

# APPENDIX

A

AMENDED

STATE OF WISCONSIN, CIRCUIT COURT, EAU CLAIRE COUNTY

For Official Use

State of Wisconsin, Plaintiff,  
-vs-

Bill Marquart, Defendant  
Name

12-17-75 Date of Birth

Order of Commitment for  
Institutional Care  
(Not Guilty by Reason of  
Mental Disease or Defect)

Case No. 00CF137

FILED  
CIRCUIT COURT  
COUNTY  
JUN 02 2003

DIANA J. MILLER  
CLERK OF CIRCUIT COURT

THE COURT FINDS:

1. The defendant was found not guilty by reason of mental disease or defect of the following crime(s):

Crime(s)

6 Counts-Mistreatment of Animals/Cause Harm  
2 Counts Felon Possess Firearm  
1 Count of Aggravated Burglary

Wis. Statute(s) Charged

951.02  
941.29(2)(a)  
943.10(2)(a)

Date(s) Occurred

03-13 to 3-15-00  
03-13 to 3-15-00  
03-13 to 3-15-00

2. The total maximum term of incarceration for the crime(s) is:

life incarceration  life incarceration plus \_\_\_\_\_ years.  204 years, \_\_\_\_\_ months.

3. A hearing has been conducted and the court determines that conditional release would pose a significant risk of bodily harm to the defendant or to others, or of serious property damage.

4. The involuntary administration of psychotropic medications is needed, given the legitimate needs of institutional confinement, because:

a. The defendant poses a current risk of harm to self or others if not medicated.

b. The administration of medication is in the defendant's medical interest, and

c. The defendant is not competent to refuse psychotropic medication or treatment due to:

mental illness,  developmental disability,  alcoholism,  drug dependence, because

the defendant is incapable of expressing an understanding of the advantages and disadvantages of accepting psychotropic medication or treatment and the alternatives; or,

the defendant is substantially incapable of applying an understanding of the advantages, disadvantages and alternatives to his or her mental illness, developmental disability, alcoholism or drug dependence in order to make an informed choice as to whether to accept or refuse psychotropic medication or treatment.

5. The crime (or, if more than one, at least one of them) is a felony and the court has informed the defendant of the requirements and penalties under §941.29, Wisconsin Statutes, that possession of a firearm is a Class E felony with a penalty of a fine not to exceed \$10,000 or imprisonment not to exceed 5 years, or both.

THE COURT ORDERS:

1. The defendant is committed to the Department of Health and Family Services for institutional care for:  75 years, 0 months, 0 days, which is not more than two-thirds of the maximum term authorized by Wisconsin Statutes, had the defendant been convicted of the offense.

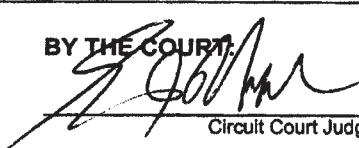
life.

This commitment shall commence on (date) 04-07-2003. The defendant is entitled to 3yr 6mo days credit for time in custody.

2. If the defendant is not competent to refuse psychotropic medication or treatment, whoever administers the medication or treatment to the defendant shall observe appropriate medical standards.

3. The sheriff of the county shall transport the defendant to the Department's designated institution:

BY THE COURT:

  
Circuit Court Judge/Clerk of Court

Eric Wahl

Name Printed or Typed

06-02-2003

Date

Distribution:

- Court (Original)
- District Attorney
- Defense Attorney
- Department of Health and Family Services *fordef*
- Sheriff (of county of defendant's residence)
- §51.42 Board (of county of defendant's residence)

# APPENDIX

## B

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
OCALA DIVISION

**BILL PAUL MARQUARDT,**

**Petitioner,**

v.

**Case No: 5:16-cv-590-Oc-10PRL**

**SECRETARY, FLORIDA  
DEPARTMENT OF CORRECTIONS  
and FLORIDA ATTORNEY GENERAL**

**Respondents.**

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**ORDER**

This matter is before the Court on the motion of Petitioner's counsel to file an amended habeas petition on behalf of Petitioner (Doc. 45) and to stay these proceedings pending restoration of Petitioner's competency and exhaustion of his post-conviction remedies in state court. (Doc. 46).

Petitioner is currently represented by attorneys with the Office of Capital Collateral Regional Counsel – Middle Region, and has been since May of 2015. Throughout these proceedings, Petitioner has repeatedly attempted to fire his attorneys and proceed *pro se*. (See Docs. 3, 10, 21, 30, 31, 47). The Court has denied those requests due (in part) to ongoing competency proceedings in state court, as well as counsel's efforts to pursue and preserve all of Petitioner's claims in this court. (Docs. 27, 42). Accordingly, and for the reasons set forth in the District Judge's most recent Order (Doc. 42), Petitioner's renewed motion to fire his counsel (Doc. 47) is due to be **DENIED**.

According to counsel, Petitioner's initial petition, which was filed *pro se*, fails to include all of his potential federal claims. Counsel seeks leave to file an amended habeas petition on

behalf of Petitioner, which includes his post-conviction claims, as well as direct appeal claims. The proposed petition (attached as an exhibit) asserts seventeen grounds, twelve of which are unexhausted. Because this is a mixed petition (i.e., it contains both exhausted and unexhausted claims), counsel requests that the amended petition be stayed until such time as Petitioner is competent and has fully exhausted his state post-conviction claims. Respondents have not filed a response in opposition, and thus, the Court assumes that they do not oppose the requested relief.

In *Rhines v. Weber*, 544 U.S. 269 (2005), the Supreme Court held that "district courts have discretion to employ, in limited circumstances, 'stay and abeyance' procedures to hold a § 2254 petition in abeyance while the petitioner exhausts his previously-unexhausted claims." *King v. Chase*, 384 Fed. Appx 972, 975 (11th Cir. 2010) (citing *Rhines v. Weber*, 544 U.S. at 275-77). Stay and abeyance is only appropriate if: "(1) the petitioner had good cause for his failure to exhaust his claims; (2) the unexhausted claims are not plainly meritless; and (3) there is no indication that the petitioner engaged in abusive litigation practices or intentional delay." *Id.* (quoting *Rhines*, 544 U.S. at 277-78). If a petitioner meets these conditions, "it likely would be an abuse of discretion for a district court to deny a stay and to dismiss a mixed petition." *Id.* (quoting *Rhines*, 544 U.S. at 278).

Here, all of the conditions are met. First, there is no dispute that Petitioner's ongoing competency and mental health issues played a part in his premature filing of his incomplete federal habeas petition. There is no suggestion that his failure to exhaust was a dilatory tactic or an otherwise abusive litigation practice. Moreover, Petitioner's unexhausted claims are not plainly meritless. For example, the amended petition asserts that: (1) Petitioner was tried while incompetent to proceed; (2) he received ineffective assistance of counsel; (3) the State committed prosecutorial misconduct and Brady violations; and (4) newly discovered evidence casts doubts

about his guilt. In addition, because (according to counsel, see Doc. 46, p.5) Petitioner has only 14 days remaining on his federal habeas clock, he may be at risk of losing his chance of federal review of his claims without an order staying his petition. *See, e.g., Talbot v. Jenkins*, No. 09-cv-28-bbc, 2010 WL 2900349, at \*4 (W.D. Wis. July 21, 2010) ("[T]his court generally deems 30 days to be a sufficient time period within which a petitioner should be able to re-file a perfected habeas petition after exhausting his state court remedies").

Accordingly, Petitioner's motion for leave to file an amended petition (Doc. 45) is **GRANTED**. The Clerk is **directed** to docket the amended petition (Doc. 45, Ex. A) as a separate docket entry. Petitioner's Motion to Stay and Hold Proceedings in Abeyance Pending Restoration of Competency and Exhaustion of Remedies (Doc. 46) is **GRANTED**, and this case is **STAYED** pending final resolution of the pending state court post-conviction proceedings. Petitioner, through counsel, shall file a motion to reopen this case within **30 days** after a final decision has been rendered regarding the pending state court post-conviction proceedings.<sup>1</sup> The failure to do so could result in the dismissal of this case without further notice. Lastly, Petitioner's counsel shall file a status report with the Court every 90 days.

**DONE** and **ORDERED** in Ocala, Florida on April 4, 2017.



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PHILIP R. LAMMENS  
United States Magistrate Judge

Copies furnished to:  
Counsel of Record  
Unrepresented Parties

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<sup>1</sup> The Court stresses that the filing must be in the form of a motion, otherwise the docket will not reveal that the case is in need of renewed attention.

**Leahy, Matthew**

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**From:** cmecl\_flmd\_notification@flmd.uscourts.gov  
**Sent:** Thursday, April 06, 2017 3:48 PM  
**To:** cmecl\_flmd\_notices@flmd.uscourts.gov  
**Subject:** Activity in Case 5:16-cv-00590-WTH-PRL Marquardt v. Secretary, Florida Department of Corrections et al Order on Motion for Leave to File

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**U.S. District Court**

**Middle District of Florida**

**Notice of Electronic Filing**

The following transaction was entered on 4/6/2017 at 3:48 PM EDT and filed on 4/6/2017

**Case Name:** Marquardt v. Secretary, Florida Department of Corrections et al

**Case Number:** 5:16-cv-00590-WTH-PRL

**Filer:**

**Document Number:** 51

**Docket Text:**

**ORDER granting [45] Motion for Leave to File an Amended Petition; The Clerk is directed to docket the Amended Petition (Doc. 45, Ex. A) as a separate docket entry; granting [46] Petitioner's Motion to Stay and Hold Proceedings in Abeyance Pending Restoration of Competency and Exhaustion of Remedies; this case is STAYED pending resolution of the pending state court post-conviction proceedings; Petitioner, through counsel, shall file a motion to reopen the case within 30 days after a final decision has been rendered regarding the pending state court post-conviction proceedings; Petitioner's counsel shall file a status report with the Court every 90 days; denying [47] Petitioner's Renewed Motion to Terminate Counsel. Signed by Magistrate Judge Philip R. Lammens on 4/6/2017. (JEB)**

**5:16-cv-00590-WTH-PRL Notice has been electronically mailed to:**

Maria E. DeLiberato deliberato@ccmr.state.fl.us, support@ccmr.state.fl.us

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**5:16-cv-00590-WTH-PRL Notice has been delivered by other means to:**

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] [296b32b175ecf3428962062eda12a6852d40ca7d2edf1d1b9332284b7a293cc429e  
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