IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,	)	
	)	
Plaintiff,	)	
	)	
	)	
v.	)	Cr. ID. No. 1411011583
	)	
	)	
	)	
RICHARD DRAUGHN,	)	
	)	
Defendant.	)	

Date submitted: November 4, 2016
Date decided: November 29, 2016

COMMISSIONER'S REPORT AND RECOMMENDATION AS TO DEFENDANT'S MOTION TO DISMISS

COMMISSIONER'S ORDER AS TO THE STATE'S MOTION TO INVOLUNTARILY MEDICATE DEFENDANT TO RESTORE COMPETENCY

Renee Hrivnak, Esquire, Deputy Attorney General, Delaware Department of Justice, 820 N. French St. 7th Floor, Wilmington, DE, 19801. Attorney for the State.

Darryl J. Rago, Esquire, Office of Defense Services, 820 N. French St. 3rd Floor, Wilmington, DE, 19801. Attorney for Defendant.

MANNING, Commissioner:

Pending before the Court is a motion filed by Draughn to dismiss the charges against him on the bases of due process, cruel and unusual punishment and speedy trial. In turn, the State has filed a motion to obtain a court order to have Draughn involuntarily medicated in an effort to restore his competence so he may stand trial. A hearing as to both motions was held on October 13, 2016. Thereafter, the State and Draughn both submitted supplemental briefing. Because a motion to dismiss is case dispositive, I am issuing my decision in the form of a Report and Recommendation.[1] The State's motion to involuntarily medicate Draughn is not case dispositive; therefore, I am issuing my decision as to that issue in the form of an Order.[2]

Upon consideration of all facts and evidence submitted by the parties, it is my recommendation to DENY Draughn's motion to dismiss without prejudice, and to GRANT the State's motion to involuntarily medicate Draughn.

Facts and Procedural History

Draughn was arrested on November 19, 2014, for the crimes of Resisting Arrest (Felony), Terroristic Threatening (2 counts), Menacing, Offensive Touching and Disorderly Conduct. The alleged victims are Draughn's wife, his wife's

[1] Super. Ct. Crim. Rule 62.

[2] *Id.*

daughter and the responding police officer. Draughn has been held in default of bail since the date of the offenses.

Draughn was indicted on January 5, 2015. Draughn had a first case review on February 23, 2015, and a final case review on May 4, 2015. During the final case review, the Court conducted a colloquy with Draughn that led the Court to believe that he was competent to stand trial. On May 14, 2015, the day scheduled for trial, the State, after speaking with the alleged victim, again raised the issue of competency with the Court. The Court then conducted a second, more extensive colloquy with Draughn. Upon conclusion of this second colloquy, the Court continued the trial and ordered Draughn to undergo an evaluation at the Delaware Psychiatric Center (DPC) to determine his competency to stand trial.

On July 23, 2015, Draughn was evaluated for competency by Dr. Donohue. Draughn was transported to DPC for purposes of the evaluation, but otherwise remained at Level Five in the Department of Corrections' custody. Dr. Donohue's report was received by the Court on August 6th, and docketed on August 11, 2015.[3] In his report, Dr. Donohue details Draughn's personal, educational, social, occupational, legal, medical and psychiatric history. Dr. Donohue's report is replete with comments indicating Draughn's obfuscation and outright refusals to meaningfully participate in the examination. Dr. Donohue notes in his report that

[3] DI # 18.

Draughn seemed unable to control his emotions and presented as hostile and intimidating. Ultimately, Dr. Donohue concludes that Draughn is suffering from a serious mental illness, either Schizophrenia or Schizoaffective Disorder, and that he is most likely incompetent to stand trial. In his report, Dr. Donohue takes great pains to point out Draughn's lack of cooperation and its effect on his ability to accurately diagnosis him. Finally, Dr. Donohue notes that Draughn is likely to refuse psychiatric medication and that a court order may be required.

On September 11, 2015, the Court issued an order to have Draughn transferred to DPC to participate in the competency restoration program.[4] On November 13, 2015, Dr. Selig filed with the Court her Forensic Mental Health Examination ("report") concerning Draughn.[5] In the report, Dr. Selig reports that Draughn was at DPC from September 23, 2015 until November 12, 2015. Dr. Selig reports many of the same concerns as Dr. Donohue. Dr. Selig outlines, in much greater detail than I am going to recited here, Draughn's adamant refusal to cooperate with treatment efforts. Dr. Selig describes Draughn's behavior as hostile, argumentative and verbally abusive toward staff and other patients. Additionally, Dr. Selig notes that Draughn appears to know where to draw the line; namely, that he is aware that any actual physical violence by him would result in a

[4] DI # 20.

[5] DI # 21.

civil commitment and the administration of medication against his will. Ultimately, Draughn was transferred back to DOC custody and competency restoration efforts were suspended due to his extreme lack of cooperation.

On December 17, 2015, Draughn was again scheduled for a competency evaluation at DPC. On the same day, Dr. Schultz filed a report with the Court indicating that Draughn had refused to cooperate with the transfer from DOC to DPC and had made threats to harm himself.[6] Dr. Schulz indicated that the evaluation was canceled and Draughn was placed on Psychiatric Close Observation ("PCO") status, for his own protection.

In his report, Dr. Schultz noted that Draughn had refused to cooperate with both medical and mental health staff and "appears to be viewing [the world] through a very "paranoid lens." Dr. Schultz notes that Draughn's paranoid symptoms have persisted and that "[w]ithout intervention it does not appear likely that his symptoms will improve, and thus, I would anticipate that it is unlikely that his competency status will change."[7]

On January 14, 2016, Dr. Schultz made another attempt to evaluate Draughn.[8] In his letter to the Court, Dr. Schultz outlines Draughn's recent psychotic symptoms and behavior. According to DOC records, Draughn is

[6] DI # 23.

[7] *Id.*

[8] DI # 24.

prescribed Haldol but is, apparently, refusing to take it. Again, Dr. Schultz opines that without a court order forcing Draughn to take antipsychotic medications, his symptoms and paranoia will not improve and that he remains not competent to stand trial.

On March 16, 2016, a status conference was held with all parties before the Honorable Commissioner Mark S. Vavala. According to the Court's docket, Commissioner Vavala discussed with Draughn his lack of cooperation and explained that he must cooperate if the case is to move forward. Draughn apparently indicated that he would cooperate and that it was his desire to be evaluated as soon as possible. Commissioner Vavala then issued an Order for another competency evaluation.[9]

On March 16, 2016, Draughn filed a motion for reduction of bail. That motion was denied without prejudice on March 22, 2016.[10]

On April 8, 2016, Draughn was again evaluated for competency at DPC. On May 10, 2016, Dr. Selig and Dr. Chandra filed their Forensic Mental Health Examination with the Court.[11] In their report, the doctors noted that Draughn was "mostly uncooperative and did not give any history." The report outlines Draughn's history, clinical presentation and mental status. The report states that

[9] DI # 27 and 30.

[10] DI # 31.

[11] DI # 32.

Draughn tried to "take control" of the interview from the outset, "yelled at the doctors", was "intimidating, intense and labile." The report notes that Draughn "became so aggressive, loud and intimidating" that the interview had to be concluded and correctional officers called to remove him. The doctors opine that based on available information, Draughn has a severe mental illness—most likely Schizoaffective Disorder—that is presently untreated.[12] Again, the doctors opine that without psychiatric medication Draughns' symptoms will not improve and that he is not competent to stand trial.

On May 10, 2016, the Court forwarded the most recent DPC report to the State and Defense Counsel. Counsel indicated that the matter should be scheduled for a competency hearing before the Court.[13]

On August 23, 2016, Draughn filed the instant motion to dismiss. [14] In his motion, Draughn argues that the nearly two-year delay in bringing him to trial has violated his right to due process, amounts to cruel and unusual punishment and has violated his right to a speedy trial.

---

[12] *Id.*

[13] Commissioner Vavala retired on June 3, 2016. Draughn's matter was reassigned to the undersigned Commissioner thereafter.

[14] DI # 35.

On August 25, 2016, the State filed its Motion To Schedule a Hearing to Determine Whether to Involuntarily Medicate defendant In An Effort to Restore His Competency.[15]

On October 13, 2016, the Court held a hearing, before all parties, as to the State and Draughn's motions. The State presented the testimony of NCCPD Officer Lech and Dr. Selig. Officer Leach's testimony detailed his interaction with Draughn and the nature of the underlying charges. Dr. Selig's testimony consisted largely of a recapitulation of the information contained in the various DPC reports submitted to the Court thus far. Draughn was also present with his attorney. However, from the start of the hearing, Draughn's behavior was disruptive and verbally combative. Much as described in the DPC reports, upon entering the courtroom, Draughn immediately became loud, intimidating and appeared to be on the edge of a violent outburst at any moment. Despite the Court's attempts to explain the nature of the proceeding to Draughn and assuage his concerns, Draughn persisted in what can only be described as very angry, paranoid and tangential ramblings. Due to Draughn's disruptive behavior, I was compelled to have him removed.

[15] DI # 36.

Upon conclusion of the hearing, I took the matter under advisement and instructed both sides to file supplemental briefs. Draughn filed his response on October 28, 2016; the State filed its response on November 4, 2016.

Defendant's Motion to Dismiss

Due Process

Title 11 *Del. C.* § 404(a) allows the State to hold an accused person, who by reason of mental illness or serious mental disorder, is not competent to stand trial, at the Delaware Psychiatric Center for treatment, until the person is capable of standing trial.[16] The statute requires that the State be able to establish a prima facie case against the defendant in order to continue the confinement. If the State fails to establish a prima facie case, the court shall dismiss the charges.[17] As a preliminary matter, for the reasons that follow, I find that the testimony presented

---

[16] § 404 Confinement in Delaware Psychiatric Center of persons too mentally ill to stand trial; requiring State to prove prima facie case in such circumstances; adjustment of sentences.
(a) Whenever the court is satisfied, after hearing, that an accused person, because of mental illness or serious mental disorder, is unable to understand the nature of the proceedings against the accused, or to give evidence in the accused's own defense or to instruct counsel on the accused's own behalf, the court may order the accused person to be confined and treated in the Delaware Psychiatric Center until the accused person is capable of standing trial. However, upon motion of the defendant, the court may conduct a hearing to determine whether the State can make out a prima facie case against the defendant, and if the State fails to present sufficient evidence to constitute a prima facie case, the court shall dismiss the charge. This dismissal shall have the same effect as a judgment of acquittal.
(b) When the court finds that the defendant is capable of standing trial, the defendant may be tried in the ordinary way, but the court may make any adjustment in the sentence which is required in the interest of justice, including a remission of all or any part of the time spent in the Psychiatric Center.

[17] *Id.*

by Officer Leach at the hearing on October 13th established a prima facie case against Draughn.

Draughn does not dispute this determination; rather, he argues that his continued confinement, in light of the State's inability to restore him to competency, will subject him to a *de facto* life sentence. Draughn cites to *State v. Goldsberry*[18] for the proposition that section 404(a) does not allow for indefinite commitment and that continued commitment must be premised on the notion that there is a reasonable probability that competence can be restored. The crux of Draughn's argument is that there has been little to no attempt to restore him to competency since his incarceration. Draughn cites to the fact that the staff at DPC has made the decision to stop treating him and has returned him to DOC custody.

As discussed by this Court in the *Goldsberry* decision, section 404(a) certainly "does not permit an incompetent criminal defendant to be held indefinitely while awaiting a return to competency."[19] The Court also noted that although Goldsberry had been held for two years and nine months, the commitment "remain[ed] reasonable since the current treating physician entertains a possibility that Goldsberry's competency may be restored under his present

[18] 2000 WL 710090 (Del. Super. April 26, 2000).

[19] *Id.* at *3.

medication regimen."[20] The Court went on to observe that "the day may come, however, when the State will have to choose between a civil commitment or release."[21]

Unlike *Goldsberry*, there is no evidence in the five DPC reports before the Court to indicate whether or not Draughn can be restored to competency with the administration of medication. However, what is abundantly clear from the DPC reports, is that without a court order forcing Draughn to take medication, there is no hope his symptoms or condition will improve. Although the amount of time Draughn has been held thus far is unfortunate, the delay is almost solely attributable to his refusal to participate in the evaluations, take medication or receive treatment of any kind. Ideally, the State should have pursued an order for involuntary medication much sooner, but unlike *Goldsberry*, Draughn's case has not been merely languishing away in the court system due to the parties' inaction. The various DPC reports show that the staff at DPC was making an effort to treat Draughn, he was just thwarting them at every opportunity. Additionally, during the status conference before Commissioner Vavala on March 16, 2016, Draughn agreed to cooperate, and in fact, demanded that he be re-evaluated as soon as possible. And yet, as soon as an attempt was made to re-evaluate him, Draughn

---

[20] *Id.*

[21] *Id.*

engaged in the same obstructionist behavior as he had during the past evaluations.[22]

Finally, Draughn cites to the United States Supreme Court case of *Jackson v. Indiana*[23] as support for his argument that Delaware's continued incarceration of him, for want of his competency to stand trial, amounts to Equal Protection and Due Process violations under the 14th Amendment. Although *Jackson v. Indiana* is certainly controlling, I do not believe that Delaware's law runs afoul of its holding. This Court has previously made it clear, and I will do so again now, that a defendant may not be held indefinitely pending restoration of competency to stand trial. If a defendant cannot be restored to competency and brought to trial within a reasonable period of time, the State must either move to civilly commit the person pursuant to 16 *Del C.* § 5011, or the Court will dismiss the case.[24] Of course, what constitutes a "reasonable period of time" is a fact-sensitive analysis that will vary greatly from case to case.

In this case, the simple and unfortunate fact is that Draughn's predicament has been created by his own behavior. Whether Draughn's outbursts and psychotic behavior is driven by his paranoid delusions, or is merely an attempt to somehow

---

[22] *See* DPC report dated 4/8/2016, DI # 32.

[23] 406 U.S. 715 (1972).

[24] *See Goldsberry*, at *3.

"game" the system and avoid a trial or conviction, I cannot say. Nevertheless, Draughn is *still* incarcerated because he has repeatedly refused to cooperate with court-ordered mental health evaluations or voluntarily take needed medication; at this point in time, the State has not violated Draughn's due process rights.

Cruel and Unusual Punishment

Next, Draughn argues that his continued confinement for an indefinite period of time, without conviction, amounts to cruel and unusual punishment. Draughn compares his situation to the unconstitutional practice of incarcerating a person simply for being an "addict."[25] I do not find Draughn's situation to be analogous. Draughn is suffering from a serious mental condition that renders him incompetent to stand trial. There is a reasonable possibility, with appropriate treatment, that Draughn may become competent to assist in his own defense and thus able to resolve his case. In any event, as I explained in the preceding section, Draughn will not be held longer than is reasonably necessary to either restore his competency or reach the conclusion that that is not possible. Unfortunately, Draughn is presently trapped in a vicious cycle whereby his mental illness is preventing the doctors from making either determination. At this point in time, I do not find that Draughn's continued detention amounts to punishment, nor is it cruel and unusual.

---

[25] *See Robinson v. California*, 370 U.S. 660 (1972).

Speedy Trial

Finally, Draughn argues that his right to a speedy trial has been violated. For this determination, I will utilize the four factor test established by the United States Supreme Court in *Barker v. Wingo*.[26] The four factors are: (1) the length of the delay, (2) the reason for the delay, (3) the defendant's assertion of his right and (4) prejudice to the defendant.[27]

It is undisputed that the delay in this case is approaching the two year mark. Additionally, the Court will not dispute that this delay has caused prejudice to Draughn. Draughn's motion to dismiss, filed on August 23, 2016, is the first time that he has argued that his right to a speedy trial has been violated. However, the reason for the extended delay is the critical issue in my determination.

Draughn's motion asserts that "Mr. Draughn likely can never be 'restored' to competency." Additionally, the motion asserts that the State "has not sought to attempt competency restoration as Mr. Draughn has been confined at Howard R. Young for the majority of the time since his arrest."

I do not find Draughn's first argument to be supported by the record. The issue of Draughn's future competency is still very much in question. Because of Draughn's behavior, the doctors at DPC have thus far been unable to adequately

---

[26] 407 U.S. 514 (1972).

[27] *Id.* at 530.

evaluate or treat him. Without some period of sustained treatment, the doctors simply cannot opine as to Draughn's prospects for competency restoration. Additionally, Draughn has not presented any evidence (e.g. an independent expert's report) stating to a reasonable degree of medical certainty that he can never be restored to competency with proper treatment.

Although it is true that Draughn was only housed at DPC from September 23, 2015 until November 12, 2015, it is because DPC was forced to return him to the more secure DOC environment due to his behavior. It is clear from the various DPC reports that any attempt by DPC to begin competency restoration, in Draughn's present state, would have been futile. It is also worth noting that DOC has prescribed antipsychotic medication that Draughn has, apparently, refused to take.

Balancing the four *Barker v. Wingo* factors, I find that the reason for the delay—Draughn's schizophrenic and obstructionist behavior—outweighs all other factors at this point in time. Draughn's motion to dismiss is therefore denied without prejudice.

State's Motion for Involuntary Medication

The State is asking this Court for an order allowing DPC to administer antipsychotic medication against Draughn's will. Such a request goes to the heart

of a person's individual liberty and fundamental rights; it is certainly not a request that I take lightly.

In *Sell v. U.S.,* the United States Supreme Court held that there are instances in which the government can involuntarily administer medication to restore competency in a person charged with nonviolent crimes. [28] However, the *Sell* Court cautioned that such instances are rare and that an ordering court must carefully review the facts of the specific case. *Sell* established four questions that must be analyzed before a court can order involuntary medication to restore competency: (1) is there an important governmental interest at stake, (2) will administration of involuntary medication significantly further those concomitant state interests, (3) is involuntary medication necessary to further those interests and are less intrusive treatments unlikely to achieve substantially the same results and (4) is administration of the drugs medically appropriate?[29]

The State and Draughn have both filed thoughtful submissions addressing each of the factors above. As expected, the State argues that it has satisfied all of the requirements for the forced administration of medication; Draughn argues the opposite. The thrust of Draughn's argument is that the State "did nothing until the Defendant filed a motion to dismiss, and it was only at that time the State had an

---

[28] 539 U.S. 166 (2003).

[29] *Id.* at *180-181.

important interest at stake to restore Draughn's competency."[30] Additionally, Draughn argues that the State has failed to produce evidence sufficient to establish that the administration of medication is substantially likely to restore him to competency, that less intrusive treatments are unlikely to achieve the same result, or that the medication is medically appropriate or in Draughn's best medical interest.

Before addressing each of the *Sell* factors, I note that a court order authorizing the involuntary administration of medication to restore competency, although rare, is not without precedent in Delaware. In *State v. Fairley*, the only reported decision I could locate, the Court of Common Pleas, after analyzing the *Sell* factors, issued such an order.[31] Fairley was charged with various misdemeanor offenses, the most serious of which were Resisting Arrest, Menacing and Carrying a Concealed Dangerous Instrument. Fairley had been arrested while seated in a vehicle in a business parking lot preparing to smoke a marijuana cigarette.[32]

The similarities between the *Fairley* case and this one are striking. Like Draughn, Fairley refused to cooperate with treatment or take medication. Both cases involve nonviolent offenses, although Draughn is charged with felony

---

[30] Defendant's letter submission to the Court, dated October 27, 2016.

[31] *State v. Fairley*, 2012 WL 2464869 (Del. Comm. Pls. June 1, 2012).

[32] *Id.* at *1.

Resisting Arrest. Both defendant's had to be removed from the courtroom during the hearing due to their disruptive outbursts.[33] In both cases, doctors from DPC testified that without medication the defendant could not be restored to competency.

Admittedly, the factual record created by the State regarding each of the *Sell* factors in this case could have been stronger. Nevertheless, when I consider all of the evidence, including the in-court testimony and the five DPC reports, I am satisfied that the State has satisfied the four *Sell* factors.

First, I find that the continued prosecution of Draughn furthers an important governmental interest. Bringing Draughn to trial ensures not only that his rights are protected, but that the alleged victims have an opportunity for justice. According to Officer Leach's testimony at the October 13, 2016 hearing, Draughn had made threats of harm against members of his family. When Draughn was going to be arrested, he resisted by fleeing the room and then "bear hugging" the officer in such a way as to prevent the officer from detaining him. Draughn is significantly larger than Officer Leach, who described his situation as nearly defenseless and that he was in fear for his personal safety. Officer Leach also testified that if not for the arrival of a second officer, the confrontation might have quickly turned violent, or deadly.

[33] *Id.* at Footnote #6.

Second, I find that administration of involuntary medications will significantly further important governmental interests. The State has a compelling interest, indeed a responsibility, to see that Draughn is properly treated prior to his release. It is clear that to release Draughn in his current state would create an unreasonable danger to his family, any law enforcement officers he might encounter, and in turn, himself. The DPC reports plainly indicate that without proper medication Draughn will never be able to be restored to competency. Furthermore, there is no evidence before me that the medications typically used by DPC will have any side effects that might interfere with Draughn's ability to assist with counsel.

Third, I conclude that involuntary medication is necessary to further the State's interests in restoring Draughn's competency. Draughn's delusions and combative behavior is so severe that the doctors are unable to communicate with him in any therapeutic manner. Without the initial mood stabilization provided by antipsychotic medication, no attempt at treatment can reasonably begin. Lastly, as instructed by the *Sell* opinion, I have considered other less intrusive means. However, based on the unequivocal language used by the doctors in the DPC reports and the balance of the record before me, I can only conclude that there are no less intrusive treatment options available. Any other course of action at this

point would be futile and would, inevitability, return to the administration of medication against Draughn's will.

Finally, I conclude that the administration of medication is medically appropriate. The doctors at DPC have repeatedly opined, since the date of the first report, that without medication, it is unlikely that Draughn can be restored to competency. There is nothing in the record to indicate that the medications typically used by DPC would be in any way detrimental. The clinical staff at DPC is medically trained and sufficiently experienced to make the necessary medical decisions (e.g. appropriate dose and type of medication) needed to successfully treat Draughn while avoiding unnecessary or harmful side effects.

Conclusion and Instructions

The State shall coordinate with the director of DPC to ensure that Draughn is transferred there as quickly as possible. The State shall submit a report to the Court within 30 days of this order, and then every 30 days thereafter, addressing the following issues: (1) the date Draughn was re-admitted to DPC, (2) Draughn's then current medication regimen, (3) any adverse medication side effects Draughn is experiencing and what ameliorative actions have been taken, (4) Draughn's behavior and level of cooperation with medication and treatment, (5) what efforts are being made to restore competency (in addition to medication) and (6)

Draughn's prognosis for competency restoration under the then current treatment plan.

If, at any point in time hereafter, doctors at DPC are satisfied that to a reasonable degree of medical certainty that Draughn's competency can never be restored, DPC will immediately notify the Court and counsel of such.

IT IS SO ORDERED

Commissioner

oc: Prothonotary
cc: all counsel via e-mail