

STATE OF MAINE
KENNEBEC,ss.

UNIFIED CRIMINAL DOCKET
AUGUSTA
DOCKET NO. CD-CR-15-592
CD-CR-16-302

STATE OF MAINE

v.

**ORDER OF COURT REGARDING
DEFENDANT'S COMPETENCY**

TRAVIS GERRIER,
Defendant

This matter was brought before the undersigned on December 5, 2016 with respect to counsel for Defendant's contention that the Defendant is presently not competent to stand trial for the offenses of Gross Sexual Assault, Class A, Unlawful Sexual Contact, Class B, and Furnishing Liquor to a Minor, Class D, the offenses being contained in an indictment bearing the Docket No. above, as well as the offenses of Tampering with a Victim, Class B, and Violation of Condition of Release, Class C in Docket No. Kenn. CD-CR-16-302. After hearing, the Court enters the following **Order** concerning Defendant's competency for the reasons set forth below:

1. Defendant is charged with Gross Sexual Assault, Unlawful Sexual Contact, and Furnishing Liquor to A Minor on or about 6/3/15 in Belgrade, Maine. Defendant is also charged with Tampering with a Witness, here the alleged victim in the offenses mentioned previously, and violating his conditions of release between 1/1/16 and 1/17/16 in Belgrade, Maine. Defendant has pleaded not guilty to all charges.

2. Defendant was set to enter a plea of guilty to some of the matters set out above on 8/11/16; however, before the plea was entered Defendant began "acting up" such that the plea proceeding was cancelled and the State withdrew its offer.

3. Thereafter Defendant was indicted on all charges on or about 9/23/16.

4. Defendant was evaluated by Dr. Andrew Wisch for the purposes of a psychological evaluation on 9/24/15, by Dr. Sarah Miller for the purposes of a psychosexual evaluation on 5/13/16, by Dr. Robert Riley for the purposes of a neuropsychological evaluation on 3/11 and 3/17/16, and most recently by Dr. Riley for the purposes of a competency evaluation on 10/28/16.

5. According to a letter from defense counsel dated 6/15/16 enclosing the first three evaluations for the undersigned's review, both Dr. Wisch and Dr. Riley had evaluated the Defendant "for competency...and found (the Defendant) competent..." *see* letter dated 6/15/16 for more details.¹

6. Dr. Wisch opined that Defendant's verbal skills were strong enough such that Defendant "should be able to learn and apply new information when it is presented at a pace that he can handle, repeated, and reinforced by a skilled therapist." Dr. Wisch also opined that Defendant as a result of his cognitive problems has a tendency to misunderstand new information and/or to say he understands it when he really does not. "As such, it will be important for his therapist to have him repeat back in his own words his understanding of new concepts as he learns them, correct any misinformation, and repeatedly reinforce the correct information." *See* Dr. Wisch's report dated 18/8/15 for more details.

7. Dr. Miller noted in her report that Defendant's attention and concentration were "adequate for purpose of the evaluation. His presentation suggested someone with limited intellectual functioning...(H)is insight into his limitations appeared good." Defendant indicated to Dr. Miller that he felt guilty after the instant offense as he "began to realize how old she was." He acknowledged that it was "the age difference is why I got in trouble" and that it "took me awhile to realize what I did was wrong..."

8. Dr. Riley noted in his report of 3/25/16 that the Defendant has had "numerous evaluations over the years, all of which demonstrated significant limitations in cognitive abilities, and evaluations of cognitive skills have demonstrated significantly lowered mental skills." The Defendant has "significant feelings of remorse regarding the incidents."

9. Dr. Riley in his report dated 11/10/16 noted Defendant's conduct in court in August of this year that resulted in the Court not proceeding with Defendant's expected plea to reduced criminal charges. Dr. Riley noted that Defendant the next day explained in part his behavior in court the day before as a result of Defendant being upset after Defendant was informed that Defendant might have to register on the sex offender registry for life. As a result of Defendant's actions in court the State withdrew its plea offer and decided to move forward on the much more serious sex offense charge that would result upon conviction in a 20 year "basic sentence." His attorney at that time "indicated that she was very concerned that, given the complexities of a more severe charge, potentially longer sentences, and potential trial procedures, that Mr. Gerrier would not be able to truly understand and participate in such complex proceedings..."

¹ There is no mention of concerns regarding Defendant's competency in Dr. Wisch's report, or in Dr. Miller's report, or in the initial report of Dr. Riley. The reports do confirm that Defendant has a long history of mental health issues and treatment along with limited cognitive and intellectual abilities. Defendant's dob is 5/3/94. Defendant has no previous criminal history.

10. "Defendant has continued to opine that if the alleged victim would tell people that the actions were consensual, then everything would be ok... even though it has been explained to him several times that an underage person could not consent to such activity." See Report of 11/10/16 at page 3, 4.

11. Defendant has also opined that it was important to him for the alleged victim "to tell the truth" (i.e. that the sexual encounter was consensual) so that "he would feel better, and so he would know whether or not she still cares about him."

12. Dr. Riley opined in his latest report that Defendant "had a limited understanding of a jury trial and the advantages or disadvantages of such a trial." The report evidences that Defendant has an understanding of the concept of a "plea bargain" as well as Defendant's understanding that there "had been a deal before I flipped out...and I had messed that up." Defendant also appeared aware of the general nature of the charge against him and that it was a serious charge.

13. Dr. Riley concludes in his latest report that Defendant "does appear to have some elementary skills associated with trial competence, including some factual understanding of his case." Dr. Riley also finds that because of the "complexity of the present situation, including the complexity of options of going to trial, accepting plea bargains, understanding sentencing options, and other more complex issues which have arisen, it does appear that his combination of intellectual disability, autism spectrum disorder, and significant mood issues do significantly impair his ability to demonstrate the full range of trial competence skills needed for this complex situation." See Report of 11/10/16 at page 9.

14. It is the undersigned's conclusion that defense counsel and Dr. Riley believe that Defendant is competent to enter a plea to a less serious offense, but is not competent when Defendant is facing the possibility of a conviction for a more serious offense that carries with it the potential for a decade-plus term of incarceration.

15. A competent defendant is one who is capable of understanding the nature and object of the charges against him, comprehending his own condition in reference thereto, and cooperating with counsel to conduct a defense in a rational and reasonable manner. *Haraden v. State*, 2011 ME 113, ¶ 7. Counsel cannot effectively assist his client when the client is unable to meaningfully communicate with counsel. *Id.* at ¶ 11.

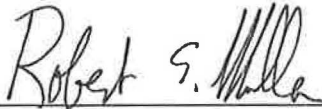
16. The factors in determining whether a defendant is able to assist counsel are set out in footnote 3 in the *Haraden* decision. This Court is free to find Defendant competent in the face of uncontradicted expert testimony opining otherwise; furthermore, it is well established that a defendant may be both mentally ill and competent to stand trial. *State v. Ledger*, 444 A.2d 404, 418-19 (Me. 1982); *Thursby v. State*, 223 A.2d 61, 68 (Me. 1966).

17. The undersigned after reviewing the factors set forth in *Haraden* with regard to the evidence presented at hearing finds that Defendant is competent to stand trial in this matter. Although imperfect to varying degrees depending upon what particular factor/function one considers, Court nevertheless finds that Defendant has demonstrated an ability to perform each function set forth in *Haraden*.

18. A defense attorney has the initial responsibility to alert a court to a defendant's possible incompetence. *State v. Dyer*, 371 A.2d 1079, 1086 (Me. 1977). The undersigned does not minimize the challenge of representing the ever-increasing number of defendants who have underlying mental health issues; nevertheless the undersigned has no concerns that the Defendant in this case is competent to stand trial in this matter, having demonstrated an ability, although admittedly imperfect, to understand the nature and object of the charges against him, comprehending his own condition in reference thereto, and cooperating with counsel to conduct a defense in a rational and reasonable manner.

SO ORDERED.

Date: 12/14/16

BY 
Robert E. Mullen, Deputy Chief Justice
Maine Superior Court