

IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

STATE OF OHIO	)	CASE NO. CR 78 042182
	)	
Plaintiff	)	JUDGE JOHN P. O'DONNELL
	)	
-vs-	)	<b><u>JOURNAL ENTRY AND ORDER</u></b>
	)	
ANTHONY HAYES	)	
	)	
Defendant	)	

*John P. O'Donnell, J.:*

On June 6, 1979, the defendant Anthony Hayes was found not guilty by reason of insanity of the aggravated murder of his son, Antonio Hayes. He was thereafter found to be a mentally ill person subject to civil commitment and has been in a psychiatric hospital or prison<sup>1</sup> since. His most recent commitment, starting March 9, 2007, has been to the maximum security Timothy B. Moritz forensic unit of Twin Valley Behavioral Healthcare's Columbus psychiatric hospital.

Twin Valley, through correspondence to the court of February 25, 2008, by its director of patient services, Karen E. Woods-Nyce, has requested that the defendant remain civilly committed but be moved to the less restrictive setting of Northcoast Behavioral Healthcare's Northfield campus. That request was supported by a 12-page report, dated February 19, 2008, of an evaluating psychiatrist, Delaney Smith, M.D. Pursuant to Ohio Revised Code section 2945.401(D)(1)(a) the prosecutor sought a hearing on the recommendation. That hearing was held May 6, 2008.

Delaney Smith, M.D. testified at the hearing. Her February 19 report was admitted as evidence with the cover correspondence from Ms. Woods-Nyce. The defendant also testified.

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<sup>1</sup> While hospitalized in 1990 the defendant assaulted another patient. He was found guilty by a separate court of felonious assault and spent about 15 years in prison.

The evidence at the hearing showed that the defendant has certain “static” risk factors for violence. These are risk factors that will always be there and include his history of violence, his military training and his paranoid schizophrenia. These factors will exist no matter where the defendant is hospitalized. He also has “dynamic” risk factors that can change with treatment. These include his insight into his mental illness and the effectiveness of his anti-psychotic medicine. Dr. Smith testified that these factors have changed for the better since the last time she evaluated him in August, 2007 (when she thought that he should not be moved to a less restrictive setting).

Dr. Smith described the conditions of the defendant’s current confinement and agreed that, if so inclined, he has significant opportunity at Twin Valley to engage in acts of violence toward staff and other patients. At Northcoast those opportunities would also exist, although possibly to a greater extent because of exposure to more staff and more fellow patients. At both institutions the defendant would be locked away from the general public.

O.R.C. section 2945.401(G) provides, in pertinent part:

(G) In a hearing held pursuant to division (C) or (D)(1) of this section, the prosecutor has the burden of proof as follows: . . .

(2) For a recommendation for a change in the conditions of the commitment to a less restrictive status, to show by clear and convincing evidence that the proposed change represents a threat to public safety or a threat to the safety of any person.

Based upon the evidence, the state did not prove by clear and convincing evidence that the proposed change in the terms of the defendant’s confinement represents a threat to public safety or to the safety of any person. The public is safe from the defendant whether he is at Twin Valley or Northcoast. As to “any person,” the threat the defendant represents to patients and staff at Twin Valley is essentially the same as he would represent to patients and staff at

Northcoast, and the therapeutic environment at Northcoast may even be conducive to reducing the threat of violence to those around him.

Therefore, the recommendation for movement to a less restrictive setting is approved. The sheriff is ordered to transport the defendant to Northcoast Behavioral Healthcare's Northfield campus upon notice from the forensic liaison that a treatment bed is available.

**IT IS SO ORDERED.**

\_\_\_\_\_  
Date

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JOHN P. O'DONNELL, JUDGE