[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-14236
Non-Argument Calendar

D.C. Docket No. 5:14-cr-00077-CDL-CHW-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DANIEL ERIC COBBLE,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Georgia

(October 7, 2019)

Before TJOFLAT, JILL PRYOR and ANDERSON, Circuit Judges.

PER CURIAM:

In this interlocutory appeal, Daniel Eric Cobble challenges the district court's order directing his standby counsel to represent him for all pre-trial matters

and rescinding his ability to represent himself *pro se* for pre-trial matters. He contends that before entering the order the district court had to find that he was not competent to represent himself.[1]

The "Sixth and Fourteenth Amendments include a 'constitutional right to proceed without counsel when' a criminal defendant 'voluntarily and intelligently elects to do so.'" *Indiana v. Edwards*, 554 U.S. 164, 170 (2008) (quoting *Faretta v. California*, 422 U.S. 806, 807 (1975). We have not yet had occasion to determine whether a district court may impose the sort of restriction the court has imposed here on an accused who insists on representing himself.

In *Gomez-Rosario*, the First Circuit approved of restrictions on a *pro se* criminal defendant similar to those imposed on Cobble. *See United States v. Gomez-Rosario*, 418 F.3d 90, 97-99 (1st Cir. 2005) (persuasive authority). There, the accused although represented by counsel, filed approximately 95 *pro se* motions in a one-year span, many of which were "quite long and packed with muddled, contradictory, meritless legal argument." *Id.* at 96-97. When he requested leave to proceed *pro se*, the district court allowed him to do so only if his

[1] We have jurisdiction over this interlocutory appeal pursuant to the collateral order doctrine. *See Devine v. Indian River County Sch. Bd.*, 121 F.3d 576, 580-81 (11th Cir. 1997), *overruled in part on other grounds by Winkelman ex rel. Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516 (2007).

attorney served as standby counsel and reviewed and screened his motions, approving those the attorney deemed appropriate. *Id.* at 98.

The First Circuit approved of the condition the district court imposed, concluding that it did not violate his Sixth Amendment right to self-representation. *Id.* at 100. The accused was still able to represent himself, address the district court, such that standby counsel did not "so interfere with his right to self-representation as to effectively render his right to self-representation meaningless." *Id.* (quotation omitted).

The district court did not err in precluding Cobble from representing himself in pretrial matters without first finding him incompetent. The motions Cobble was filing constituted an abuse of the judicial process court. The court entered the order in the exercise of is inherent power to manage the case.

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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November 19, 2019

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 18-14236-EE
Case Style: USA v. Daniel Cobble
District Court Docket No: 5:14-cr-00077-CDL-CHW-1

The enclosed order has been entered on petition(s) for rehearing.

See Rule 41, Federal Rules of Appellate Procedure, and Eleventh Circuit Rule 41-1 for information regarding issuance and stay of mandate.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Elora Jackson, EE/lt
Phone #: (404) 335-6173

REHG-1 Ltr Order Petition Rehearing

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-14236-EE

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

DANIEL ERIC COBBLE,

Defendant - Appellant.

Appeal from the United States District Court
for the Middle District of Georgia

BEFORE: TJOFLAT, JILL PRYOR and ANDERSON, Circuit Judges.

PER CURIAM:

The Petition for Panel Rehearing filed by the Appellant is DENIED.

ORD-41

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

November 27, 2019

Clerk - Middle District of Georgia
U.S. District Court
475 MULBERRY ST
MACON, GA 31201

Appeal Number: 18-14236-EE
Case Style: USA v. Daniel Cobble
District Court Docket No: 5:14-cr-00077-CDL-CHW-1

A copy of this letter, and the judgment form if noted above, but not a copy of the court's decision, is also being forwarded to counsel and pro se parties. A copy of the court's decision was previously forwarded to counsel and pro se parties on the date it was issued.

The enclosed copy of the judgment is hereby issued as mandate of the court. The court's opinion was previously provided on the date of issuance.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Lois Tunstall
Phone #: (404) 335-6191

Enclosure(s)

MDT-1 Letter Issuing Mandate

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

UNITED STATES OF AMERICA, *

vs. *

CASE NO. 5:14-CR-77 (CDL)

DANIEL ERIC COBBLE, *

Defendant. *

O R D E R

Defendant, who is proceeding *pro se*, is charged with three counts of mailing threatening communications in violation of 18 U.S.C. § 876(c). As explained in the remainder of this Order, the Court has determined that Defendant's deficient self-representation has impaired the orderly disposition of this case and jeopardized his right to a fair trial. The Court therefore requires appointed standby counsel, Brian Jarrard, to act as active counsel for Defendant for all pretrial matters. The Clerk of Court shall treat Defendant as being represented by counsel for purposes of Local Criminal Rule 49.3 and Local Rule 5.5. Therefore, all pretrial motions must be filed by counsel; pretrial motions filed by Defendant in his *pro se* capacity will not be accepted by the Clerk or considered by the Court. Additionally, any pending *pro se* motions as of the date of this Order (ECF Nos. 555-570) are terminated.

BACKGROUND

Defendant is a state prisoner charged with three counts of mailing threatening communications to two United States District Court Judges in violation of 18 U.S.C. § 876(c). Defendant allegedly mailed the threats to the judges after the judges denied Defendant's various requests for federal relief from his state conviction and sentence. The Court appointed counsel for the Defendant at arraignment, and Defendant pled not guilty to the charges.

I. Competency Evaluations

Upon motion by Defendant's first court-appointed counsel, the Court committed Defendant to the Bureau of Prisons to undergo a psychiatric evaluation. *See* Order on Mot. for Psychiatric Evaluation (Apr. 29, 2015), ECF No. 28. After receiving the results of the evaluation, the Court determined that Defendant was competent to proceed to trial. *See* Order (Oct. 27, 2015), ECF No. 61. Defendant's counsel filed a notice of a proposed insanity defense at that time.

Several months later, Defendant's counsel filed a motion indicating that Defendant had an upcoming independent psychiatric evaluation. Therefore, Defendant moved to continue the trial so that a competency hearing could be held after obtaining the results of the private evaluation. *See* Def.'s Mot. to Continue and Mot. to Conduct Evidentiary Hr'g (Jan. 8, 2016), ECF No. 73. The Court

granted the motion and conducted a competency hearing in August 2016. *See* Minute Sheet re: Competency Hr'g (Aug. 11, 2016), ECF No. 115. Based on the additional evidence presented, the Defendant's behavior at the competency hearing, and the concurrence of counsel for the Government and the Defendant, the Court determined that Defendant was incompetent to stand trial. The Court accordingly committed Defendant to the custody of the Attorney General to be placed in a suitable facility for such reasonable time, not to exceed four months, as necessary to determine whether there was a reasonable probability that in the foreseeable future Defendant would attain the capacity to permit the proceedings to go forward. *See* Order (Feb. 13, 2017), ECF No. 173; 18 U.S.C. § 4241(d). The Eleventh Circuit affirmed the Court's competency determination, and Defendant was admitted to the mental health unit at Federal Medical Center-Butner in July 2017.

The Government subsequently provided the Court with a second psychiatric evaluation indicating that Defendant was competent to proceed to trial. The Court then held another competency hearing on July 16, 2018. Based upon the Government's psychiatric report and other evidence presented at that hearing, the Court found that Defendant was competent and set the case down for trial. *See* Order (July 16, 2018), ECF No. 251.

II. Final Pretrial Conference

The Court conducted the final pretrial conference for the trial on the same day as the July 2018 competency hearing. At that time, Defendant discharged his counsel and informed the Court that he wished to represent himself. After conducting the colloquy required by *Faretta v. California*, 422 U.S. 806 (1975), the Court concluded that Defendant was competent to represent himself and that he knowingly, voluntarily, and intelligently made the choice to do so. *See* Order (July 16, 2018), ECF No. 251. The Court directed Defendant's previously appointed counsel to remain as standby counsel. The Court reminded Defendant that his previous counsel had raised the affirmative defense of insanity and inquired as to whether Defendant intended to present that defense at trial. Defendant responded that he did not intend to rely upon the insanity defense at trial.

III. Defendant's Pretrial Preparation

Following his discharge of counsel, Defendant began filing voluminous, often nonsensical, documents with the District Court, the Court of Appeals, and the Supreme Court. Based on these motions, Defendant does not seem to dispute that he threatened the judges as charged in the indictment. Instead, his primary defense appears to be that state law justified the threats as follows: (1) his state convictions are invalid; (2) he is consequently being held unlawfully; (3) the judges he threatened wrongfully

denied his requests for federal post-conviction relief, thereby prolonging his unlawful state confinement; (4) state law (and "the Declaration of Independence") authorizes him to resist unlawful arrest with whatever force necessary; and (5) his threats to the judges were part of his justified and legal resistance to his unlawful confinement. By the Court's count, twenty-one of Defendant's motions relate to this meritless defense.

One of his motions sought subpoenas to be issued to his mom, his son, his son's mom, "his first love," his step-father, his biological father, his adoptive dad, three state inmates, "Doctor Capps, my neurologist," and a "state prison dorm officer." He generally alleged that these witnesses would testify "as to why I had right to threaten and as to why court lacks jurisdiction to prosecute me." Pl.'s Mot. 1, ECF No. 285. Buried in his documents, he also indicated that he intended to call some of these witnesses as character witnesses. Pl.'s Mot. 1, ECF No. 357.

Rule 17(b) of the Federal Rules of Criminal Procedure directs courts to issue and serve subpoenas "for a named witness if the defendant shows an inability to pay the witness' fees" if the defendant shows "the necessity of the witness's presence for an adequate defense." The indigent defendant "bears the burden of articulating specific facts that show the relevancy and necessity of the requested witness's testimony." *United States v. Rinchak*, 820 F.2d 1557, 1566 (11th Cir. 1987). The Court found that

Defendant had not carried this burden. *See* Order Den'g Def.'s Various Motions 3-4 (Aug. 21, 2018), ECF No. 548. In addition to failing to specifically articulate the relevance of the witnesses' testimony, Defendant provided virtually no information that could be used to locate the witnesses to serve them with subpoenas. The Court further found that any testimony by these witnesses related to the various immaterial and frivolous defenses Defendant had raised in other motions.[1] Finally, the Court also explained that Defendant's state law justification theory, in which he essentially seeks to relitigate his state convictions, is irrelevant to the charged offenses. Therefore, the Court denied Defendant's requests for subpoenas.[2]

By the Court's calculation, Defendant had filed 254 *pro se* motions as of August 27, 2018. The vast majority of Defendant's motions are frivolous or immaterial. For example, fifty-two motions deal with Defendant's various civil suits or his conditions of confinement; twenty-nine motions present patently frivolous

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[1] At the time the Court ruled on Defendant's motion for subpoenas, Defendant had indicated that he would not pursue an insanity defense.

[2] Defendant will not be permitted to call witnesses or present evidence to prove the alleged infirmity of his state convictions. Further, the principle Defendant relies on for this theory does not extend beyond the arrest itself. Defendant is correct that Georgia law allows individuals to use proportional, reasonable force to resist patently unlawful arrests. But under no reasonable interpretation does it permit individuals who have been *convicted* and who continue to dispute their state convictions to threaten federal judges who deny the individual's requests for post-conviction relief. Defendant is precluded from raising this theory at trial.

"sovereign citizen" legal theories; fifteen motions seek compensation for Defendant's time in custody or Defendant's property that was allegedly destroyed by authorities; twenty-five motions propose various schemes for Defendant to obtain money to pay for retained counsel; and ten motions relate to disputes about Defendant's family relationships. Defendant filed eleven separate motions to be deported to England. He even filed a motion to replace all the hair he allegedly lost because of x-rays the federal government conducted on him in 2015 and 2017. *See* Pl.'s Mot., ECF No. 325. In three separate orders, the Court denied all 254 motions Defendant filed between the pretrial conference and the start of trial.

IV. Trial

Jury selection in Defendant's trial began Monday, August 27, 2018. Before the trial jury was sworn, Defendant moved for a continuance. Among other bases for a continuance, Defendant asserted that he needed additional time to prepare what he described as his "incompetent at the time of the crimes" defense.[3] Defendant explained that he did not intend to present an "insanity" defense. Instead, he wished to assert that he was not "competent" at the time of the alleged offenses and that his lack of competency prevented him from having the requisite appreciation of the

[3] Defendant asserted various other reasons for a continuance, all of which the Court denied as frivolous and meritless.

wrongfulness and unlawfulness of his alleged criminal acts. Thus, while Defendant refused to label the defense "insanity," he made it clear that this was in fact the substance of his defense. He complained that because the Court had denied his request to subpoena his neurologist, he was unable to adequately present this defense.

Before ruling on the motion for continuance, the Court asked Defendant's standby counsel whether he believed that Defendant had a viable insanity defense and whether a continuance was necessary for Defendant to prepare that defense. Counsel concurred with Defendant's motion for a continuance. Government counsel also informed the Court that a continuance was appropriate to allow Defendant and the Government an opportunity to prepare for Defendant's resurrected insanity defense. The Court granted Defendant's motion for continuance. For the sake of completeness, the Court specifically finds that the continuance is in the Defendant's best interest; that granting the continuance allows the Defendant the opportunity to present a viable defense and the Government the opportunity to adequately prepare to meet that defense; that the continuance will assure a fair trial which is in the public interest; and that any interest that the Defendant or the public may have in proceeding to trial sooner is outweighed by these other interests. Accordingly, all deadlines relating to the Speedy Trial Act shall be tolled until the next scheduled trial.

DISCUSSION

Defendant certainly has a right to present his defenses at trial. But he also has a duty to follow the rules. His conduct in filing numerous motions that require the Court's review, most of which are ultimately determined to be frivolous, is counterproductive if his true desire is to prepare his defense for trial. Forcing the Court to search through his many frivolous filings on the chance that something meritorious may be buried within runs the risk that something could be overlooked. It is in Defendant's interest that the good not be thrown out with the bad. His present approach increases this risk. Further, the Court's experience with the Defendant makes it clear that instructing him to stop filing frivolous motions will be ineffective. The question is whether anything can be done about it.

The right to self-representation is well established. *See Faretta*, 422 U.S. at 819-20 (explaining that the right to self-representation is "necessarily implied" by the structure of the Sixth Amendment). But for defendants in the "gray area" of competency, the right to self-representation is not absolute. *See Indiana v. Edwards*, 554 U.S. 164, 178 (2008) ("[T]he Constitution permits States to insist upon representation by counsel for those competent enough to stand trial under *Dusky* but who still suffer from severe mental illness to the point where they are not competent to conduct trial proceedings by themselves."). In

Edwards, the Supreme Court affirmed a state trial court's decision to deny a criminal defendant's request to exercise his right to self-representation. Although the defendant was competent to *stand* trial, the trial court refused to find that he was competent to actually *conduct* the trial proceedings. *Id.* at 169. The Court concluded that this "competency limitation" to a defendant's right to self-representation comported with the Constitution. The Court, however, did not articulate a standard for determining a defendant's competence to conduct a trial. Instead, the Court observed that trial judges "will often prove best able to make more fine-tuned mental capacity decisions, tailored to the individualized circumstances of a particular defendant." *Id.* at 177; *see also id.* at 179 ("assuring trial judges the authority to deal appropriately with cases" where a *pro se* defendant's mental competency is at issue).

The present case does not fit precisely within the *Edwards* framework. The Court is not convinced that Defendant is incompetent to represent himself at trial.[4] But the Court is convinced that allowing Defendant to continue to represent himself in *preparation* for trial will interfere with the efficient administration of justice and will jeopardize Defendant's ability to adequately present his defenses. District courts "have both

[4] The Court reserves judgment on this issue.

the inherent power and the constitutional obligation to protect their jurisdiction from conduct which impairs their ability to carry out Article III functions." *Procup v. Strickland*, 792 F.2d 1069, 1073 (11th Cir. 1986) (per curiam). This includes "the jurisdiction to protect themselves against abusive litigants." *United States v. Powerstein*, 185 F. App'x 811, 813 (2006) (per curiam). "A litigant 'can be severely restricted as to what he may file and how he must behave in his applications for judicial relief.'" *Id.* (quoting *Procup*, 792 F.2d at 1074). "He just cannot be completely foreclosed from any access to the court." *Id.* (quoting *Procup*, 792 F.2d at 1074).

The Court finds that under these circumstances, it is appropriate to require standby counsel to play a significant role in trial preparation. *See, e.g., United States v. Gomez-Rosario*, 418 F.3d 90, 101-02 (1st Cir. 2005) (concluding that a trial court's requirement that *pro se* defendant's standby counsel screen defendant's proposed motions did not violate defendant's right to self-representation). Defendant's filing of more than two hundred frivolous motions in the month and a half period during which he has proceeded *pro se* suggests the need for some restrictions. Additionally, Defendant's vacillation and mislabeling of what to this point may be his only relevant and viable defense (his insanity defense) suggest that continued self-representation would undermine his interests in a fair trial. *See Edwards*, 554 U.S. at

176-77 ("[I]nsofar as a defendant's lack of capacity threatens an improper conviction or sentence, self-representation in that exceptional context undercuts the most basic of the Constitution's criminal law objectives, providing a fair trial."). The Court is nonetheless mindful that Defendant retains the right to direct his defense. *See McCoy v. Lousiana*, 138 S. Ct. 1500, 1505 (2018) (explaining that it is "the defendant's prerogative, not counsel's, to decide on the objective of his defense").

Accordingly, the Court orders that standby counsel Brian Jarrad shall act as active appointed counsel for pretrial purposes and shall act as standby counsel at trial. Consequently, the Court will consider no additional motions filed by Defendant in his *pro se* capacity. *See* M.D. Ga. LR. 5.5. Any pretrial motions shall be filed by Mr. Jarrard after consultation with his client. Mr. Jarrard shall also be responsible for having subpoenas issued to persons who are to testify at trial, including witnesses supporting Defendant's insanity defense and Defendant's character witnesses. If Defendant demands that counsel subpoena certain witnesses that counsel is not comfortable subpoenaing because they do not possess relevant evidence, counsel shall file the request to subpoena those witnesses with Defendant's explanation as to why they should be allowed to testify. And the Court will make a determination as to whether those witnesses should be subpoenaed. Counsel may file any such motions under seal so that they are not available to

Government counsel. The Court finds that these measures balance the Defendant's right to a fair and orderly trial with Defendant's right to self-representation.

The Court understands that placing restrictions on a Defendant who has been found competent to stand trial is out of the ordinary. And it does so reluctantly. But Defendant's conduct demonstrates that his self-representation without active assistance of counsel has interfered with the orderly administration of justice and diminishes the likelihood of providing him with a fair trial. The Court emphasizes that none of these restrictions prevents Defendant from communicating the objectives of his defense to his counsel; nor do they excuse counsel from pursuing such defenses if they can be asserted in good faith. Defendant may also consult with his counsel about whatever pretrial motions Defendant thinks are necessary. But standby counsel, who is familiar with the Court's procedural rules and ethical obligations, shall retain ultimate control over pretrial filings. Finally, today's Order does not prevent Defendant from actually conducting his own defense at trial. Instead, it only requires that Defendant's standby counsel act as active counsel for the sole purpose of pretrial preparation of Defendant's case.

CONCLUSION

The remaining pretrial proceedings shall be conducted consistent with today's Order. This case shall be tried before a jury on February 11, 2019 beginning at 9:00 A.M. at the United States Courthouse in Columbus, Georgia.

IT IS SO ORDERED, this 30th day of August, 2018.

S/Clay D. Land
CLAY D. LAND
CHIEF U.S. DISTRICT COURT JUDGE
MIDDLE DISTRICT OF GEORGIA

Additional material from this filing is available in the Clerk's Office.