

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS.

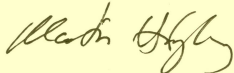
SUPERIOR COURT

GRANTED AS FOLLOWS: The March 21, 2022, jury selection has been canceled and will need to be rescheduled after a new appearance is filed for the Defendant. The postponement is due to no fault of the State or of the Court.

218-2019-CR-01132

State of New Hampshire

Clerk's Notice of Decision
Document Sent to Parties v.
on 02/17/2022



Honorable Martin P. Honigberg

February 16, 2022

Brandon Castiglione

STATE'S EXPEDITED MOTION TO CLARIFY SCHEDULING

NOW COMES the State of New Hampshire, by and through its attorneys, the Office of the Attorney General, and asks this Honorable Court to clarify its February 7, 2022 Interim order on Status of Counsel. In an effort to ensure witnesses are available, the State asks that the Court issue an additional order clarifying whether the trial remains scheduled for jury selection on March 21, 2021 when the Court has ordered the defendant apply for counsel and scheduled a status of counsel hearing for March 1, 2022. In support thereof, the State sets forth as follows:

1. Trial in this matter is scheduled for jury selection and the beginning of trial on Monday, March 21, 2022. Trial was originally scheduled in February of 2022 pursuant to the defendant's Structuring Proposal, to which the State assented. Due to the unavailability of prior counsel for the defendant, and the defendant's own decision to reassign the case within the Public Defender's Office, the trial was continued approximately one month to the March date noted above.

2. Throughout the months of December and January, the defendant filed several motions on the status of his counsel. This included an ex parte hearing on January 11, 2022. The January 11th hearing was originally scheduled as a hearing on the defendant's motions to compel discovery, filed as far back as July of 2021.¹ Instead, an ex parte hearing was held, again at the defendant's own request, and the motions hearing was abandoned and continued to a further date.

3. Between April 2021 and the present, the defendant has been assigned four separate attorneys from the New Hampshire Public Defender's office, and filed multiple ex parte pleadings for status of counsel hearings. The State is not privy to the information contained within those pleadings, nor the defendant's or counsel's representations during the multiple hearings held on said pleadings. At most, the State can infer from being present in Court on January 11, 2022, that the defendant may be representing that he has been denied his right to a speedy trial.

4. On February 15, 2022, the State received a copy of the Court's Interim Order on Status of Counsel, dated February 7, 2022. Presumably at the defendant's own request, the defendant is now being afforded an opportunity to apply for and be appointed new counsel, or, in the alternative, to represent himself. The State received this notice just 34 days before jury selection is scheduled to begin, and the next scheduled hearing on the status of counsel is now on March 1, 2022, just 20 days before trial is scheduled to begin.

5. The State submits that if trial counsel is appointed, it is highly unlikely that counsel will agree to the appointment to represent the defendant against the charge of Second Degree Murder and be ready to proceed in less than three weeks, or that such a quick turnaround time can be done while providing effective assistance of counsel. Should the defendant elect to represent himself, the court would presumably assign standby counsel. Again, the State submits that it is highly unlikely that counsel will agree to such appointment with such little time to adequately prepare against charges of Second Degree Murder. The State also submits that

¹ The State filed timely objections to those motions. Despite the best scheduling of the Court, the defendant has raised the status of his counsel at each hearing scheduled to address and resolve these motions over the last six months.

responsibility for this timeline rests entirely with the defendant's choice of representation, and not as a result of the actions of either the State or the Court.

6. Given the defendant's choices in this matter, the State asks for clarification from the Court whether trial is still scheduled to begin on March 21, 2022. The Court can see from the State's witness list that the scheduling of trial impacts many individuals. The State is unclear whether the Court's Interim Order will or will not impact the scheduled trial date, and needs to be made aware to either proceed with arrangements for witnesses to be available for trial as scheduled on March 21, 2022, and for counsel's trial preparations.

WHEREFORE, the State of New Hampshire humbly asks this Honorable Court to:

- A. CLARIFY whether the Court's Interim Order on Status of Counsel impacts the scheduled trial date of March 21, 2022, and if so, to what effect;
- B. Clarify and acknowledge that any postponement of the trial date is not due to any fault of the State or the Court;
- C. Issue an expedited order on the State's requests in light of the close proximity to trial as currently scheduled; and
- D. Grant any such further relief that this Honorable Court deems to be just and proper.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

By its attorney,

JOHN M. FORMELLA
ATTORNEY GENERAL

Date: February 16, 2022

/s/ Benjamin J. Agati

Benjamin J. Agati, Bar #16161
Senior Assistant Attorney General

/s/ Adam L. Woods

Adam L. Woods, Bar #265354
Attorney

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent via to the defendant via U.S. Mail as he currently has elected to appear *pro se* in this matter.

/s/ Benjamin J. Agati

Benjamin J. Agati