

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA,

CASE NO. #00-6055 Cr-ZLOCH

Plaintiff,

JUDGE: ZLOCH

v.

RICHARD CUCIAK,

Defendant.

CLERK OF DISTRICT COURT
S.D. OF FLA.-FTL
NOV 14 PM 1:31
[Signature]

**EMERGENCY UNOPPOSED MOTION TO CONTINUE
SENTENCING DATE AND TIME FOR FILING OBJECTIONS TO P.S.I**

COMES NOW the Defendant, RICHARD CUCIAK, by and through his undersigned counsel, moves this Honorable Court to continue the Sentencing in this matter currently scheduled for November 16, 2000, and the time for filing objections to P.S.I. and as grounds for this Motion would submit as follows:

1. Sentencing in this matter is presently set for November 16, 2000 at 1:30 P.M.
2. Defendant has a lengthy history of mental health issues and is currently receiving psychiatric help from the Veterans Administration and is currently taking medication(s) for his psychiatric conditions
3. Undersigned counsel filed a Motion For Authorization with the Court in order to obtain authorization to utilize Family Institute for a mental health evaluation of Defendant and testimony and this Court granted such Motion through its Order dated October 30, 2000.
4. Family Institute has completed all steps necessary for preparation of its Report including but not limited to testing. However, Family Institute's Clinical Psychologist, W. Grady Ryan, PHD has been quite ill with influenza and bronchitis for approximately nine (9) days and is unable to

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34

physically dictate his Report and is not expected to be in adequate physical condition to give testimony on November 16, 2000 at sentencing.

5. Undersigned counsel was able to directly converse verbally with Dr. Ryan on November 14, 2000 and Dr. Ryan stated that his physicians, Sheldon S. Warman, M.D. and Martin Zfaz, M.D. would confirm Dr. Ryan's physical condition. In addition, Dr. Ryan advised the undersigned counsel in the foregoing November 14, 2000 conversation as follows that:

A. There is ample clinical data for the Court to consider a forensic decision that the Defendant qualifies for downward departure based upon reduced mental capacity as connected to the offense.

B. That his diagnosis is, inter alia, that Defendant is paranoid schizophrenic;

C. That Defendant, in Dr. Ryan's opinion, is a man who, inter alia, cognitively and perceptually has difficulty processing input with accuracy and who is driven by terror;

D. That Defendant, in Dr. Ryan's opinion has diminished mental capacity and faulty reasoning separate and apart from substance abuse.

6. Undersigned counsel cannot proceed with an appropriate Motion For Downward Departure and provide the Court with the forensic testimony of Dr. Ryan due only to Dr. Ryan's temporary physical illness.

7. Undersigned counsel submits that Defendant and undersigned counsel are in good faith regarding this matter and this Motion. Further, AUSA Kathleen Rice (and Tracey L. Webb, U.S. Probation Officer) have been on notice for months concerning the Defendant's presentation of the issue of mental health through pleadings, telephone discussions, the role of Family Institute and the filing by Defendant of a Notice Of Intent To File Motion For Downward Departure.

8. In light of the foregoing, undersigned counsel believes that it is in the interest of justice

to extend the sentencing date and to file objections to the P.S.I. In this regard, Defendant requests a fourteen (14) day extension.


9. Undersigned counsel has contacted AUSA Kathleen Rice and on November 14, 2000. Ms. Rice stated that she has no objection to this Court granting this Motion.

WHEREFORE, for the foregoing reasons the Defendant would request this Honorable Court grant this Motion To Continue Sentencing Date and postpone the Sentencing for a later time, or for any other relief this Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Motion To Continue Sentencing Date has been provided by U.S. Mail to AUSA Kathleen Rice, c/o the Office of the United States Attorney 500 E. Broward Boulevard, 7th Floor, Fort Lauderdale, Florida 33394-3002, and Tracey Webb, c/o U.S. Probation, 299 E. Broward Boulevard, Room 409, Fort Lauderdale, Florida 33301 this 14th day of November, 2000.

Respectfully submitted,
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By: 
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