testify in this matter and had no concern qualifying him
11 as an expert in this case.
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14 At the hearing, Dr. Donovan testified primarily to the psychological examination he
15 performed on Defendant, which formed the basis of his opinion that Defendant was competent
16 to proceed with trial. Dr. Donovan testified that his examination of Defendant included clinical
17 interviews with Defendant to monitor Defendant's behavioral and mental state, which he
18 completed in the course of two days for a total of four hours, the administration of a
19 psychological test to assess mental retardation, if any, and data such as Defendant's criminal
20 history, current criminal charges, medical reports, and the police report provided by the
21 Commonwealth. Dr. Donovan also sought assistance from a Chamorro interpreter and
22 Defendant's sister while performing Defendant's psychological exam. Dr. Donovan also
23 interviewed Defendant's sister and brother about Defendant's daily functioning and history.
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26 Dr. Donovan's examination report includes an exhaustive and impressive observation
27 of Defendant's physical/perception, affect, and behavior. His report indicated that Defendant
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1 appeared normal in these three areas. According to Dr. Donovan, Defendant was initially
2 unresponsive to his questioning, often indicating a lack of comprehension on Defendant's part,
3 and appearing defensive towards him. Dr. Donovan testified that he had to vary his approach
4 including enlisting the help of a Chamorro interpreter and Defendant's sister, and modifying
5 his testing by employing visual motor testing rather than language related testing. Accordingly,
6 Dr. Donovan observed a change in Defendant's demeanor. Defendant appeared more relaxed
7 and cooperative, and gave answers that were responsive to Dr. Donovan's questions. Taken
8 altogether, Dr. Donovan's report indicated that based on his assessment of Defendant,
9 Defendant showed no evidence of a major mental disorder or psychosis.
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12 Moreover, although Dr. Donovan's report share similar outcomes as Dr. Blinder's
13 report when assessing Defendant's affect, behavior, and perception, Dr. Donovan's analysis
14 veers markedly in the opposite direction in his evaluation of Defendant's mental
15 state/mentation. According to Dr. Donovan, in order to obtain a diagnosis for mental
16 retardation, an individualized intelligence test ("IQ") needs to be administered. Dr. Donovan
17 noted that Dr. Blinder failed to administer one. Dr. Donovan testified that he utilized parts of
18 the Wechsler Adult Intelligence Scale – IV test to examine whether Defendant was
19 intellectually disabled. According to Dr. Donovan, this test considers a range of different
20 manifestations of intelligence which can be broken down into two parts: verbal and nonverbal
21 intelligence. A low score in all areas of the test, both verbal and nonverbal, would indicate
22 some form of intellectual ability; however, a low score in only one area would usually signify
23 no intellectual disability, but rather some other type of language processing or sensory
24 problem. Here, Dr. Donovan identified that Defendant suffers from a significant sensory
25 problem – hearing loss, which has affected Defendant since childhood. Dr. Donovan found that
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1 Defendant was intellectually competent. In addition to the IQ test, Dr. Donovan evaluated
2 Defendant's everyday life function. Dr. Donovan found that Defendant is capable of caring for
3 himself – he handles his finances, was deemed capable of handling his money by Social
4 Security Services, has held employment in the past, pays for his mortgage, does his shopping,
5 and maintaining order and balance at home. Based on Dr. Donovan's assessment of
6 Defendant's IQ test coupled with evidence of Defendant's capabilities to function in his
7 everyday life, Dr. Donovan concluded that Defendant does not suffer from an intellectual
8 disability.
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10 Furthermore, Dr. Donovan concluded that Defendant has the ability to understand the
11 legal process. Dr. Donovan evaluated Defendant's criminal history, including Defendant's
12 1998 criminal record containing similar sexual abuse charges, a 2014 interview with a
13 detective at the Sexual Offender Registry's Office, which he indicated that he understood that
14 there was a sexual assault accusation against him, and the underlying criminal file.
15 Specifically, Dr. Donovan reviewed Defendant's 1998 criminal record and noted that
16 Defendant had signed a plea agreement essentially acknowledging that he knowingly and
17 voluntarily entered a guilty plea. Similarly, in 2014, based on Dr. Donovan's notes of the
18 interview between Defendant and a detective investigating a separate sexual assault incident,
19 Defendant indicated that he had a hearing problem, but was capable of understanding the
20 questions, which Defendant gave relevant answers to. Dr. Donovan opined further that since
21 the present case contains allegations and charges substantially similar to those charged against
22 him in 1998, Defendant benefits in terms of what he has to learn in the present case –
23 Defendant understands that his jeopardy is greater in this case, the same pleas will be
24 explained to him, and that the same dynamics and vocabularies will be used in this case.
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1 Additionally, based on Dr. Donovan's examination of Defendant's criminal history, Dr.
2 Donovan determined that between 1998 through 2014 and until the date of examination, in
3 2016, there has been no change in Defendant's mental capacity. According to Dr. Donovan,
4 the fact that there has been no significant changes in Defendant's capacities is noteworthy
5 because it undermines Dr. Blinder's finding that Defendant suffers from an intellectual
6 disability. Dr. Donovan testified that intellectual disabilities are commonly present in
7 individuals before the age of 18, and because Defendant presented no change in capacities
8 throughout the years, it is unlikely that Defendant is intellectual disabled.
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10 Although Dr. Donovan testified that Defendant does not suffer from an intellectual
11 disability, he does recognize that Defendant is hearing impaired, which might add to the
12 difficulty of having Defendant consult effectively with his attorney. Dr. Donovan nevertheless
13 finds that Defendant's sensory defect does not rise to the level to render him incompetent, and
14 that although his hearing loss may affect his ability to interact with his counsel,
15 accommodations made in Court should alleviate much of these problems. Dr. Donovan
16 identified several approaches to accommodate Defendant, such as allowing a Chamorro
17 interpreter to be present at trial, having Defendant obtain a hearing aid for his right ear, taking
18 sufficient breaks during the trial so that Defendant could consult with his attorney, and having
19 the Court and parties communicate using concrete and basic concepts.
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22 **b. Weight Given to Experts' Testimony**
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24 Throughout the course of Defendant's competency hearing, the Court heard
25 testimonies from two expert witnesses that have come up with differing conclusions as to
26 Defendant's competency: Defendant's expert, Dr. Blinder, testified that Defendant was
27 incompetent to proceed with trial; the Commonwealth's expert, Dr. Donovan, concluded that
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1 Defendant was competent to proceed with trial. The Court finds that the opinions of both
2 experts were sincerely held within their areas of expertise. “When the [c]ourt receives expert
3 opinions with differing conclusions, it does not err [‘] simply by crediting one opinion over
4 another where other record evidence exists to support the conclusion.[’]” *Deruiter*, 2015 U.S.
5 LEXIS 176591 at *47 (citing *Johnston v. Singletary*, 162 F.3d 630, 639 (11th Cir. 1998)).
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7 However, the trial judge presiding over a competency hearing is generally afforded broad
8 discretion in determining the credibility of an expert’s testimony. *State v. Marrero*, 2010 R.I.
9 Super. LEXIS 11, *37 (R.I. Super. Ct. 2010). “Just as a hearing justice may pick and choose
10 among evidence presented by laypersons, he or she may do the same . . . with evidence of
11 experts. A hearing justice is free to choose between expert opinions so long as he does not
12 from mere whim . . . but with reasonable justification.” *Id.*; see also *Commonwealth v.*
13 *DeBerardinis*, 2004 Mass. Super. LEXIS 183, *18 (“A court must evaluate the credibility of
14 the expert testimony that is presented on the issue of defendant’s competency. . . . The court is
15 not required to accept the [expert’s testimony], even if uncontroverted. Moreover, it is not the
16 number of witnesses but the credibility of their testimony that the court must weigh.”). For
17 instance, courts have given more weight to experts whose evaluation was conducted over a
18 longer period of time than the other. *Deruiter*, 2015 U.S. Dist. LEXIS 176591 at *49; and
19 *United States v. Carter*, 2013 U.S. Dist. LEXIS 177382, *13 (E.D. Tenn. 2013).
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22 In this case, the Court gives more weight to Dr. Donovan’s opinion for several reasons.
23 First, Dr. Donovan’s evaluation was conducted over a longer period of time. Dr. Donovan
24 testified that he evaluated Defendant over the course of two days for a total of four hours.
25 Second, Dr. Donovan was recommended by the Attorney General of Hawaii as one of the
26 leading experts in his field of practice. Third, although Dr. Donovan testified that this was his
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1 first time providing services to the Commonwealth, Dr. Donovan has been qualified as an
2 expert in forensic psychology in all of the courts in Hawai'i. Dr. Donovan testified that he
3 primarily serves as a consultant to the Hawai'i court where he provides testimonies regarding
4 penal responsibilities and competency. For the most part, Dr. Donovan's position as a court
5 consultant requires that he be held to a higher level of neutrality and objectivity than an expert
6 hired primarily by the defense. Fourth, Dr. Donovan submitted a more comprehensive and
7 exhaustive evaluation report consisting of 12 pages and highlighting issues pertinent for the
8 Court to determine (1) whether Defendant possesses the intellectual capabilities to understand
9 the nature and consequences of the criminal proceedings against him; and (2) whether
10 Defendant can properly assist in his defense. Dr. Blinder's three page report pales in
11 comparison to the breadth of information provided by Dr. Donovan in his report. Dr. Blinder's
12 report seemingly includes general observations of Defendant's mental and physical abilities
13 without identifying a standard of testing that he used to perform his evaluation. Dr. Donovan,
14 on the other hand, administered several individualized tests including parts of the Wechsler
15 Adult Intelligence Scale – IV, the Wide Range Achievement Test – 4, the Competency
16 Assessment for Standing Trial for Defendants with Mental Retardation, and the Competency
17 Assessment Instrument. The Court finds that Dr. Donovan's utilization of these tests to
18 determine whether Defendant suffered from mental retardation or some form of intellectual
19 disability rather than a conclusion based on Defendant's ability to answer standard competency
20 protocol questions particularly notable. Fifth, Dr. Donovan testified that he reviewed
21 Defendant's past criminal record as part of his assessment of Defendant's competency. Dr.
22 Blinder indicated that he did not review Defendant's 1998 criminal case, but only had access to
23 it after his examination of Defendant. Finally, Dr. Donovan's testimony as to Defendant's
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1 present capabilities is significant and relevant to determine whether Defendant is competent to
2 proceed with trial. Dr. Donovan testified that he reviewed three significant time periods:
3 Defendant's 1998 criminal record, Defendant's 2014 interview with a detective at the Sex
4 Offender Registry Office, and Dr. Donovan's June 2016 evaluation, and found no significant
5 change in Defendant's capacities. This undercuts Dr. Blinder's report that Defendant suffers
6 from childhood encephalopathy, which might explain a progressive deterioration of the brain
7 throughout the years.
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9 **c. Court's Findings**

10 The Court is tasked to determine whether Defendant is competent to proceed with trial.
11 In doing so, the Court must determine "whether the defendant has the sufficient ability to
12 consult with his lawyer with a reasonable degree of rational understanding and whether he has
13 a rational as well as factual understanding of the proceedings against him." 6 CMC § 6603(a);
14 *Camacho*, 2002 MP 22 ¶¶ 9-10. The Court recognizes that this standard requires a two part
15 inquiry: (1) whether Defendant has the present ability to understand the nature and
16 consequences of the proceedings against him; and (2) whether Defendant has the sufficient
17 ability to assist in his defense.
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20 Defendant argues that he has met his burden in proving that Defendant's poor mental
21 and cognitive capabilities render him unable to satisfy the two prong test. The Court disagrees.
22 First, Defendant requested that the Court take notice of Dr. Donovan's expert opinion as to his
23 substantive legal determination of competency. According to Defendant, Dr. Donovan's
24 testimony invaded the Court's province by taking away the Court's duty in making the
25 ultimate legal determination of competency. The Court does not find Dr. Donovan's testimony
26 and opinions offensive and it does not rise to a level characterized by Defendant as an ultimate
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1 legal determination and judgment. The Court acknowledges that psychiatrists and
2 psychologists alike are normally relied upon by the courts to determine whether a defendant's
3 mental state meets the criteria of an established legal standard. See *People v. Crawford*, 239
4 N.W.2d 670, 671 (Mich. Ct. App. 1976) (Determining the issue of defendant's competency to
5 stand trial, "require[s] an expert witness to determine the mental state of a defendant and then
6 to decide whether that mental state meets the criteria of an established legal standard.").
7 Further, Defendant argues that Dr. Donovan's reliance on the legal standard announced in
8 *Dusky v. United States*, 362 U.S. 402 (1960) does not comport with Commonwealth law. This
9 is incorrect. In *Camacho*, our Supreme Court relied upon *Dusky* to interpret the standard
10 codified in 6 CMC § 6603(a), which is the statute pertinent in this case. Thus, the Court finds
11 that Dr. Donovan's reliance on the established legal standard was proper. 2002 MP 22 ¶¶ 8-10.
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14 Next, Defendant challenges Dr. Donovan's report finding Defendant competent
15 although he suffers from mental and cognitive impairments. Defendant argues that Defendant's
16 mental deficiencies are enough to characterize Defendant as mentally incompetent, such that
17 he suffers from a progressive brain disease since childhood and mental retardation. However,
18 this Court finds that these reasons are not sufficient to satisfy both prongs of the statute. Many
19 courts have found a defendant competent to stand trial even though they suffer from a serious
20 case of mental and intellectual disabilities. See, e.g., *United States v. Hogan*, 986 F.2d 1364,
21 1373 (11th Cir. 1993) (holding that level of comprehension is not a requirement of
22 competency); *DeBerardinis*, 2004 Mass. Super. LEXIS at *18-19 (finding that although the
23 defendant had been "diagnosed with vascular dementia, early Alzheimer's dementia,
24 depression and anxiety, these illnesses do not preclude a finding that [the defendant] is
25 competent to stand trial"); *Marrero*, 2010 R.I. Super. LEXIS at *33 ("The fact that a person is
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1 evaluated as mentally retarded does not automatically make him or her incompetent to stand
2 trial by virtue of that evaluation.”); *United States v. Glover*, 596 F.2d 857, 866-867 (9th Cir.
3 1979) (finding that a defendant was competent to stand trial although he had an intelligence
4 level at the lowest 1 percent of society); *Carter*, 2013 U.S. Dist. LEXIS 177382, *5-11
5 (finding defendant competent even though the defendant was withdrawn, had a low IQ, and
6 was a simple thinker with a poor verbal memory and could be expected to have difficulty with
7 complex hypothetical questions). While the Court agrees with Defendant that he suffers from
8 poor mentation, the pertinent issue is whether this affects his present ability to understand the
9 nature and consequences of the proceedings against him. The Court finds that it does not.
10 Defendant had no significant change of capacities since 1998. Defendant’s past criminal record
11 strongly suggests that Defendant understood the nature and consequences of the crime he
12 committed, where he signed a plea agreement voluntarily and knowingly, and gave responsive
13 answers in an interview conducted in 2014 pertaining to a separate incident of sexual assault.
14 Furthermore, Dr. Donovan indicated that during his evaluation of Defendant in June 2016
15 Defendant was responsive to his questions and appeared willing and capable when he varied
16 his interview approach. Moreover, the Court’s concern of whether Defendant understands the
17 proceedings against him is assuaged by the fact that Defendant is facing the same criminal
18 charges he was convicted of in 1998. Thus, Defendant has some advantages in the current
19 criminal proceeding, such that he is facing the same type of criminal allegation, the same pleas
20 will be explained to him, and has been through probation and parole before. Therefore, the
21 Court finds that Defendant has a sufficient present ability to understand the nature and
22 consequences of the proceedings against him.
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1 Finally, Defendant argues that because he suffers from mental and cognitive
2 disabilities, he is unable to assist in his defense. Specifically, defense counsel argues that
3 proceeding with trial will be an immense burden upon him. The Court, upon consideration of
4 the record, finds that Defendant's poor mentation is caused by a significant hearing loss since
5 childhood. Although the Court acknowledges that Defendant's sensory defect may likely
6 impede with his ability to assist in his defense, the Court is optimistic that proper
7 accommodations may be made to allow Defendant to properly assist in his defense. See
8 *Glover*, 596 F.2d at 846-65 (The Ninth Circuit upheld a finding of competency stating that the
9 fact a defendant might not understand the proceedings unless they are explained to him in
10 simple language, which would put an additional burden upon counsel, it certainly does not
11 establish that the defendant is incompetent to stand trial.); *Carter*, 2013 U.S. Dist. LEXI
12 177382 at *13 (finding that although defendant suffered from a low IQ, was a simple thinker
13 with poor verbal memory, and that he could be expected to have difficulty with complex
14 hypothetical questions, the Court held that proper accommodations could be made for him
15 such as: (1) simplifying the proceedings whenever possible by paraphrasing complex concepts
16 into familiar terms and avoiding legal jargon; (2) slowing down the proceedings and repeating
17 information as needed to allow ample time for defendant to ask and respond to questions; and
18 (3) allowing breaks in order to provide opportunities for counsel to discuss information and
19 development with the defendant as needed.). Additionally, courts have provided
20 accommodations to defendants who have suffered from memory and processing defects. See
21 e.g., *United States v. Butterfly*, 72 F.3d 136 (9th Cir. 1995) (Despite expert testimony that the
22 defendant's mental defects would prevent him from being able to interpret witness testimony,
23 the defendant was found competent where the court promised to proceed slowly and provide
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1 frequent breaks so that his attorney could explain the proceedings to him.); *United States v.*
2 *May*, 475 F. Supp.2d 1102, 1107 (D. Kan. 2007) (providing accommodations to defendant who
3 suffered from memory and information processing deficits). In the present case, the Court
4 recommends that the following accommodations be afforded to Defendant to help assist in his
5 defense: (1) having a Chamorro interpreter present in all stages of the trial; (2) allowing
6 Defendant to obtain a working hearing aid before trial; (3) allowing frequent breaks to give
7 defense counsel the opportunity to discuss the information and developments of the trial; and
8 (4) simplifying the proceedings whenever possible by paraphrasing complex concepts into
9 familiar terms.
10

11 V. CONCLUSION

12
13 Based on the foregoing, the Court finds that Defendant is competent to stand trial to the
14 charges against him: (1) Defendant is able to understand the character and consequences of the
15 proceedings against him; and (2) Defendant is able to properly assist in his defense. The Court
16 now recommends that this action should proceed to trial. A Status Conference in this matter is
17 set for April 4, 2017, at 1:30 p.m. in Courtroom 205A.
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19 **IT IS SO ORDERED** this 27th day of February, 2017.

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23 KENNETH L. GOVENDO
24 Associate Judge
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