

STATE OF RHODE ISLAND

KENT, SC.

SUPERIOR COURT

[Filed: June 9, 2022]

STATE OF RHODE ISLAND

:
:
:
:
:

v.

C.A. No. K1-2021-0164A

JESSICA BREARD

DECISION

MATOS, J. Before this Court is Defendant Jessica Breard’s Motion to Dismiss. Jurisdiction is pursuant to G.L. 1956 § 8-2-15, as Ms. Breard is charged with felony offenses in the State of Rhode Island, and Rule 12 of the Superior Court Rules of Criminal Procedure.

I

Facts and Travel ¹

On April 22, 2020, West Warwick Police responded to Defendant Jessica Breard’s apartment for reports of sounds of glass breaking. (First Competency to Stand Trial Evaluation (First Competency Evaluation) 16:36-39.) When the police arrived, the fire alarms were sounding, smoke was coming from the windows of the apartment, and police observed a large amount of broken glass on the back lawn. *Id.* at 41-43. Police then knocked on the door of the apartment and encountered Ms. Breard “[i]n her normal manic state.” *Id.* at 17:2-4. Officers observed a fire coming from the stove in the kitchen area where clothing and paper towels were burning on top of the stove. *Id.* at 17:8-11. Ms. Breard stated that she did not know how the clothing got there, but

¹ The following facts are based on the information included in Ms. Breard’s two competency reports. These reports reference West Warwick Police Reports but do not include them as exhibits. There is no criminal information on the record because this case arises from a Grand Jury indictment.

that she was cold and wanted to get warm, and then she began apologizing for her actions. *Id.* at 17:12-15. As a result of this April 22, 2020 incident, Ms. Breard was charged with First Degree Arson and Interference in violation of G.L. 1956 § 11-4-2, and Interference with a Fire Alarm Apparatus in violation of §11-4-10. An Indictment followed on March 17, 2021.

On May 8, 2020, based on the examination of Barry Wall, M.D. (Dr. Wall), Ms. Breard was found “mentally incompetent to stand trial.”² (First Competency Evaluation 2). Ms. Breard was sent to Eleanor Slater Hospital (ESH) Female Forensic Unit for treatment. *Id.* at 15. At the November 6, 2020 competency conference, Ms. Breard showed modest improvements but remained incompetent. (Second Competency Evaluation 6.)

On May 24, 2021, Dr. Wall and Daniel Manfra, M.D. (Dr. Manfra) found Ms. Breard continued to be incompetent to stand trial. (Second Competency to Stand Trial Evaluation (Second Competency Evaluation) 1.) Dr. Wall and Dr. Manfra opined that “[Ms. Breard’s] competency is unrestorable” (Second Competency Evaluation 15.) Dr. Wall and Dr. Manfra stated that “[b]ecause she has chronic psychosis at baseline, she has once been recommended as nonrestorable.” *Id.* at 6. Specifically, Dr. Wall and Dr. Manfra’s report stated, “In our opinion, Ms. Breard is likely to imperil the peace and safety . . . of herself if left unsupervised. In our opinion, Ms. Breard will not regain competency within the maximum period of placement under R.I.G.L. § 40.1-5.3-3.” *Id.* at 2. On June 1, 2021, this Court accepted the findings of Dr. Wall and Dr. Manfra’s report, deemed Ms. Breard incompetent to stand trial, and continued the matter for semi-annual review. (Order, June 1, 2021 (McBurney, Mag.))

² While this is the first competency evaluation for this case, Ms. Breard has previously been found incompetent and non-restorable in another, unrelated case. (Second Competency Evaluation 6.) On June 30, 2014, Ms. Breard was first evaluated for competency to stand trial. *Id.* Eventually, on September 16, 2015, Ms. Breard was evaluated as non-restorable but able to be placed on outpatient status. *Id.*

On June 25, 2021, Ms. Breard filed a Motion to Dismiss accompanied by a memorandum in support of her motion. (Mot. to Dismiss 1; Mem. in Supp. Mot. to Dismiss (Mem. Mot. Dismiss.) 1.) On September 2, 2021, the State of Rhode Island (State) objected to Ms. Breard’s Motion to Dismiss. (State’s Obj. to Mot. Dismiss 1.) The State then submitted an Amended Objection to Ms. Breard’s Motion to Dismiss on September 27, 2021. (State’s Am. Obj. to Mot. Dismiss (State’s Am. Obj.) 1.) On January 12, 2022, Ms. Breard responded to the State’s objection with a second memorandum in support of her motion. (Second Mem. Supp. of Mot. Dismiss (Second Mem. Mot. Dismiss) 1.) On March 24, 2022, the State filed a supplemental memorandum in support of its objection to Ms. Breard’s motion to dismiss. (State’s Suppl. Mem. in Supp. of its Obj. to Def.’s Mot. to Dismiss (State’s Suppl. Obj. Mem.) 1.) This Court heard the parties’ arguments on March 25, 2022.

II

Standard of Review

When the court interprets a statute, its “ultimate goal is to give effect to the purpose of the act as intended by the Legislature.” *Alessi v. Bowen Court Condominium*, 44 A.3d 736, 740 (R.I. 2012) (quoting *Webster v. Perrotta*, 774 A.2d 68, 75 (R.I. 2001)). “[W]hen the language of a statute is clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.” *Id.* (quoting *Waterman v Caprio*, 983 A.2d 841, 844 (R.I. 2009)). “When [the Court] examine[s] an unambiguous statute, ‘there is no room for statutory construction and [the Court] must apply the statute as written.’” *State v. Menard*, 888 A.2d 57, 60 (R.I. 2005). In addition, “[i]t is axiomatic that ‘this Court will not broaden statutory provisions by judicial interpretation unless such interpretation is necessary and appropriate in carrying out the clear intent or defining the terms of the statute.’” *Id.*

III

Analysis

Ms. Breard argues that this Court should dismiss the charges against her “for lack of jurisdiction” because Ms. Breard has been found not competent to stand trial, and her competence is non-restorable. (Mem. Mot. Dismiss. 1.) Further, Ms. Breard argues that the Court should dismiss the charges against her “based on the United States’ Constitution 5th and 14th Amendments’ right to due process, the 6th and 14th Amendments’ right to a speedy trial, as well as Section 2 and Section 10 of Article 1 of the Rhode Island Constitution.” (Second Mem. Mot. Dismiss 1.) The State contends that Ms. Breard’s interpretation of the language of § 40.1-5.3-3 is misguided, and the plain language of § 40.1-5.3-3(j) addresses the constitutional concerns raised by Ms. Breard. (State’s Suppl. Obj. Mem. 6-7.) Specifically, the State argues that “the General Assembly has fashioned such a remedy, which prevents the indefinite period of commitment that would invoke due process concerns.” *Id.* at 4.

Section 40.1-5.3-3, entitled “Competency to Stand Trial,” outlines the process and consequences of a competency review. An individual is considered competent to stand trial under Rhode Island law if “he or she is able to understand the character and consequences of the proceedings against him or her and is able properly to assist in his or her defense.”³ Section 40.1-

³ The Rhode Island Supreme Court discussed the definition of competency in § 40.1-5.3-3(a)(2) and promulgated a similar three-part test: 1) that the defendant understands the nature of the charges brought against him; 2) that the defendant appreciates the purpose and object of the trial proceedings; and 3) that defendant has the mental capacity to reasonably and rationally assist his counsel in preparing and presenting a defense. *State v. Owen*, 693 A.2d 670, 671 (R.I. 1997). The Rhode Island Supreme Court has recognized that, “[u]nfortunately, there is no hard-and-fast rule for determining whether a defendant possesses the necessary mental capacity to ensure an adequate protection of his or her basic constitutional rights.” *State v. Buxton*, 643 A.2d 172, 175 (R.I. 1994). The Supreme Court has also acknowledged that “there are differing degrees and variations of mental illness, not all of which preclude criminal prosecution.” *See id.*

5.3-3(a)(2). If the Court finds that the defendant is incompetent to stand trial, the court is authorized to commit the defendant to an appropriate public or private facility. Section 40.1-5.3-3(h). However, this commitment is not permanent; the General Assembly provided for five instances in which a defendant must be released from commitment. Section 40.1-5.3-3(i)(3).

One of these five instances is outlined in § 40.1-5.3-3(i)(3)(v), which states, in pertinent part:

“The commitment ordered pursuant to [an incompetency finding] shall terminate upon the occurrence of . . . [t]he court [finding] there is no reasonable likelihood that in the foreseeable future the defendant will become competent and his or her condition is such that he or she cannot properly be committed under § 40.1-5-8.” Section 40.1-5.3-3(i)(3)(v.)

Once that finding is made, § 40.1-5.3-3(j) addresses the potential for the dismissal of pending charges:

“When a court commits a defendant pursuant to subsection (i)(2) or (i)(3), it shall compute, counting from the date of entry to the order of commitment, the date of the expiration of the period of time equal to two thirds (2/3) of the maximum term of imprisonment for the most serious offense with which the defendant is charged. If the maximum term for the most serious offense charged is life imprisonment or death, the court shall, for the purpose of computation, deem the offense to be punishable by a maximum term of thirty (30) years. In the order of commitment, the court shall provide that if, on the date so computed, the defendant is still committed under the order, the charges against him or her shall be dismissed.” Section 40.1-5.3-3(j).

In addition, § 40.1-5.3-3(m) allows that if the defendant is found incompetent to stand trial, “[t]he State may proceed with civil detention measures pursuant to § 40.1-5-8.” Section 40.1-5.3-3(m). Specifically, § 40.1-5.3-3(m) provides,

“If the court finds that the defendant is incompetent and that a reasonable likelihood does not exist that he or she will become competent **prior to the dismissal of the charges pursuant to subsection (j)**, it shall order that thirty (30) days thereafter the

defendant be discharged from detention under the order of commitment. Upon entry of the order, the state may commence proceedings seeking to commit the defendant pursuant to § 40.1-5-8.” Section 40.1-5.3-3(m) (emphasis added).

Defendant relies, in part, on *State v. Morin*, P1 82-2517A, 1992 WL 813491 (R.I. Super. Jan. 31, 1992) to support her request for dismissal. In that case, a paralyzed, speech-impaired and vision-impaired defendant had been confined for several years pending disposition of his criminal charges. *Morin*, 1992 WL 813491, at *7-8. After discussing the competency statute generally, the Court engaged in a brief analysis regarding dismissal of the defendant’s charges pursuant to the Court’s finding that the defendant was incompetent and nonrestorable. *Id.* at *8-9. Specifically, the Court found that under *Jackson v. Indiana*, 406 U.S. 715 (1972), the charges against the defendant should be dismissed. *Morin*, 1992 WL 813491, at *8 (citing *Jackson*, 406 U.S. at 717.) The Court recognized that the United States Supreme Court declined to dismiss the defendant’s charges in *Jackson* but went on to state that based on the constitutional concerns expressed *in dicta* in *Jackson*, the charges against the defendant should be dismissed. *Morin*, 1992 WL 813491, at *9 (citing *Jackson*, 406 U.S. at 717). Specifically, the court found that “[o]nce released, and for all practical purposes, the court loses jurisdiction over the defendant as the legislature failed to provide for any mechanism which would have allowed the court to maintain jurisdiction. *Id.* at *8.

The dismissal of the charges was not appealed to the Rhode Island Supreme Court. Instead, the State of Rhode Island sought to stay enforcement of the Superior Court Order. *See State v. Morin*, 606 A.2d 681, 682 (R.I. 1992). The Supreme Court addressed *Jackson* but only in the context of determining whether Morin’s continued confinement was warranted and denied the petition for stay. *Id.* (“This evidence . . . triggers the due-process principles enunciated in *Jackson* . . . These principles prevent the state from continuing to confine defendant in the forensic unit . . . without following civil commitment procedures.”) *Id.*

In *Jackson*, the United States Supreme Court examined an Indiana statute that permitted persons to be held indefinitely if they were found to be incompetent. *Jackson* 406 U.S. at 715-16. The defendant in *Jackson* had committed two small thefts, for a total amount of nine dollars, yet the defendant faced the potential of being held pretrial for the rest of his life on the grounds he had been found to be incompetent. *Id.* The defendant had no opportunity to be released or to challenge the charges against him, solely because the defendant could not be restored to competency. *Jackson*, 406 U.S. at 717. Ultimately, *Jackson* held that Indiana’s provisions for the indefinite institutionalization of incompetent defendants violated substantive due process because they did not bear any “reasonable” relation to the purpose for which the defendant was committed. *Id.* at 738. The Supreme Court did not hold that criminal charges must be dismissed against a non-restorable incompetent defendant, but did state, *in dicta*, that dismissal “has usually been thought to be justified on grounds not squarely presented here: [including] the denial of due process inherent in holding pending criminal charges indefinitely over the head of one who will never have a chance to prove his innocence.” *Id.* at 740.

Jackson stands for the principle that incompetent, non-restorable defendants may not be held indefinitely. *See Jackson*, 406 U.S. at 738; *Morin*, 606 A.2d at 682. In the instant case, the clear and unambiguous language of § 40.1-5.3-3(j) provides a mechanism for dismissal of charges if a defendant is deemed incompetent and not restorable to competence. Section 40.1-5.3-3(j). The statute creates a safeguard against the due process concern raised surrounding the indefinite commitment of incompetent defendants. The language of § 40.1-5.3-3(j) unambiguously states that “[t]he court shall provide that if, on the date so computed, the defendant is still committed under the order, the charges against him or her shall be dismissed.” Section 40.1-5.3-3(j). In addition, § 40.1-5.3-3(m) emphasizes that a determination of non-restorability is to be made in the

context of when the charges would be dismissed pursuant to subsection (j). According to the statute, commitment shall be discharged “if the court finds that the defendant is incompetent and that a reasonable likelihood exists that he or she will become competent prior to the dismissal of the charges pursuant to subsection (j).” Section 40.1-5.3-3(m). The operative analysis is based upon the eventuality of dismissal pursuant to subsection (j). *See* Second Competency Evaluation at 2 (“In our opinion, Ms. Breard will not regain competency within the maximum period of placement under R.I.G.L. § 40.1-5.3-3.”)

Hence, contrary to the holding in *Morin*, the statute specifically provides that the Court maintains jurisdiction until the statutory period expires, requiring dismissal. The plain language of the statute sets the durational limitation of the pendency of Ms. Breard’s charges, distinguishing this case from the indefinite detention concern raised in *Jackson*. Compare § 40.1-5.3-3(j) with *Jackson*, 406 U.S. at 717. According to the Competency Reports, Ms. Breard will not be able to stand trial and avail herself of her rights under the Sixth Amendment to the U.S. Constitution, and article I, section 15 of the Rhode Island Constitution. U.S. CONST. amend. VI; R.I. CONST. art. I, § 15. However, this likelihood is not fatal, and does not mandate dismissal, absent particular allegations of due process violations demonstrated by Ms. Breard. *See Jackson*, 406 U.S. at 717.⁴

The charges against Ms. Breard will not be pending indefinitely. According to § 40.1-5.3-3(j), Ms. Breard shall be entitled to dismissal of these charges upon the expiration of a twenty-year

⁴ Defendant, in her memorandum in support of her motion, does not explicitly demand a speedy trial but argues, generally, that the pendency of these charges violates her right to a speedy trial. However, at oral argument on this matter, counsel for defendant acknowledged that the present posture of the case tolled the Speedy Trial Act, by virtue of the incompetency proceedings. (Hr’g Tr. 13-17, Mar. 25, 2022.) Moreover, in this case, defendant has not made a particularized argument to support dismissal on speedy trial grounds. *See Barker v. Wingo*, 407 U.S. 514, 519-22 (1972); *State v. Oliveira*, 961 A.2d 299 (R.I. 2008).

period of commitment. Section 40.1-5.3-3(j) (“[p]eriod of time equal to two thirds (2/3) the maximum term of imprisonment.”). Therefore, this Court will not dismiss these charges pursuant to the due process concerns expressed in *Jackson*. 406 U.S. at 717.

IV

Conclusion

Having considered arguments by counsel, this Court holds that, for the foregoing reasons, Defendant’s motion to dismiss is DENIED.

IT IS SO ORDERED.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: State of Rhode Island v. Jessica Breard

CASE NO: K1-2021-0164A

COURT: Kent County Superior Court

DATE DECISION FILED: June 9, 2022

JUSTICE/MAGISTRATE: Matos, J.

ATTORNEYS:

For Plaintiff: John C. Malloy, Esq.

For Defendant: Susannah D. Cotter, Esq.