

State of New Hampshire

HILLSBOROUGH, SS.

HILLSBOROUGH SUPERIOR COURT
SOUTHERN DISTRICT
DOCKET NO.: 226-2019-CR-814

Granted

Tina L. Nadeau

Honorable Tina L. Nadeau

March 23, 2023

STATE

v.

DALE E. HOLLOWAY, JR.,
Defendant

DEFENDANT'S MOTION FOR CONTINUANCE OF CRIMINAL MEDIATION

NOW COMES DEFENDANT, Dale E. Holloway, Jr. (hereinafter "Defendant"), in the above-captioned matter and respectfully moves this Honorable Court to continue the Criminal Mediation that is scheduled for March 24, 2023, to a further date, for the reasons hereinafter set forth.

As grounds therefor, Defendant hereby submits as follows:

1. A Criminal Mediation hearing in this matter is scheduled for March 24, 2023.
2. Dr. Eric Mart, the mental health expert had previously scheduled an evaluation of the Defendant for the morning of February 13, 2023.
3. Dr. Mart was unable to conduct the February 13, 2023, mental health evaluation.
4. The reason that Dr. Mart was unable to conduct his evaluation is because the New Hampshire Department of Corrections will not provided adequate accommodations necessary for him to conduct his evaluation in accordance with the American Psychological Association. (**See Exhibit 1**).
5. As a result, Counsel raised this issue with the court on February 13, 2023, and it was agreed that that a possible resolution for this was to transport Mr. Holloway to the Court where an evaluation could take place.
6. Counsel reached out to Dr. Mart and requested dates when he would be available to travel to the court and conduct an evaluation.

7. Dr. Mart indicated to counsel that he has available dates to conduct such an evaluation from May 1-3, 2023.
8. As a result, counsel filed a motion transport the Defendant to the courthouse on one of those days to conduct his evaluation.
9. The State takes no position on this Continuance motion.
10. The State has objected to the motion requesting that he be transported as untimely and unnecessary.
11. The ongoing complications getting a mental health evaluation is not the fault of the defendant nor a result of a lack of effort on part of his counsel. **(See Exhibit 1)**.
12. Defendant asserts that the issues that have complicated this ability to conduct the evaluation are systemic in nature and a direct result of the policies and procedures employed by the New Hampshire Department of Corrections. **(See Exhibit 1)**
13. Denying the Defendant, the right to be evaluated for mental defects or illness that are directly related to his charges is a violation of due process codified in the New Hampshire Constitution and the Constitution of the United States.
14. Defendant is now requesting this Court to reschedule the criminal mediation to a further date.
15. Defendant requests that the clerk contact the parties via email to schedule a date that will work for all parties.
16. Neither the State of New Hampshire nor the Court shall be prejudiced by this request.

WHEREFORE, based upon the foregoing reasons, Defendant hereby requests that this Honorable Court:

- A. Reschedule said criminal mediation Hearing, which is scheduled for March 24, 2023
- B. That the Clerk contact counsel for Defense and the State before scheduling a new Criminal Mediation date in this matter; and
- C. Grant any such other relief as may be proper and just.

Dated: March 23, 2023

Respectfully submitted,

Dale Holloway,
By his Attorney,

/s/ John G. MacLachlan

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CERTIFICATION

I hereby certify that a copy of the foregoing pleading has this day been sent to counsel for the State via the electronic filing system.

/s/ John G. MacLachlan

John G. MacLachlan, Esq.

EXHIBIT 1

John Maclachlan

From: Eric <emart@comcast.net>
Sent: Monday, February 13, 2023 11:22 AM
To: John Maclachlan
Subject: Dale Holloway

Dear Attorney MacLachlan:

I just spent three hours attempting to evaluate your client over at the State Prison. In fairness, the warden and the tech support person have been very helpful and cooperative and have gone out of their way to set up the meeting. However, the telehealth setup is completely inadequate.

I had been informed that I could not give Mr. Holloway screen control so that he could take certain tests I wanted to give him. What I was not told was that I can't even show him my screen.. What they appear to have is either a video camera or a iPad or Kindle fire bolted to the wall.

This means I can't show him any of the questions from the IQ tests, neuropsychological assessment tools or personality tests that I think are essential for an adequate assessment.

You are probably aware that different correctional facilities in the state of New Hampshire have different setups for this type of thing.

Some of the county jails have laptops with which I can give the inmate screen control and they can simply take the tests as they were intended to be given. Others at least allow me to share my screen. In this case, I was able to interview Mr. Holloway but I had to read him the Personality Assessment Inventory because there was no way to show it to him. This is a nonstandard administration and there is no question in my mind that if I reached conclusions that were helpful to your case, I would be attacked for nonstandard administration of the test. Under these circumstances, checking out Mr. Holloway for neuropsychological dysfunction, low intellectual abilities and other potentially relevant factors is impossible.

I think it's important to point out that from my perspective, there is a built in bias against defense experts in the New Hampshire system. For example, if a judge orders an individual to be evaluated by the Office of the Forensic Examiner it is my understanding that law enforcement personnel transport the inmate down to their office and provide security during the evaluation. I seriously doubt that they would bring Mr.

Holloway to my office if you requested it. They also take inmates under guard to Concord Hospital when necessary, but apparently psychologists who are engaged by defense attorneys are not entitled to such assistance. Additionally, if I were willing to go to the jail to do the evaluation (which I am not, I am a 67-year-old man with a heart condition) the conditions would also be unacceptable. The last time I was there the cubicle they used for attorney-client visits and presumably court ordered psychological evaluations does not take place in a private room. It takes place in a screened off area in the main visitation lounge which creates problems with confidentiality as well as noise.

I am more than prepared to write you a letter detailing these concerns so that you can present it to the court of jurisdiction. Frankly, should you decide to raise the issue of Mr. Holloway's mental state at time of the offense, I would be happy to write a supporting letter detailing my problems and citing the appropriate ethical standards from the American Psychological Association. Right now, my wife is out of the office running some errands so the line was closed but you can feel free to call me at 603-812-3771 (cell phone) so that we can discuss how to proceed.

Regards,

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