

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

STATE OF OHIO,)	CASE NO. CR 07 504064/504448
)	
Plaintiff)	JUDGE JOHN P. O'DONNELL
)	
-vs-)	<u>JOURNAL ENTRY AND ORDER</u>
)	
NICHOLAS MURRELL,)	
)	
Defendant)	

On December 3, 2007, in case number 504064, Nicholas Murrell was indicted on two separate counts of aggravated robbery, two separate counts of felonious assault, and two separate counts of robbery. On December 10, 2007, he was indicted in case number 504448 on one count of attempted abduction.

After a hearing on January 31, 2008, the defendant was found incompetent to stand trial and was referred to Northcoast Behavioral Healthcare for restoration to competency. The initial restoration period was for four months since the court was then unable to determine whether there was a substantial probability that the defendant could be restored to competency.¹ Ultimately, on October 14, 2008, Northcoast's chief clinical officer, Muhammaed Momen, M.D., corresponded to the court with an opinion that the defendant could not be restored to competency. Hence, a hearing pursuant to O.R.C. 2945.38 and 2945.39 was held on October 27, 2008.

¹ See O.R.C. 2945.38(B)(1)(a).

At the hearing the following items were admitted into evidence: the October 14, 2008, one-page correspondence of Dr. Momen to the court; and the October 14 seven-page report of Alice Cook, Ph.D., who evaluated the defendant at Northcoast. Dr. Cook also testified.

Ohio Revised Code sections 2945.38 and 2945.39 provide, in pertinent part, as follows:

2945.38 Competence to stand trial.

* * *

(H) If a defendant is committed pursuant to division (B)(1) of this section, within ten days after the treating physician of the defendant or the examiner of the defendant who is employed or retained by the treating facility advises that there is not a substantial probability that the defendant will become capable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense even if the defendant is provided with a course of treatment . . .the court shall conduct another hearing to determine if the defendant is competent to stand trial and shall do whichever of the following is applicable:

* * *

(3) If the court finds that the defendant is incompetent to stand trial, if the defendant is charged with an offense listed in division (C)(1) of this section, and if the court finds that there is not a substantial probability that the defendant will become competent to stand trial even if the defendant is provided with a course of treatment. . .further proceedings shall be as provided in sections 2945.39, 2945.401 , and 2945.402 of the Revised Code.

2945.39 Expiration of the maximum time for treatment for incompetency.

(A) If a defendant who is charged with an offense described in division (C)(1) of section 2945.38 of the Revised Code is found incompetent to stand trial. . . after the court finds that there is not a substantial probability that the defendant will become competent to stand trial even if the defendant is provided with a course of treatment, one of the following applies:

* * *

(2) On the motion of the prosecutor or on its own motion, the court may retain jurisdiction over the defendant if, at a hearing, the court finds both of the following by clear and convincing evidence:

(a) The defendant committed the offense with which the defendant is charged.

(b) The defendant is a mentally ill person subject to hospitalization by court order or a mentally retarded person subject to institutionalization by court order.

* * *

(C) If the court conducts a hearing as described in division (A)(2) of this section and if the court does not make both findings described in divisions (A)(2)(a) and (b) of this section by clear and convincing evidence, the court shall dismiss the indictment, information, or complaint against the defendant. Upon the dismissal, the court shall discharge the defendant unless the court or prosecutor files an affidavit in probate court for civil commitment of the defendant pursuant to Chapter 5122. or 5123. of the Revised Code. If the court or prosecutor files an affidavit for civil commitment, the court may order that the defendant be detained for up to ten days pending the civil commitment. If the probate court commits the defendant subsequent to the court's or prosecutor's filing of an affidavit for civil commitment, the chief clinical officer of the hospital or facility, the managing officer of the institution, the director of the program, or the person to which the defendant is committed or admitted shall send to the prosecutor the notices described in divisions (H)(4)(a)(i) to (iii) of section 2945.38 of the Revised Code within the periods of time and under the circumstances specified in those divisions. A dismissal of charges under this division is not a bar to further criminal proceedings based on the same conduct.

Based upon the evidence described above, the court finds that the defendant is incompetent to stand trial and that there is not a substantial probability that the defendant will become competent to stand trial even if provided with a continued course of treatment.² The court further finds no evidence that the defendant is a mentally ill or mentally retarded person subject to institutionalization by court order and therefore declines to retain jurisdiction pursuant to O.R.C. 2945.39(A)(2). Therefore, pursuant to O.R.C. 2945.39(C), the indictments are dismissed. The defendant will be discharged ten days from the date of this entry unless the prosecutor files an affidavit for civil commitment in probate court. The defendant's current bond

² The maximum period of competency restoration for the charged offenses is one year. See O.R.C. 2945.38(C). Since the referral to competency restoration was on January 31, 2008, and restoration efforts were suspended no later than October 14, the maximum time for competency restoration has not expired.

includes a condition of court-supervised release. Since the prosecutor has ten days to file an affidavit in probate court, the bond and court-supervised release are to continue for ten days past the date of this entry.

IT IS SO ORDERED.

John P. O'Donnell, Judge

Date: _____

SERVICE

A copy of this Journal Entry was sent by regular U.S. mail, this ____ day of March, 2009,
to the following:

Angela Thomas, Esq.
Assistant Cuyahoga County Prosecuting Attorney
1200 Ontario Street, 9th Floor
Cleveland, Ohio 44113
Attorney for Plaintiff

Charles Swanson, Esq.
1370 Ontario Street
Suite 1800
Cleveland, Ohio 44113
Attorney for Defendant

Judge John P. O'Donnell