

NOTICE: Summary decisions issued by the Appeals Court pursuant to its rule 1:28, as amended by 73 Mass. App. Ct. 1001 (2009), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

19-P-693

BODHISATTVA SKANDHA

vs.

MIDDLESEX SUPERIOR COURT & another.¹

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

The plaintiff, Bodhisattva Skandha, is an inmate currently incarcerated at Massachusetts Correctional Institution at Norfolk (MCI-Norfolk). He appeals from an order denying him leave to file a complaint in the Superior Court. We affirm.

In his proposed complaint, Skandha, as plaintiff and purported "next friend" of Larry Wampler (also known as Hung Tan Vo), seeks a declaratory judgment under G. L. c. 231A essentially declaring that Wampler's new trial motion, filed in Commonwealth v. Wampler, No. 9181-cr-0808 (Middlesex Super. Ct.), was erroneously denied.²

¹ Middlesex County District Attorney.

² Wampler was convicted, in 1992, of murder in the first degree by reason of deliberate premeditation. See Commonwealth v. Vo, 427 Mass. 464, 464-465 (1998). Both Wampler's conviction and the order denying Wampler's original new trial motion were affirmed on appeal. See id. at 473. Thereafter, Wampler, acting pro se, on several occasions requested representation to

The plaintiff-appellant is subject to an order in the Superior Court for Suffolk County requiring prior judicial review of any complaint before acceptance for filing. See Skandha v. Clerk of the Superior Court for Civil Business in Suffolk County, 472 Mass. 1017, 1019 (2015). The regional administrative justice conducted this review and denied the plaintiff leave to file his complaint, stating that "declaratory judgments are not available to review decisions of the criminal side of this Court, nor does plaintiff [Skandha] have standing to assert Mr. Wampler's rights."

The judge did not abuse his discretion or commit legal error in screening out the plaintiff-appellant's complaint. Skandha does not explain how a civil remedy under G. L. c. 231A applies to a criminal case. Moreover, although Skandha suggests that he has standing, as Wampler's "next friend," to assert Wampler's rights because, essentially, Wampler allegedly is incompetent and Skandha "is truly dedicated to the best interest of the real person of interest," there is no indication or even an allegation that Skandha has been appointed Wampler's guardian or "next friend." See Enos v. Secretary of Env'tl. Affairs, 432

pursue another new trial motion. Wampler was unsuccessful. Wampler eventually filed a pro se motion (i) for appointment of counsel; and (ii) to vacate, set aside, or correct sentence. A judge of the Superior Court denied that motion in 2016. It is this 2016 order that seems to be at issue in Skandha's present proposed complaint.

Mass. 132, 135 (2000) ("standing is not measured by the intensity of the litigant's interest or the fervor of his advocacy" [citation omitted]).

Order denying leave to file
complaint affirmed.

By the Court (Vuono, Blake &
Singh, JJ.³),

Joseph F. Stanton

Clerk

Entered: April 28, 2020.

³ The panelists are listed in order of seniority.

Supreme Judicial Court for the Commonwealth of Massachusetts

John Adams Courthouse

One Pemberton Square, Suite 1400, Boston, Massachusetts 02108-1724

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APPENDIX B

Bodhisattva Skandha
MCI - Norfolk (W28163)
P.O. Box 43
Norfolk, MA 02056

RE: Docket No. FAR-27465

BODHISATTVA SKANDHA

vs.

MIDDLESEX SUPERIOR COURT & another

Suffolk Superior Court No. 1984CV01075
A.C. No. 2019-P-0693

NOTICE OF DENIAL OF APPLICATION FOR FURTHER APPELLATE REVIEW

Please take note that on July 27, 2020, the application for further appellate review was denied.

Francis V. Kenneally, Clerk

Dated: July 27, 2020

To: Bodhisattva Skandha
Susanne G. Reardon, A.A.G.



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February 29, 2016

Mr. Hung Tan Vo a/k/a Larry D. Wampler, Jr., W52160
MCI Norfolk
P.O. Box 43
Norfolk, MA 02056

RE: Commonwealth v. Hung Tan Vo a/k/a Larry D. Wampler, Jr., W52160
Middlesex Superior Court No(s). 9181CR00808

Dear Mr. Larry D. Wampler, Jr., W52160:

Massachusetts law does not provide you with a right to have an attorney appointed to represent you in the proceeding currently before the court. However, an attorney from the Committee for Public Counsel Services (CPCS) Post-Conviction Collateral Screening Panel was assigned to review your case and inform me whether your case presented circumstances that would warrant my assigning counsel, despite your not having a 'right' to a lawyer.

The attorney assigned to review your case has advised us concerning the history and current status of this proceeding. We have decided not to assign a lawyer to represent you.

If you wish to proceed pro se, you may request a copy of the self-help materials in writing from Dorothy Mele at the above address.

I regret that limited resources and legal requirements restrict the availability of legal assistance our office can provide.

Very truly yours,

Donald Bronstein/mt

Donald S. Bronstein
Director of Criminal Appeals
Private Counsel Division

1 which would be the side to side, would cause you
2 no reason to believe that he just didn't want to
3 have any questions asked.

4 A I almost interpreted that as, pardon the
5 expression, I don't give a damn.

6 Q Have you ever had any clients tell you that
7 before, too?

8 A Sometimes.

9 Q In fact, you talked with both of Mr. Vo's parents
10 about the change in plea, correct?

11 A Yes, many, yes.

12 Q And that was prior to trial?

13 A Prior to trial?

14 Q It was prior to trial.

15 A Prior to trial?

16 Q Correct.

17 A No, I don't remember talking to them prior to

18 trial about the change in plea.

19 Q At any time prior to going into the lobby, if in

20 fact you recall that, one week prior to trial?

21 A Yes.

22 Q Did you ever have any discussions with Mr. Vo

23 concerning pleading guilty?

24 A Prior to this time?

1 Q ~~Prior to this time.~~

2 A ~~No.~~

3 Q Never once discussed what his options were on
4 manslaughter, second degree or first degree?

5 A I talked to him about that. I talked to him,
6 certainly wasn't going to plead guilty to first
7 degree. And my own opinion, I thought that second
8 degree was proper. I told him, I said if the
9 right, what do you think, if the right thing comes
10 along, what do you think? And he said yes.

11 Q "Yes" to what?

12 A Possibly a plea, yes.

13 Q Possibly?

14 A Yes.

15 Q But no definitive?

16 A Nothing, no, no.

17 Q Did Mr. Vo at any time, during the whole pendency
18 of this case, ever express a desire to plead

19 guilty until after the verdict, except after the
20 verdict came in?

21 A Yes, he did. I told him what manslaughter would
22 mean to him or even the second degree would mean
23 to him. I thought that if a manslaughter at some

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1 particular, you had occasion to deal with Mr.
2 Glynn who was the defense counsel in this case,
3 correct?

4 A Correct.

5 Q During the period of time that you were involved
6 in the case with Mr. Glynn and Mr. Vo, were there
7 any discussions concerning reduction of charge
8 from first-degree murder to something other than
9 first-degree murder?

10 A Yes.

11 Q Do you recall the circumstances or the general
12 time frame as to when those conversations started?

13 A The case went to trial on March 2nd, Monday March,
14 2nd of 1992. There was a motion to suppress heard
15 in November in front of Judge Bohn the previous
16 November. After the motion to suppress results,
17 the findings by the Judge which I believe were in
18 December, we had several court dates between

19 December and the trial date. The first discussion

20 was a very brief one. Mr. Glynn had inquired one

21 of the court dates, whether or not I think I could

22 do anything for him in terms of something less

23 than first degree. I had told him we'd consider a

24 second. And I think Mr. Glynn basically said that

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1 wouldn't, he wouldn't advise his client to do
2 that, or he wouldn't want to. So that came up one
3 or two times and that was the initial plea
4 discussions, which was sometime during that
5 winter.

6 Q And then prior to trial, approximately a week
7 earlier, was there a meeting up here in the court
8 on preliminary matters concerning the trial?

9 A During the last week in February, I think there's
10 a couple of things that occurred relative to this
11 case. I think originally, we may have had a trial
12 date early in February, but maybe Mr. Glynn was
13 tied up in a murder trial, and I was also, so it
14 was kicked over to the beginning of March.

15 The week before the trial began, I
16 believe it was February 25th, Clerk McDade had
17 given myself, and I believe later that day Mr.
18 Glynn, a copy of a recommitment notice that had

19 been sent to Superior Court, an 18A petition that

20 dealt with where he should await trial. So I

21 believe we were in court maybe the Wednesday

22 before trial began, and I believe we were in for a

23 conference with the judge on the Friday before

1 eighteen to twenty. We lobbied the case with
2 Judge Bohn a couple of occasions, I believe it may
3 have been that Friday; and if not, definitely that
4 Monday before we impaneled. Judge Bohn called us
5 in to see whether or not there had been any
6 attempt to resolve this short of trial. ~~I~~
7 ~~remember we had a lobby conference.~~ I indicated
8 our office was willing to break it down to
9 ~~manslaughter.~~ My memory is I told Judge Bohn
10 eighteen to twenty or even fifteen to twenty, I
11 think I was somewhat flexible.

12 Judge Bohn, as I recall said something
13 to the effect of that sounds like a reasonable
14 offer. I do know the figures twelve to fifteen
15 came up and it came out of the lobby. My memory
16 is, while I may have mentioned it, I thought Judge
17 Bohn indicated to Mr. Glynn if his client pled;
18 that a twelve to fifteen would be something he'd
19 consider. I believe it was like an unagreed
20 thing, I wasn't saying to Mr. Glynn eighteen to
21 twenty agreed or not. And I believe twelve to
22 fifteen came out of the lobby. I may have
23 mentioned it, but my best memory is that it came
24 from Judge Bohn that that's what he thought would

1 A Yes.

2 THE COURT: Does he know what it means
3 to "waive"?

4 Q You know what I mean by waive, I mean you're not
5 going to hold him to any communication, he's free
6 to testify without any restrictions?

7 A Yes.

8 MR. CHAMPA: Thank you.

9 THE COURT: All right, Mr. Vo, you may
10 return to your seat next to Mr. Champa.

11 MR. CHAMPA: Thank you, Judge.

12

13 (Defendant stands down.)

14

15 LAWRENCE GLYNN, Sworn

16 DIRECT EXAMINATION BY MR. CHAMPA

17 THE COURT: Yes, sir.

18 THE WITNESS: Good morning, Your Honor.

19 Q Could you give the Court, please, your full name
20 and occupation, Mr. Glynn?

21 A — Lawrence Robert Glynn. I'm a practicing attorney
22 at law, 2600 Massachusetts Avenue in Cambridge.

23 Q And practicing attorney in the Commonwealth of
24 Massachusetts?

1 A I've been practicing for approximately twenty-four
2 years.

3 Q And in that twenty-four years, have you
4 specialized in any particular field of law?

5 A Well, I do probably about sixty percent of my work
6 is in the criminal field and the other forty
7 percent in civil litigation.

8 Q And in the past twenty-four years, have you had
9 any murder cases, My Glynn?

10 A I have in the past twenty-four years tried twenty-
11 five murder cases within the Commonwealth of
12 Massachusetts.

13 Q So it's fair to say that you're experienced in the
14 practice in the field of criminal law especially
15 capital cases?

16 A Yes, sir.

17 Q Do you know of the defendant, Hung Tan Vo?

18 A Yes, I do. He was my client back in the area of
19 1991, 1992.

20 Q And were you privately retained to represent Mr.
21 Vo?

22 A No, I was appointed to represent Mr. Vo.

23 Q By whom?

24 Q By the Commonwealth of Massachusetts, Committee

1 for Public Counsel Services.

2 Q Now, sir, do you know the District Attorney, Mr.
3 McEvoy?

4 A I do know John McEvoy, I've known him for probably
5 fifteen years.

6 Q And it's fair, he was the prosecutor in this
7 particular case?

8 A Yes.

9 Q And, of course, Judge Bohn was the presiding
10 justice?

11 A Yes, he was.

12 Q During the trial of Mr. Vo. Did you prepare an
13 affidavit relative to the motion for a new trial?

14 A Yes, I did.

15 Q And you read that affidavit?

16 A I haven't read it since I drafted it.

17 MR. CHAMPA: May I, Judge?

18 THE COURT: Yes.

19 (Document handed to the witness.)

20 Q Now, Mr. Glynn, after your appointment to
21 represent Mr. Vo, did you have any discussions or

22 receive any discovery from Mr. McEvoy relative to
23 the case?

24 A I did.

1 Q And what kind of discovery did you receive from
2 Mr. McEvoy?

3 A I received purported statements by the defendant;
4 I received grand jury minutes; I received numerous
5 police reports not only from Somerville, but
6 Woburn Police and State Police authorities.

7 Q Did you have an investigator working on the case
8 with you?

9 A I had an investigator on the case at that time.

10 Q Was that Mr. Rudnicki?

11 A Yes, he was a former state trooper and I had
12 retained him after receiving permission from the
13 courts.

14 Q And did you discuss the case with Mr. Rudnicki?

15 A Many times, many times.

16 Q And did you have occasion to discuss the factual
17 facts of the case with Mr. Vo?

18 A I have, many, many times.

19 Q When did you first meet Mr. Vo, do you recall the
20 date?

21 A I don't recall the exact date, no.

22 Q Where did you first meet him?

23 A I met him here in this building when I was
24 appointed to represent him and I believe he was

1 incarcerated on the top floor, the holding cells
2 up -- strike that -- up above the seventeenth
3 floor.

4 Q Were you able to converse freely with Mr. Vo?

5 A I was at first, yes, I was able to communicate
6 with him. He was very responsive at the outset.

7 Q When you say "at first," did something change or
8 alter?

9 A Well, no, not up until the time of trial. He was
10 able to converse with myself. I brought Mr.
11 Rudnicki, we had planned a strategy at the trial.
12 He assisted me in many ways, he was a very good
13 client.

14 Q Now, you read the reports submitted by Dr. Profit?

15 A I have.

16 Q Relative to competency, criminal responsibility?

17 A Yes..

18 Q And, in fact, you cross-examined Mr. Profit at a

19 motion hearing before Judge Bohn relative to

20 whether or not Mr. Vo exercised his prerogatives

21 and his rights under the Lamb, the so-called Lamb

22 warnings?

23 A Yes.

24 Q So you were familiar, prior to the motion hearing,

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1 with what Dr. Profit's report had to say about Mr.
2 Vo.

3 A Yes.

4 Q Were you in agreement at that time, based upon
5 your years of experience, that Mr. Vo was
6 competent to assist you?

7 A Up to that time, I would say that, I had some
8 questions in my mind but generally, yes. I
9 thought he was competent to stand trial based on
10 the support that he was giving me and the
11 assistance that he was giving me.

12 Q Now, when you say "up to that time," what time are
13 we talking about?

14 A I'm talking about after the impanelment of the
15 jury.

16 Q And that was sometime in early March of 1992?

17 A I believe that's the date.

18 Q And he was able to assist you in impaneling of the
19 jury?

20 A Very enthusiastic, very helpful up to that time.

21 Q Did you have occasion to converse with his former
22 girlfriend, Maureen Ambrose?

23 A I never did; she was reluctant to speak with me

24 and she was reluctant to speak with Mr. Rudnicki.

1 Q You did send her communications, letters with
2 questions --

3 A Many times, yes.

4 Q -- that you wished to speak with her?

5 A Yes, yes.

6 Q Did you have an occasion to converse with Mr.
7 McEvoy relative to possible disposition of the
8 offense of murder, in other words, if I can
9 rephrase that, a reduction of the offense of
10 murder one to a lesser-included offense, prior to
11 trial?

→ 12 A I had. But my memory is that John McEvoy said
13 there might be something coming forth, but I don't
14 have a memory here today of ever getting a solid
15 offer from the Commonwealth until the trial began.
16 I'm not solid on that, but I think that was the
17 position.

18 Q But at some point, you did get a recommendation

19 from Mr. McEvoy relative to a plea by Mr. Vo of a

20 -- lesser-included offense, that would be

21 manslaughter.

22 A Yes, I did.

23 Q And was there a specific number of years relative

24 to the plea?

1 A Yes.

2 Q What was that, please?

3 A Well, the recommendation first was manslaughter,
4 and we had discussions, and I believe Judge Bohn
5 possibly may have been involved but not to the
6 extent that it was between Mr. McEvoy and I. And
7 there was a recommendation after the trial began,
8 if my memory serves me right --

9 Q What was that recommendation?

10 A -- of a manslaughter with a twelve to fifteen.

11 Q Committed sentence?

12 A Yes.

13 Q Did you find that unusual in your experience in
14 trying cases in Middlesex County?

15 A Well, very unusual but the facts of the case may
16 have warranted it, I don't know. But in all of
17 the murder cases I have handled, I have never had
18 a manslaughter twelve to fifteen recommendation.

19 Q Usually the recommendation, it's fair to say, is
20 eighteen to twenty or fifteen to twenty, is that
21 fair?

22 A Most of the time.

23 Q Now, were you able to convey that recommendation
24 to your client?

1 A The answer is no.

2 Q What happened before you could convey that
3 recommendation to Mr. Vo, please?

4 A Well, he participated very well with me in the
5 impanelment of a jury. And the trial began, I
6 believe it was across the hall. And once we
7 impaneled a jury, Mr. McEvoy made his opening, and
8 he was fine at that point. And the first witness
9 called by Mr. McEvoy at the trial was the love of
10 his life really, his former girlfriend, live-in
11 girlfriend, whatever, Maureen Ambrose I believe
12 her name was.

13 And she went up to the witness stand and
14 sat down, and I believe Mr. McEvoy asked her to
15 identify herself and tell the Court where she
16 lived. She identified herself by reciting her
17 name. And then she said, "I'm living with my
18 boyfriend at" such and such an address which I

19 don't remember.

20 Q In Somerville, does that refresh your
21 recollection?

22 A When that was spoken by that first witness, Mr.
23 Hung Tan Vo just ceased to be helpful to me at
24 all, I remember

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1 Q Where -- I'm sorry. Where was he sitting in
2 comparison to where you were sitting?

3 A He was sitting to my right during most of the
4 trial. And I remember him putting his head down,
5 I remember him shaking, I remember some watering
6 of his eyes, and he was just destroyed at that
7 point.

8 Q Now, this was after she said, "I'm living in
9 Somerville with my boyfriend."

10 A "With my boyfriend."

11 Q "In Somerville with my boyfriend," or words to
12 that effect.

13 A Yes.

14 Q At that point, or some point shortly thereafter,
15 did Judge Bohn or did you request a recess?

16 A There was a recess requested. I think he had to
17 clear himself up, get himself together again, Mr.

18 Vo.

19 Q And were you able to converse with Mr. Vo during
20 that recess?

21 A I was unable -- I spoke words to him but I don't
22 think they penetrated, I don't think he understood
23 what I was saying. I think his grief was so
24 insurmountable, he just couldn't focus on the

1 trial.

2 Q Do you know his parents?

3 A Yes, I do.

4 Q Do you recognize them from being in the back, the
5 persons in the courtroom?

6 A His mother is in the courtroom, his father is in
7 the courtroom, and his sister is in the courtroom.

8 Q And the mother is Cam Tai Vo?

9 A Yes.

10 Q And is the father Larry Wampler?

11 A Yes.

12 Q And did you have occasion, shortly after His Honor
13 called a recess, to go in another room, another
14 location, and converse with Mr. Vo in the presence
15 of his parents?

16 A I did, I conversed with his parents and his sister.
17 many times throughout the trial. But after Mr.

18 McEvoy made an offer to resolve this case by way

19 of a plea, I tried to get across to Mr. Vo how

20 important and how a fair offer this was. I then,

21 he seemed not to understand what I was saying. I

22 then enlisted the aid of his mother who went in

23 back of the courtroom, back here, the court

24 officers let her talk to him or try to talk with

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1 him, and they just couldn't penetrate.

2 Q And it's fair to say based upon your experience,
3 Mr. Glynn, is it not, that, even prior to Maureen
4 Ambrose testifying, even prior to that time, that
5 the case, the facts against Mr. Vo, were
6 substantial?

7 A They were very strong, yes.

8 Q He had given statements that you were unable to
9 suppress?

10 A Yes.

11 Q As to his participation?

12 A Exactly.

13 Q There was another eyewitness, I believe.

14 A Yes.

15 Q Who was present at the scene in Woburn?

16 A Woburn.

17 Q Knowing all this, did you try to convey to Mr. Vo
18 that he should entertain, in his mind at least,

19 the possibility of taking a manslaughter?

20 A I did everything in my power to convince him that

21 this was the offer that he should accept, he

22 should resolve this case. I did everything. I

23 enlisted the aid of his parents, his sister. I

24 was even talking to anybody who would listen to me.

1 to talk to this man to accept this offer of a
2 manslaughter.

3 Q And you knew, did you not, that during their
4 relationship, that Mr. Vo had cut off the digital
5 portion of his finger, so-called pinky finger?

6 A Yes.

7 Q And you knew on other occasions that he attempted
8 suicide?

9 A He attempted suicide on several occasions, he
10 threatened, and that's why he was transported from
11 this Cambridge building to Bridgewater.

12 Q As a matter of fact, during the trial, he was at
13 Bridgewater, was he not?

14 A He was.

15 Q And transported back and forth to Middlesex
16 Superior Court?

17 A But he was transported on a daily basis to
18 Bridgewater, where I later learned of his

19 condition and how serious it was during the course

20 of the trial. I didn't know that during the

21 trial.

22 Q Now, in paragraph number ten, you state, "This
23 revelation of her residing," -- I'm referring to

24 Miss Ambrose residing with another male -- "So

1 shocked the defendant that he became irrational
2 and unresponsive to the extent he was unable to
3 assist me in his own defense."

4 A Yes.

5 Q Do you wish to elaborate on that, or did you cover
6 that?

7 A I think I covered it in paragraph ten, that I do
8 not think he was responsive. As a matter of fact,
9 ~~he wished to take the stand.~~ At one time, I went
10 down to Bridgewater to visit with him, I think on
11 a weekend, and I ~~tried to prepare him for his~~
12 ~~testimony because he did want to testify,~~ and he
13 was not responsive.

14 Q How did you try to prepare him, Mr. Glynn?

15 A I tried to tell him what questions I'd be asking
16 him. And his response was, ~~"I must save face. I~~
17 ~~must save face."~~ That had no meaning to me

18 ~~whatsoever. And in the forty-five minutes to an~~

19 ~~hour I spent with him, he repeatedly said, "I must~~
20 ~~save face."~~

21 Q Did you see Mr. Vo again prior to his testimony?

22 And when I say "again," did you visit with him

23 again prior to his testimony?

24 A I did.

1 Q And did he continue that same, with that same
2 attitude?

3 A ~~I~~ just couldn't get across to him what his
4 testimony, prepare his testimony along with what
5 he told me previous.

6 Q Was there any question in your mind -- and you
7 know what competency means, of course.

8 A Yes, yes.

9 Q Any question in your mind that Mr. Vo was not
10 competent to assist you in his defense during the
11 course of the trial?

12 A Up to the point when Maureen Ambrose testified, he
13 was, at the time she testified, that totally
14 destroyed this young man. He showed his love for
15 her by cutting off a finger. He pledged his love
16 to them, that they wanted to die together. These
17 are many things that manifested to me that this
18 man couldn't live without this girl.

19 MR. CHAMPA: I have no further
20 questions. Thank you Mr. Glynn.

21 THE COURT: Mr. O'Reilly.

22 MR. O'REILLY: Thank you, Your Honor.
23
24

1 CROSS-EXAMINATION BY MR. O'REILLY

2 Q Good afternoon, Mr. Glynn.

3 A Yes.

4 Q During the entire time that you knew Mr. Vo, you
5 communicated with him without an interpreter,
6 correct?

7 A Yes.

8 Q And you state that he was absolutely fine up until
9 Miss Ambrose testified that she was living with
10 the boyfriend at Somerville?

11 A Fine, he was very cooperative and I think he
12 understood what I was saying and he was responsive
13 to what I was saying to him.

14 Q And you had no question in your mind as to his
15 competency up until that level?

16 A Well, the fact that cutting off one's finger, I
17 had a little bit. But I felt that he could help
18 me defend him, yes.

19 Q Well, cutting off the finger occurred way before
20 the incident in question, correct?

21 A Well, not way before, several months.

22 Q Several weeks.

23 A Yes.

24 Q But during the period of time that you were

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1 associated with him though, he was competent as
2 far as you were concerned, particularly since
3 doctors from Bridgewater said he was competent.

4 A Yes.

5 Q And do you recall the week or so prior to the
6 trial actually having a lobby conference on this
7 case with an offer from the Commonwealth for
8 possibility of a manslaughter plea?

9 A I don't specifically remember, it could be. I
10 thought the offer of manslaughter came right after
11 John McEvoy made his opening. You might be right
12 though, I'm not sure.

13 Q And the fact of the matter remains is, you've been
14 doing murder trials for a number of years and it's
15 not uncommon for defendants to reject offers of
16 reduction from murder to either second degree or
17 manslaughter, correct?

18 A Well, possibly second degree, but very seldom ever
19 with a manslaughter. Very seldom.

20 Q And most of those reasons are sometimes, the
21 defendant has just made up his mind he's not going
22 to admit to anything, correct?

23 A Well, you're generalizing many cases I've handled
24 and I don't know if I can give a fair answer to

1 that, Mr. O'Reilly.

2 Q Well, have you ever had a client prior to Mr. Vo
3 reject a manslaughter?

4 A Yes.

5 Q So that, in and of itself, is not indicative as to
6 whether he's competent or not competent, the fact
7 that he rejected in and of itself?

8 A That in and of itself is not indicative of whether
9 he's competent.

10 Q ~~So if that offer was made by the Commonwealth~~
11 ~~prior to the impanelment and rejected by Mr. Vo,~~
12 ~~that was during a period of time where you felt he~~
13 ~~was competent.~~

14 A When did I feel he was —

15 Q If in fact that offer was made to Mr. Vo prior to
16 impanelment of the jury, and rejected prior to
17 impanelment of the jury, that was during a period
18 of time when Mr. Vo was competent.

19 Q I would say he was competent before Maureen
20 Ambrose testified, yes.

21 Q In fact, would it also not be accurate that the
22 Commonwealth's recommendation was either a fifteen
23 to twenty or eighteen to twenty, and that after a
24 lobby conference, there was an indication that the

1 sentence would be twelve to fifteen?

2 A I don't think it was fifteen to eighteen at first,
3 I think you're correct there, I think it was after
4 further discussions that Mr. McEvoy, on behalf of
5 the Commonwealth, then came in with twelve to
6 fifteen, yes.

7 Q In fact, sir, is it also not accurate that the day
8 the jury began its deliberations, you approached
9 Mr. McEvoy with the request as to whether the
10 offer to plead guilty to manslaughter remained on
11 the table?

12 A Yes.

13 Q And the response was it was not on the table?

14 A I really don't remember that. I did approach John
15 McEvoy, asking him if that was still on the table.
16 And I can't be positive of this, whether John said
17 it's on the table till the jury comes in or not, I
18 really can't answer that.

19 Q But at least at that point on the day the
20 impanelment began, you did not feel it was

21 fruitless to discuss the change of plea with Mr.

22 Vo.

23 A I had always talked with Mr. Vo about a change of
24 plea, hopefully that we could work something out.

1 I do that with all the clients.

2 Q And, sir, was it also not accurate that at the
3 time that the recess was requested, when Miss
4 Ambrose was testifying, was immediately after Mr.
5 Vo had talked about cutting his finger off, not
6 after Miss Ambrose stated that she was living with
7 her boyfriend in Somerville?

8 A No, I don't think the fact that he had cut the
9 finger off had anything to do with his emotional
10 problems during the initial part of the trial. It
11 was clear to me at least that it was Maureen
12 Ambrose coming in and sitting at the witness
13 stand. She was very well dressed up, she was a
14 very attractive woman, and he was still happy.
15 And then when she said the words she was living
16 with her boyfriend, that was his downfall.

17 Q Well, I guess what I'm saying, sir, is, you asked
18 for a recess immediately after a question
19 detailing the severance of his finger.

20 A Yes.

21 Q Not at the time that she said that she was living
22 with her boyfriend.

23 A That's right.

24 Q Okay. Now, sir, you were aware, were you not,

1 that he had been examined by Dr. Profit just prior
2 to trial and found competent?

3 A Yes.

4 Q And you also stated he was unable to assist you in
5 his own defense.

6 A Yes.

7 Q When was the decision made by Mr. Vo or yourself
8 that he was to testify, before or after the trial
9 started?

10 A He was to have testified before the trial started.
11 However, when I saw his behavior, observed his
12 behavior, and especially when I went down over the
13 weekend to Bridgewater, and his reaction to my
14 trying to prepare him to testify, I then thought
15 he should not testify. He rejected my advice.

16 Q And that is not the first time, nor will it
17 probably be the last time that your advice was

18 rejected by a defendant, correct?

19 A That's right.

20 Q So the testimony, would it be not accurate to say
21 that Mr. Vo, when being questioned by both
22 yourself and Mr. McEvoy, appeared to, at some
23 times, wishing to get certain phrases out, such
24 as, "I hurt"; but for ninety-nine percent of the

1 time, he was responsive to what you were asking
2 him?

3 A I would not agree with that, no.

4 Q Well, he answered the questions. He sometimes
5 went off, but he focused when necessary when he
6 was required to by the Court.

7 A Well, he did go off on many tangents, so I would
8 not say that he was helpful to his own case, nor
9 responsive.

10 Q Would you say that it is the revelation of events
11 as to the finding of the weapon, how the argument
12 developed, how the confrontation with the victim
13 developed, his flight afterwards, Vo was
14 consistent on direct and on cross?

15 A Yes.

16 Q And would it also be fair to say that the general
17 theme of Mr. Vo's testimony when he was up on the
18 stand was to minimize his culpability by laying
19 off the blame on the victim as being the
20 provocateur of this confrontation?

21 A That's true.

22 Q And that Mr. Vo's portrayal of how the weapon was
23 discharged was accurate up until an explanation as
24 to how many times he was shot?



ANTHONY J. BENEDETTI
CHIEF COUNSEL

55

The Commonwealth of Massachusetts
Committee for Public Counsel Services
44 Bromfield Street, Boston, MA 02108-4909

TEL: (617) 482-6212
FAX: (617) 988-8495

NANCY T. BENNETT
DEPUTY CHIEF COUNSEL
PRIVATE COUNSEL DIVISION

August 5, 2014

Clerk of Court, Criminal
Middlesex Superior Court
200 Trade Center
Woburn, Ma 01801

RE: Commonwealth v. Larry D. Wampler, Jr.
Middlesex Superior No. MICR1991-00808

Dear Clerk:

Kindly be advised that the Committee for Public Counsel Services previously screened Mr. Wampler's case and a determination was made not to assign counsel. The Committee's decision on this matter has not changed. At this time, we will not be assigning counsel to represent Mr. Wampler on his post-conviction case.

Should the Court have any questions regarding this decision, please do not hesitate to contact us.

Sincerely,

Dorothy A. Mele
Assignment Coordinator

cc: Mr. Larry D. Wampler, Jr. W52160 ✓
MCI Norfolk

Filler

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COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

COMMONWEALTH

V

-NO. SJC-06099

HUNG TAN VO

MOTION FOR A NEW TRIAL

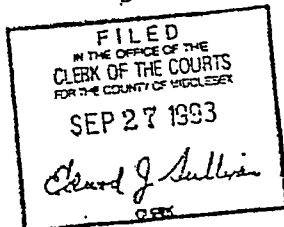
Now comes the defendant in the above-entitled matter and respectfully requests that this Honorable Court remand the case before it to the Superior Court and to the trial judge pursuant to the provisions found in M.G. L. ch. 278, §33E.

The basis for my request for a new trial are contained in a Special Competency Evaluation conducted by Wesley E. Profit, Ph.D. assigned to the Bridgewater State Hospital; said report dated August 26, 1993.

The Defendant respectfully requests that the matter be remanded to the trial judge in order to hear evidence and make a determination if, in fact, the Defendant is entitled to a new trial or relief from judgment.

Hung Tan Vo
by his attorney

Lawrence R. Glynn
Lawrence R. Glynn
2600 Massachusetts Avenue
Cambridge, Mass. 02140
491-7777



9/27/93

After hearing, defendant's motion for a new trial is denied.
See this Court's Memorandum of Decision and Order dated February 21, 1996. Robert H. Bolm Jr.

MIDDLESEX, SS:

SUPERIOR COURT
NO. 91/808

COMMONWEALTH

V

HUNG TAN VO

1995 Aug 3 Filed in Court

AFFIDAVIT

I, Lawrence R. Glynn, do hereby depose and say the following is true and accurate to the best of my knowledge and belief:

1. I am an attorney at law licensed to practice in the Commonwealth of Massachusetts.
2. I was appointed by the Committee for Public Counsel Services to represent the Defendant, Hung Tan Vo, in the above-numbered indictment charging him with murder in the first degree.
3. Miss Maureen Ambrose, a former fiancée of the Defendant, was a material witness for the Commonwealth.
4. The Defendant, Hung Tan Vo, had allegedly shot and killed one Thuan Pham on or about 2/19/91 at Woburn, Massachusetts in the presence of said Maureen Ambrose in the Marshall's Warehouse Parking Lot.
5. According to Maureen Ambrose, the victim, Thuan Pham, had repeatedly raped over a period of time while Maureen Ambrose had visited Thuan Pham allegedly to tutor him in his school work.
6. The Defendant, Hung Tan Vo, ostensibly to show his love and affection for Maureen Ambrose had approximately two to three weeks prior to the shooting cut off one of his fingers to show his deep love for Maureen Ambrose.
7. Maureen was a regular visitor to the Defendant while he was incarcerated at the Bridgewater State Hospital Treatment Center and often would stay outside of the chain link fence gazing at each other even after visiting hours. Hung Tan Vo was sent to the Bridgewater facility because of his suicidal tendencies and for observation purposes.

62.1

8. The Defendant, Hung Tan Vo, believing that Maureen Ambrose was still in love with him and was still his beloved was shocked and angered when she took the witness stand to testify against him.

9. At the outset of her testimony, she stated that she had a new boyfriend and was residing with him in the Somerville area.

10. This revelation by Maureen Ambrose so shocked the Defendant that he became irrational and irresponsible and began to weep next to me at the defense table and he was unable to assist me in his own defense from that period on.

11. From that time on as Maureen Ambrose was the first Commonwealth witness, the Defendant's mental condition and lack of cooperation and focus on the trial prohibited me from presenting an adequate defense on his behalf.

12. The deterioration of the Defendant's mental condition continued and was subsequently verified by Dr. Profit who examined the Defendant at the Bridgewater facility during the course of the trial.

13. In addition, Assistant District Attorney John W. McEvoy, Jr. who prosecuted the case in behalf of the Commonwealth, had offered a reduction of the indictment from murder to manslaughter with a recommendation of 12 to 15 Years at MCI, Cedar Junction, committed.

14. Although I conveyed this offer to the Defendant, he clearly did not understand what I was trying to tell him because of his distraught condition and he was unable to focus on what the offer consisted of and was unable to make a voluntary, intelligent decision relative to the Commonwealth's proposal.

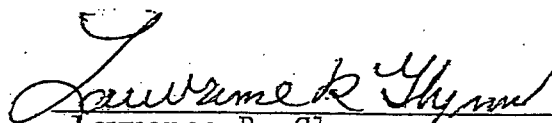
15. Clearly, because of the evidence presented by the Commonwealth, the proposal of a reduction from murder in the first degree to manslaughter was one which I adamantly proposed to Mr. Hung Tan Vo with a strong recommendation that he immediately accept this offer before the conclusion of the trial.

16. In fact, I asked his parents to assist me in an attempt to convey to Hung Tan Vo the importance and fairness of his accepting the Commonwealth's recommendation and they spoke with him in my presence in an attempt to convince him.

17. However, for reasons set forth above, Mr. Hung Tan Vo was unable to make a clear and rational decision and thus what I perceived from my experience in the practice of criminal law to be a most reasonable

offer and proposal was not accepted by Mr. Vo because he could not focus and because of his mental condition after the trial had commenced.

Signed this 15th day of June, 1995 under the pains and penalties of perjury.


Lawrence R. Glynn
2600 Massachusetts Avenue
Cambridge, MA 02140
491-7777

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COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

SUPERIOR COURT DEPARTMENT
MICR1991-00808

COMMONWEALTH

V.

LARRY D. WAMPLER, JR.
(aka HUNG TAN VO)

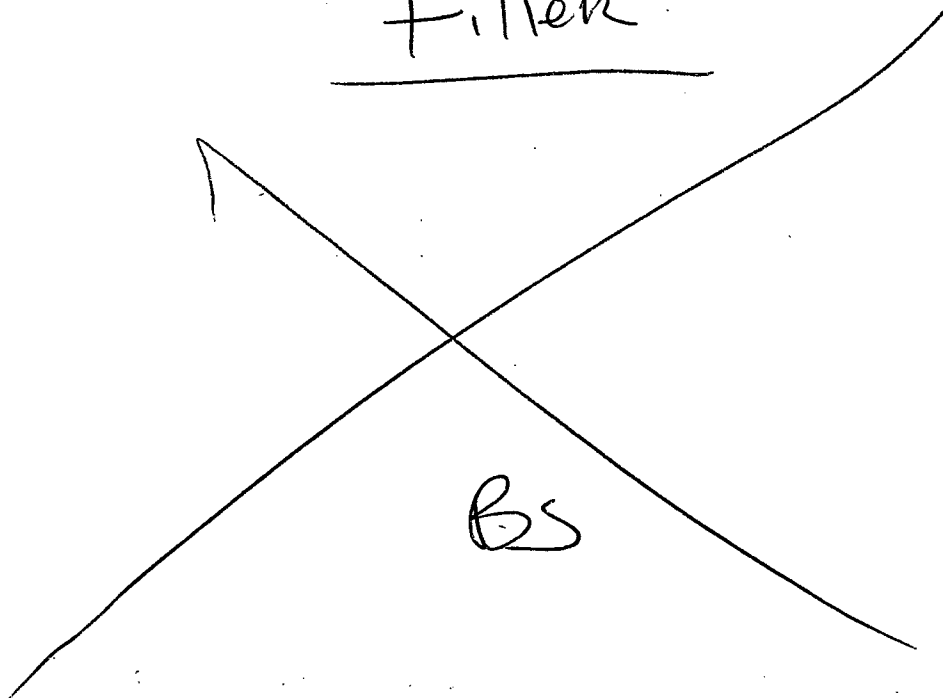
COMMONWEALTH'S OPPOSITION TO DEFENDANT'S MOTION TO
VACATE, SET ASIDE, OR CORRECT SENTENCE

Now comes the Commonwealth in the above-captioned matter and respectfully requests that this Honorable Court deny the defendant's motion to vacate, set aside, or correct sentence without a hearing. As grounds therefore, the Commonwealth states that the defendant's grounds for a new trial are meritless and he has not raised a substantial issue that would warrant a hearing under Rule 30 - let alone a new trial. A cursory review of the full transcript of the defendant's November 27, 1995 post-trial hearing reveals that trial counsel relayed the Commonwealth's plea offer to the defendant and the defendant rejected that offer.¹ Therefore, the defendant has not demonstrated ineffective assistance of counsel under the standard set forth by the

¹ A copy of the motion transcript is attached to the Commonwealth's opposition, and citations to that transcript are abbreviated "(Tr. [page])."

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District Attorney John McEvoy, the trial prosecutor, testified that the Commonwealth offered to break the case down to manslaughter immediately prior to trial. (Tr. 139). ADA McEvoy further testified that, prior to empanelment, defense counsel informed him that counsel "had taken the offer to Mr. Vo and tried to speak with him[,] but that counsel "could not convince his client to plead guilty." (Tr. 140).

Trial counsel also testified that, when presented with a plea offer of twelve to fifteen years for manslaughter in the early stages of the trial, counsel "tried to get across to Mr. Vo how important and how fair the offer was" and "enlisted the aid of [the defendant's] mother" to do so. (Tr. 89). Counsel characterized his efforts as follows:

I did everything in my power to convince him that this was the offer that he should accept, he should resolve the case. I did everything. I enlisted the aid of his parents, his sister. I was even talking to anybody who would listen to me to talk to this man to accept this offer of a manslaughter.

(Tr. 90-91). Without question, the defendant was aware of both the Commonwealth's offer and his attorney's opinion that he should plead guilty to manslaughter. Any argument to the contrary, given the testimony outlined above, is deceitful and without merit. Accordingly, the defendant was not denied the effective assistance of trial counsel, and his motion should be denied without a hearing.

[RA 5]

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COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX SS.

SUPERIOR COURT

No. 9181cr00808

Commonwealth v. Wampler,

DEFENDANT'S REBUTTAL TO THE COMMONWEALTH'S
OPPOSITION TO DEFENDANT'S MOTION TO VACATE,
SET ASIDE, OR CORRECT SENTENCE

The defendant, Larry D. Wampler, J., for the record, objects to the Commonwealth's material misstatement of facts, and hereby brings to the Court's attention the following:

1. The Commonwealth's statements "...the defendant's grounds for a new trial are meritless..." [Opp., page 1]

The defendant has filed no subject matter jurisdiction for a new trial.

2. The Commonwealth stated "...the defendant rejected that offer."

The defendant's motion to vacate the conviction is based on what happened pre-trial, which the Commonwealth left out of its Opposition. [Opp. p. 1]

3. The Commonwealth mischaracterized his direct appeal by stating, "...by the defendant's direct appeal, in which he claimed that 'incapacity caused him to lose the opportunity to resolve his case on more favorable terms by agreeing to plead guilty to manslaughter.'" [Opp., p. 2]

Any reference by the Supreme Judicial Court was to the early stages of the trial, nothing adjudicated about pre-trial, where the defendant's counsel did not bring the Commonwealth's offer to him.

Had the defendant's counsel communicated to him the offers from the Commonwealth, there would be no subject matter jurisdiction to conduct a trial as the defendant would have accepted the lower charge of manslaughter.

4. The Commonwealth claimed the defendant's present claim is further contradicted by testimony of both the trial prosecutor and trial counsel for the defendant at the November 1995 hearing. [Opp. p. 2]

The trial counsel's testimony, under oath, was that prior to trial he did not bring the Commonwealth's offers of a plea bargain to the defendant, as is exhibited in Exhibit 12, pp. 105-106.

5. The Commonwealth does not refer to Exhibit 12, pp. 105-106 because it is evidence that satisfies the prejudice prong of Strickland, that because of his counsel's failure to bring him the Commonwealth's offers of 12-15, 15-20, 18-20, Second Degree Murder, and indeed, had offered to reduce the charge to either Voluntary Manslaughter, or Involuntary Manslaughter. [Opp., pp. 2-3]

Based on Lafler, and Frye, and the performance of trial counsel prior to the trial to be lacking in honest representation, the Commonwealth now tries to renege on the pleas. That is not the law.

6. The Commonwealth's Opposition only attacks what had happened when the defendant became emotionally unstable in the middle of the trial, based on hearing his girlfriend's testimony, his being on medication, or a combination of both. [Opp. pp. 1-3]

The defendant's motion to vacate, set aside, or correct, is all about pre-trial and the ineffectiveness of his attorney.

December 26, 2016

/s/ Larry D. Wampler Jr.
Larry D. Wampler, Pro Se
Box 43,
Norfolk, MA 02056

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

SUPERIOR COURT
CRIMINAL ACTION
NO.: MICR1991-00808

COMMONWEALTH

v.

LARRY D. WAMPLER, Jr.

MOTION TO VACATE, SET ASIDE,
OR CORRECT SENTENCE

Now comes the defendant, Larry D. Wampler, Jr.¹, formerly Hung Tan Vo, born in Saigon, Vietnam, to an American Army Serviceman (father) and Vietnamese (mother), who is indigent and need a representation. The defendant knew nothing then and now about the law, with the help of another inmate prepared this Pro Se motion, and moves this Honorable Court grant him a MOTION TO VACATE, SET ASIDE, OR CORRECT SENTENCE pursuant to Mass. R. Crim. P. 30(a), on the viable issues of pre-trial error and ineffective assistance of counsel based on Lafler v. Cooper, 132 S. Ct. 1376 (2012) and Missouri v. Frye, 132 S. Ct. 1399 (2012) [Companion cases on the ineffectiveness of trial counsel for failing to inform the defendant that a plea bargain was offered by the prosecutor prior to trial, which did not involve a new rule, but instead presents a structural error that "require the prosecution to reoffer the plea proposal." Id. at 1389.]

¹See, Commonwealth v. Hung Tan Vo
427 Mass. 464 (1998)

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This motion is supported by a Memorandum of Law and documents contained in the official record, which include the following supporting affidavit:

* Affidavit of Larry D. Wampler, Jr., in support of Motion To Vacate, Set Aside, or Correct Sentence

WHEREFORE, as it appears that justice was not done in this case, the defendant requests that the judgment be reversed and that he be granted a motion to vacate, set aside, or correct sentence.

Respectfully Submitted,

Date: November 15, 2016

Larry D. Wampler, Jr.
Larry D. Wampler, Jr. Pro Se
W52160 (MCI Norfolk)
P.O. Box 43
2 Clark St.
Norfolk, MA 02056-0043

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COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT
CRIMINAL ACTION
No. 1991-808

COMMONWEALTH

vs.

LARRY D. WAMPLER, JR., f/k/a HUNG TAN VO¹¹

MEMORANDUM AND ORDER ON DEFENDANT'S MOTIONS
(1) FOR APPOINTMENT OF COUNSEL OUTSIDE OF
THE COMMITTEE FOR PUBLIC COUNSEL SERVICES,
AND (2) TO VACATE, SET ASIDE, OR CORRECT SENTENCE

For the reasons that follow, the defendant's Motion for Appointment of Counsel Outside of the Committee for Public Counsel Services (Paper #96) and his Motion to Vacate, Set Aside, or Correct Sentence, (Paper #97) are both DENIED.

BACKGROUND

On March 12, 1992 a jury convicted the defendant of murder in the first degree by reason of deliberate premeditation. The victim was a man whom the defendant's girlfriend claimed had raped her; the defense theory, self defense. Following an evidentiary hearing on, and denial of, a motion for new trial before the trial judge (Bohn, J.), the conviction and the denial were affirmed on appeal. Commonwealth v. Hung Tan Vo, 427 Mass. 464 (1998).

¹¹The defendant was born in Vietnam to a Vietnamese mother (Cam Thi Vo) and an American serviceman (Larry Dale Wampler). Both parents attended the trial. Apparently, the defendant was named Hung Tan Vo at birth and was so referenced during his murder trial, but he now prefers to be called Larry D. Wampler, Jr., after his father. I have referred to him herein as "the defendant," except when quoting directly from documents that refer to him by his birth name.

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The defendant was represented by counsel at trial, in his motion for new trial, and in his direct appeal. From time to time since then the defendant, acting *pro se*, has asked that counsel be appointed to represent him to pursue another new trial motion. For the most part, the requests have been referred to the Committee for Public Counsel Services ("CPCS"). On each occasion, CPCS has declined to accept the representation. See Paper Nos. 76, 73, 82, 83, 86, 87, 88, 89, 90, 91, 93, and 95 and related docket entries, and exhibits attached to the defendant's Motion for the Appointment of Counsel Outside of the Committee for Public Counsel Services (Paper #96).

Presently before me are the defendant's Motion for Appointment of Counsel Outside of the Committee for Public Counsel Services (Paper #96) and his Motion to Vacate, Set Aside, or Correct Sentence (Paper #97). The latter argues that the defendant is entitled to a new trial because his trial counsel, Atty. Lawrence Glynn, failed to inform him "[p]rior to trial" that the trial judge had expressed a willingness to consider a 12-15 sentence on a plea.

The subject of the plea offer was explored in the first motion for new trial and the subsequent appeal to the SJC. The motion was prepared and litigated by Atty. Ralph F. Champa, Jr., who also participated in the appeal. The theory was that the defendant, who was already emotionally fragile, became incompetent early in the trial upon hearing his girlfriend's testimony that she had a new boyfriend and was now living with him. Thereafter, Champa's brief read, "Vo was unable or unwilling to participate in any discussion of legal strategies, including pleading guilty to a lesser offense."

In support of the new trial motion, the defendant's parents and his trial attorney each submitted an affidavit. Both parents stated that their son was so distraught they could not speak with him. Atty. Glynn averred that John McEvoy, the ADA who tried the case for the Commonwealth,

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"had offered a reduction of the indictment from murder to manslaughter with a recommendation of 12 to 15 years at MCI, Cedar Junction, committed," and that he "conveyed this offer to the Defendant." The charge concession "was one which I adamantly proposed to Mr. Hung Tan Vo with a strong recommendation that he immediately accept this offer before the conclusion of the trial," but he "was unable to make a clear and rational decision." (Paper Nos. 62.1, 62.2, 62.3)

The same three witnesses gave similar testimony at the November 29, 1995 evidentiary hearing on the motion. (Tr. pp. 85-91, 95-98, 105-08 (Glynn); 114-15 (defendant's mother, Cam Tai Vo); 121-23 (defendant's father, Larry Wampler)). Glynn testified that he had discussed a possible plea before trial ("I do that with all the clients"); that there was a lobby conference with Judge Bohn sometime in the week before jury impanelment; and that the Commonwealth offered manslaughter and a 12-15 recommendation, although Glynn didn't remember "ever getting a solid offer from the Commonwealth until the trial began."

ADA McEvoy also remembered the lobby conference and the 12-15 proposed sentence, which he recalled came from Judge Bohn. He testified that Glynn told him on the day of impanelment that he had brought the offer to the defendant, but that he "could not convince his client to plead guilty." (Tr. 138-40)

Glynn's recollection was more or less consistent on these points. He recalled the lobby conference and that the 12-15 sentence was discussed, but testified that "there was a recommendation after the trial began ... of manslaughter with a twelve to fifteen." Asked if he was able to convey the recommendation to his client, however, Glynn said no, owing to the defendant's distress following the girlfriend's testimony.

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I conversed with his parents and his sister many times throughout the trial. But after Mr. McEvoy made an offer to resolve this case by way of a plea, I tried to get across to Mr. Vo how important and how fair an offer this was. I then, he seemed not to understand what I was saying. I then enlisted the aid of his mother who went in back of the courtroom, back here, the court officers let her talk to him or try to talk with him, and they just couldn't penetrate.

I did everything in my power to convince him that this was the offer that he should accept. I enlisted the aid of his parents, his sister. I was even talking to anybody who would listen to me to talk to this man to accept this offer of a manslaughter.^[2]

(Tr. 85-91, 97-98) As Atty. Champa argued to Judge Bohn at the new trial hearing, "The problem is, Judge, he wasn't offered the plea, because, our argument is, he wasn't competent." (Tr. 158)

Judge Bohn denied the motion in a 21-page decision dated February 22, 1996. Key to the decision was the judge's rejection of the assertion that the defendant was incompetent during the trial. He noted, among other things, that the girlfriend's revelation, six months after the shooting and six months before the trial, that she had been having consensual intercourse with the decedent (whom she had previously claimed had raped her) had not prevented the defendant from assisting his counsel and preparing his defense. (Tr. 18-19) He noted as well that the defendant had taken the stand five days after his girlfriend's testimony, and had given testimony that

was complete, coherent, and nearly identical to the story he had relayed to Dr. [Wesley] Profit several months earlier. There were no emotional outbursts, manifestations, or signs that Vo did not

²Glynn also testified that later in the trial the defendant, apparently against the advice of counsel, insisted on testifying, saying, "I must save face. I must save face." When he testified, it was to portray the decedent as the first aggressor, and to protect the girlfriend from legal jeopardy. (Tr. 92-93, 100, 110-11) On cross examination, he acknowledged that he wasn't sure whether McEvoy's 12-15 offer had come before impanelment or right after opening statements. (Tr. 95-97)

understand the nature and object of the proceedings against him. Vo even recounted how he thought [the victim] was reaching for a gun and that he was acting in self defense. Such a defense and, in particular that language used by Vo, demonstrated to this court that Vo did assist in preparing his own defense and understood fully the legal standards involved.

While Vo did not plead guilty to manslaughter, such a fact is not determinative. By going forward with the trial, Vo attempted to "save face" and tell the jury that what he did was justified. The jury did not agree with him. *Moreover, the plea to a lesser offense was available to Vo before [the girlfriend] took the stand, at a point, it is conceded, when Vo was competent to stand trial.* Based on the evidence presented, this court cannot conclude that Vo's refusal to accept a guilty plea equates to a finding that he did not understand the proceedings. *Vo understood the proceedings and chose to go forward despite the offer of a plea to a lesser offense.*

While Vo was certainly depressed after [the girlfriend's] testimony, this court concludes that he had a factual understanding of the proceedings against him, consulted with his attorney, and was able to assist in preparing his own defense.

(Paper 64, pp. 19-21; emphasis supplied) As noted above, the SJC confirmed the conviction and the denial of a new trial.

There is nothing more to be done. Atty. Glynn testified in the 1995 hearing that he conveyed the plea offer to the defendant very early during the trial, when Glynn recalled the offer was made. ADA McEvoy's recollection was consistent, and there is no new evidence to the contrary. Even if the offer had been made before trial and Glynn had neglected to tell his client right away, as the defendant suggests, there is no evidence that it had already been taken off the table when Glynn approached the defendant, or soon afterward. Finally, no matter what the timing, the theory that the defendant was so distraught at his former girlfriend's testimony that he was not competent to decide whether to accept the plea offer has already been the subject of an evidentiary hearing, and rejected.

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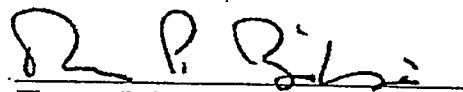
A defendant who seeks a new trial on grounds of ineffective assistance

bears the burden of demonstrating that, "there has been serious incompetency, inefficiency, or inattention of counsel – behavior of counsel falling measurably below that which might be expected from an ordinary fallible lawyer," and that, as a result, the defendant was "likely deprived ... of an otherwise available, substantial ground of defence."

Commonwealth v. Boria, 460 Mass. 249, 252 (2011), quoting Commonwealth v. Saferian, 366 Mass. 89, 96 (1974). The defendant in this case has put forward no evidence suggesting that Atty. Glynn was ineffective, or that any act or omission on his part deprived the defendant of the opportunity to accept the Commonwealth's offer of a plea to manslaughter.

ORDER

For the foregoing reasons, the defendant's Motion for Appointment of Counsel Outside of the Committee for Public Counsel Services (Paper #96), and his Motion to Vacate, Set Aside, or Correct Sentence, (Paper #97), are both DENIED, without hearing.


Thomas P. Billings
Justice of the Superior Court

Dated: January 17, 2017.

75

Exhibit 7

Barry A. Bachrach
Attorney at Law
62 Paxton Street
Leicester, MA 01524

Bodhisattva Skandha
W28163 - Box 43,
Norfolk, MA 02056

June 30, 2015

RE: Commonwealth v. Wampler,

/ MICR1991-0808

Dear Mr. Bachrach:

You were recommended to me by the reversal of judgment in Commonwealth v. Alphonse, 87 Mass. App. Ct. 336 (2014)

Please review the enclosed motion, affidavit, and memorandum and see if you can represent Mr. Wampler, for a reduced fee, or, even better Pro Bono.

Sincerely yours,

Bodhisattva Skandha
Bodhisattva Skandha
Prison Advocate and
Buddhist Liaison

Exhibit 8

Paul Joseph Davenport
Attorney at Law
50 Congress Street #615
Boston, MA 02109

Bodhisattva Skandha
W28163 - Box 43,
Norfolk, MA 02056

July 13, 2015

RE: Commonwealth v. Wampler, MICR1991-00808

Dear Mr. Davenport:

You were recommended to me by Commonwealth v. Gelfgatt,
468 Mass. 512 (2013)

As you may ascertain from the enclosed motion for new trial, the defendant has viable issues with which to be awarded a new trial. He is very reluctant to file his motion as a Pro Se defendant.

If you could take a close look at this case and decide to represent Mr. Wampler for a reduced fee (he and his family are Vietnamese and very middle-class) or Pro Bono, it would certainly serve the ends of justice.

Sincerely yours,

Bodhisattva Skandha

Bodhisattva Skandha
Buddhist Advocate

THE LAW OFFICE of

BARRY BACHRACH

ATTORNEY AT LAW

62 Paxton Street
Leicester, MA 01524
Tel 508-892-1533
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Barry A. Bachrach, Esquire
Email: bbachrach@bachrachlaw.net

Rhonda L. Bachrach, Esquire
Email: rbachrach@bachrachlaw.net

Exhibit 9

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July 20, 2015

MCI - Norfolk
Attn: Bodhistattva Skandha
W28163 - Box 43
Norfolk, MA 02056

RE: *Appeal*

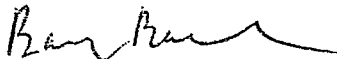
Dear Mr. Skandha:

Please be advised that I am in receipt of your correspondence and enclosures regarding the case of *Commonwealth v. Wampler*, MICR1991-0808. First, thank you for considering my services for reviewing this case. However, since I already have numerous reduced fee and pro bono cases at this time, I cannot take this case on either on a reduced fee or pro bono basis. Instead, I would have to take a significant retainer to review the file and, if warranted, file the appeal and argue the appeal.

Based on the above, I will hold off on performing any work on the *Wampler* matter until I hear how you wish me to proceed. Given the procedural history of this case, not to mention how far back it goes, I would need a retainer of no less than Ten Thousand Dollars (\$10,000) to handle this matter.

Thank you for your prompt attention to this matter. Please let me know how you wish to proceed. If I do not hear from you, I will assume that you do not wish me to pursue this matter on your behalf.

Very truly yours,



Barry A. Bachrach

BAB/rlb

78

Exhibit 10

Rebecca Rose
Attorney At Law
Box 440044
Somerville MA 02144

Bodhisattva Skandha
W28163 - Box 43
Norfolk MA 02056

August 31 2015

RE; Commonwealth v. Wampler;

MICR1991-00808

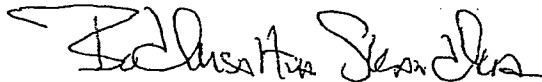
Dear Attorney Rose;

Please take a look at this pleading and ascertain if you are interested in representing Mr. Wampler. His family is not rich but I'm sure something can be worked out. Mr. Wampler graduated from Somerville High School so he told me he knows you're a good lawyer.

Please let me know if this is something you'd be interested in doing.

Thank you for your time and effort in this matter.

Bodhisattva Skandha
Prison Advocate



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Exhibit 11

REBECCA ROSE
Attorney at Law
P.O. Box 440044
Somerville, MA 02144
617-868-1121

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION

September 22, 2015

Bodhisattva Skandha, W28163
MCI Norfolk
PO Box 43
Norfolk, MA 02056

Re: Commonwealth v. Wampler

Dear Mr. Skandha,


Thank you for your confidence in me. I have read the motion and the attachments regarding Mr. Wampler's case that you sent to me, and I regret to inform you that I am not able or willing to take on Mr. Wampler's case. I am sending the materials back to you so that you can use them in the future.

I suggest that Mr. Wampler ask CPCS to screen his case - CPCS appoints murder-qualified attorneys to review cases that have issues worthy of review. Mr. Wampler can send his materials and a request to:

Donald Bronstein, Director
CPCS Private Counsel Appeals Unit
44 Bromfield St.
Boston, MA 02108

You should get a prompt response from Attorney Bronstein or someone in his office. If CPCS will not appoint an attorney to screen the case, Mr. Wampler can request a copy of CPCS's manual on submitting a motion pro se. Good luck to you and Mr. Wampler.

Very truly yours,


Rebecca Rose
Attorney at Law

encls.

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Exhibit 12
COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
No. SJ-2017-0073

Middlesex Superior Court
No. 1991-00808

COMMONWEALTH

v.

LARRY D. WAMPLER, JR.

ORDER DENYING LEAVE TO APPEAL

The defendant's application pursuant to G. L. c. 278, § 33E, for leave to appeal from the denial of defendant's "motion to vacate, set aside, or correct sentence;" is denied on the grounds set forth in the Commonwealth's opposition.

By the Court, (Hines, J.) *gph*

Maura S. Doyle
Maura S. Doyle, Clerk

Entered: March 24, 2017

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Supreme Judicial Court for the Commonwealth of Massachusetts

John Adams Courthouse

One Pemberton Square, Suite 1400, Boston, Massachusetts 02108-1724

Telephone 617-557-1020, Fax 617-557-1145

Larry D. Wampler, Jr.
MCI Norfolk (W52160)
P.O. Box 43
Norfolk, MA 02056

RE: No. SJC-12333

COMMONWEALTH

vs.

LARRY D. WAMPLER, JR.

NOTICE OF DECISION

A decision by the Supreme Judicial Court was issued in the above-captioned case on this date. The text of the decision will be available for approximately two weeks at:
<http://www.mass.gov/courts/court-info/sjc/about/reporter-of-decisions/>.

Francis V. Kenneally, Clerk

Dated: August 18, 2017

STATE APPELLATE DEFENDER OFFICE

82

DAWN VAN HOEK
DIRECTOR

MICHAEL MITTLESTAT
DEPUTY DIRECTOR

www.sado.org
Client calls: 313.256.9822



Exhibit 13

MAIN OFFICE:
PENOBSCOT BLDG., STE 3300
645 GRISWOLD
DETROIT, MI 48226-4281
Phone: 313.256.9833 • Fax: 313.965.0372

LANSING AREA:
Phone: 517.334.6069 • Fax: 517.334.6987

August 23, 2017

Bodhisattva Skandha
W28163-Box 43
Norfolk, MA 02056

Dear Mr. Skandha:

I write in response to your letter received June 5. Please accept my apologies for the delayed response. I cannot give you a legal opinion but I did read the documents you sent and have some comments.

First, you should include a citation to any court that has applied *Lafler v Cooper* retroactively.

Second, it is not clear from the pleadings whether any plea offer was conveyed to Mr. Wampler at any time in the process. It is hard to imagine there was never any discussion about possible pleas. Also, it should be made clear, if true, that Mr. Wampler wanted to plead guilty and had conveyed that to his attorney. The desire to plead guilty and letting his attorney know was key for Mr. Cooper.

Third, it is not clear if this legal issue has been raised before as part of earlier appeals.

Fourth, I would include more context if it exists for the attached pages regarding the prosecution's recall of the plea offer.

The key to winning is that the client told the lawyer he wanted to plead and the lawyer then failed to convey the offer(s) (Frye) or misadvised on the risks and benefits (Cooper).

Good luck!

Sincerely,

Valerie Newman
Assistant Defender

**THE LAW OFFICE OF
WILLIAM S. SMITH**

997 MAIN STREET
P.O. BOX 282
HOLDEN, MA 01520
TEL.: (774) 317-9287
ATTORNEYSMITHLAW.COM

WILLIAM S. SMITH, ESQ.

PAMELA M. O'SULLIVAN, ESQ.,
OF COUNSEL

E-MAIL: HOLDENATTORNEY@GMAIL.COM
FACSIMILE: (508) 267-0500

MOBILE: 774-364-1754

August 26, 2017

Bodhisattva Skandha- W28163
PO Box 43
Norfolk, MA 02056

RE: Your Recent Correspondence re. Mr. Wampler
***DISCLAIMER: THE WITHIN LETTER DOES NOT CONSTITUTE IN ANY
WAY THE FORMATION OF AN ATTORNEY-CLIENT RELATIONSHIP
NOR SHOULD IT BE CONSTRUED AS SUCH***

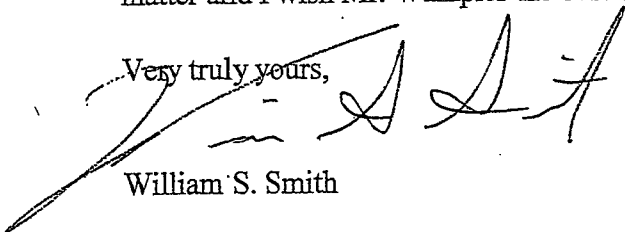
Dear Mr. Skandha,

Thank you for your letter to my office dated August 10, 2017 which I received recently. At present, my office is cannot accept any *pro bono* cases due to the extremely busy practice we have. I therefore regret that I am declining to take this matter.

By all means I suggest strongly that Mr. Wampler continue to contact other attorneys. He should also continue to try CPCS. You might also try writing the Middlesex County Bar Association on his behalf at: 200 Trade Center, 3rd Floor, Rm 329, Woburn, MA 01801.

Lastly, please do not ever hesitate to contact my office in the future if we can ever be of assistance to you or anyone else you might know. Thank you for your attention to this matter and I wish Mr. Wampler the best of luck with his matter.

Very truly yours,


William S. Smith

WSS/jk

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Exhibit 15

Hrones Garrity & Hedges
Lewis Wharf Bay 232
Boston MA 02110

Bodhisattva Skandha
W28163 - Box 43
Norfolk; MA 02056

August 31 2015

RE; Commonwealth v. Wampler

MICR1991-00808

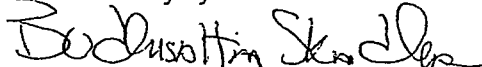
Dear Attorneys;

Please look at the enclosed pleading(s) and see if you can be interested in representing Mr. Wampler - his family and he may be able to work out a plan of payment if you are interested in doing so.

As you can see - the issues are good - he just needs the right representation. Do you speak Vietnamese?

Please let me know your decision. I am hoping you can be unbusy enough to help.

Sincerely yours


Bodhisattva Skandha

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Exhibit 16

Carney & Bassil
Attorneys at Law
20 Park Plaza
Boston MA 02116

Bodhisattva Skandha
W28163 - Box 43
Norfolk MA 02056

August 31 2015

RE: Commonwealth v. Wampler

MICR1991-00808

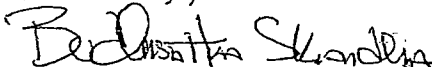
Dear Gentlemen;

Please take a look at the enclosed pleadings and see if you would be interested in representing Mr. Wampler.

His family does not have a lot of money but I'm sure something can be worked out. As you can see from the documents Mr. Wampler has good issues.

Please let me know if you can help Mr. Wampler.

Sincerely;


Bodhisattva Skandha
Advocate

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Exhibit 17

Mr. William S. Smith
Attorney at Law
997 Main street
P.O. Box 282
Holden MA 01520

Bodhisattva Skandha
W28163 - Box 43,
Norfolk MA 02056

September 12, 2017

RE: PETITION TO ORDER SPECIFIC PERFORMANCE OF THE
COMMONWEALTH'S OFFERS TO PLEAD GUILTY

Dear Mr. Smith:

Thank you for your letter of August 26, 2017.
The information that I sent to you has been negated
by the SJC's most recent denial of Mr. Wampler's
attempt to hear his case, not as a motion for new
trial, which they erroneously interpreted.

So, I put together the enclosed petition,
which clearly seeks a remedy for events which had
occurred pretrial.

If you do not take the case, please return
the petition to me, as it is the only one I have.

Thank you for your professionalism.

Very truly yours,

Bodhisattva Skandha

Bodhisattva Skandha

Exhibit 18

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Rebecca A. Jacobstein
Attorney at Law
P.O. Box 223
Watertown MA 02471

Bodhisattva Skandha
W28163 - box 43
Norfolk MA 02056

September 21 2015

RE: Commonwealth v. Wampler;

MICR1991-00808

Dear Attorney Jacobstein;

Enclosed please find my motion for new trial; affidavit;
and memorandum of law for Mr. Larry D. Wampler who was
convicted in Commonwealth v. Hung Tan Vo; 427 Mass. 424
(1998)

Mr. Wampler has been trying to hire an attorney for quite
awhile now with no just results. He disdains filing it
Pro Se.

Should you find yourself interested in the case you could
rewrite the pleadings to satisfy Lamplere v. Cooper; 131
S.Ct. 1376 (2012) for a price and then go on to represent
and support the case in the Superior Court.

Please write back and let me know your particulars and
I will convey your interest to Mr. Wampler who is not
literate.

Thank you very much for your contemplated support.

Sincerely yours;

Bodhisattva Skandha

Bodhisattva Skandha
Buddhist Advocate

Paula Lynch Attorney at Law

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September 21, 2015

Bodhisattva Skandha W28163
P.O. Box 43
Norfolk, MA 02056

Dear Mr. Skandha:

I have received your letter regarding Larry D. Wampler, and his desire to retain an attorney to file a Motion for New Trial and I have a question or two.

First, is Mr. Wampler indigent (most residents of Norfolk are indigent having lost their ability to earn a living)? If he is, he is entitled to write to Donald Bronstein of the Committee for Public Counsel Service to have an attorney such as myself appointed to his case and determine whether or not Mr. Wampler would benefit from a lawyered post-conviction action such as a Motion for New Trial..

Has this already happened? If not, why not? Second, why have you selected me in particular to undertake Mr. Wampler's case?

I appreciate that you are acting on Larry D. Wampler's behalf and have probably done a very good job preparing a motion, affidavit, and memorandum of law, but I am unwilling to take on a case without knowing the answers to the questions I asked.

Thank you for thinking of me and I wish you well in your pursuit of justice.

With every good wish,

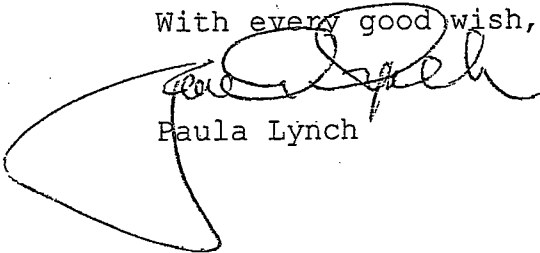

Paula Lynch

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(Note: prisoners are not allowed copies of statutes, caselaw or regulations, per the Law Librarian, William Mongelli)

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#1: The Lower Court Abused Its Discretion
By Dismissing The Complaint

pp. 6-8

#2: The Plaintiff Has Standing According
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pp. 8-11

#3: The Lower Court Failed To Apply Full
Faith And Credit

pp. 11-14

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Order Of February
25, 1992.

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Form DCD-64

District Court Department of The Trial Court

Brockton Division

No. 9215 Mh 0073

IN THE MATTER OF Hung Vo

ORDER OF CIVIL COMMITMENT OF A PRISONER PURSUANT TO G.L. c. 123, s. 18

In accordance with G.L. c. 123, s. 18, a petition has been filed by James F. Gilligan M.D. (name)

Medical Director (title) of the Bridgewater State Hospital (hospital), for the commitment of

Hung Vo (name), a prisoner whose sentence expires on Awaiting Trial.

I find that Hung Vo (name) is mentally ill and that (check appropriate box):

☒ failure to retain said person in a facility would create a likelihood of serious harm, and there is no less restrictive alternative for said person.

☒ failure to retain said person in strict security would create a likelihood of serious harm, and said person is not a proper subject for commitment to any facility of the Department of Mental Health.

Therefore, it is ORDERED that said person be committed to the Bridgewater Hospital (hospital) for a period

not to exceed one year (6 mos./1 yr.), or until such time as there is no longer a likelihood of serious

harm by reason of mental illness, whichever period is shorter.

And the Court Officer, or other officers duly authorized, are hereby commanded to remove said person to said

hospital and deliver said person to the Superintendent or Medical Director and to make return of this warrant with their doings thereon to the Clerk-Magistrate of this court as soon as may be.

WITNESS my hand and seal at Brockton (Bridgewater) February 25, 1992

[Signature]
Justice

THIS COMMITMENT ORDER EXPIRES February 24, 1993

Original to Clerk-Magistrate
Copies to Court Officer, prisoner, Petitioner, and place of detention.

Order Of
February 25, 1992

BRIDGEWATER STATE HOSPITAL

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Page

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50-32111

Name

VO, HUNG

No.

OCTOBER 19, 1991

COMPETENCY EVALUATION

W.E. PROFIT, Ph.D.

IDENTIFYING CHARACTERISTICS AND BRIEF LEGAL HISTORY: Mr. Hung Tan Vo, (DOB: 5/14/69), is a single, 21 year old, male of American and Vietnamese descent, born in Saigon, Vietnam, who gives his usual occupation as laborer and his religion as Buddhism and who was referred on July 5, 1991 under Section 18A for the second time to Bridgewater State Hospital from the Middlesex County Jail at Cambridge where he was awaiting trial on charge of Murder. Subsequent to that referral, Mr. Vo was committed to Bridgewater State Hospital on August 14, 1991 for a period of time not to exceed six months by the District Court of Brockton. On August 14, 1991, an order was issued by the Superior Court of Middlesex County for an examination of Mr. Vo for Competency to Stand Trial. This evaluation was completed in fulfillment of that court order.

CIRCUMSTANCES OF ADMISSION:

Mr. Vo's admission from the Middlesex County Jail at Cambridge was accompanied by the referral note of Dr. Milton Schmidt, who reported the following: "Inmate took an overdose of Tylenol and cut his chest and neck. He reportedly told priest, 'Will I go to heaven?' and noted 'I took 50 pills and have about 100 more pills in my cell' (a large number of pills were indeed present in his cell). He has denied feeling suicidal till now and has shown no signs of psychosis. Priest has described him as depressed and sad."

Dr. Schmidt concludes: "Patient is an extremely serious suicide risk. His actions indicate depression and a sense of hopelessness--of suicide being a solution for him and his problems. His promises of safety cannot be trusted. He needs evaluation and treatment at a secure psychiatric facility."

Dr. Schmidt also notes: "I am told that there is evidence he has been giving away his possessions."

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BRIDGEWATER STATE HOSPITAL

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Page

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Name

VO, HUNG

No.

50-32111

OCTOBER 19, 1991

COMPETENCY EVALUATION

W.E. PROFIT, Ph.D.

INFORMED CONSENT: Prior to beginning the examination, Mr. Vo was informed that the examiner is a licensed clinical psychologist, that the examination was ordered by the Court, and that the purpose of the examination was to allow the examiner to make recommendations to the Court concerning Competency to Stand Trial. Mr. Vo was told further that the examination was not confidential in that a report would be written to the Court. He was advised that he had a right to refuse the examination and that he had a right to refuse to answer any questions during the course of the examination but that anything which he said might be repeated to the Court. Mr. Vo was then asked if he understood the nature of the warning that was being given to him. He was asked to paraphrase the warning in his own words and to explain its meaning. Mr. Vo was able to do so and his consent to be examined was accepted on this basis.

PERTINENT HISTORY: Mr. Hung Vo was born in Saigon, Vietnam to Kam Vo, a Vietnamese woman, and Larry Dale Wampler, an American soldier. Mr. Vo's mother is Buddhist but she sent her children to Catholic schools and Mr. Vo describes himself as a Catholic Buddhist. Mr. Vo is the second oldest and only male of three children. Mr. Vo reports that his family was able to move to the United States seven or eight years ago. Their trip from Vietnam saw them stop briefly in Thailand for ten days and they flew to New York by way of Germany, finally settling in Massachusetts. Mr. Vo's mother now lives in Quincy and his sister lives in Sommerville.

To the best of his knowledge, Mr. Vo states that he reached developmental milestones in age appropriate fashion and there is no history of unusual childhood diseases nor has Mr. Vo ever been the victim of any physical or sexual abuse. Mr. Vo believes that there is no history of mental illness in his family and to the best of his knowledge no one in his family has ever been hospitalized for treatment of mental illness nor has anyone been under the care of psychiatrist, psychologist, or psychiatric social worker. Mr. Vo himself reports no history of hospitalization or treatment for a mental illness.

BRIDGEWATER STATE HOSPITAL

Page

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Name

VO, HUNG

No.

50-32111

OCTOBER 19, 1991

COMPETENCY EVALUATION

W.E. PROFIT, Ph.D.

Mr. Vo states that he graduated from Sommerville High School in 1988. He worked during high school in a variety of laborer jobs. Immediately after graduation from high school, Mr. Vo took a job with the Nick Floor Sander Company in Sommerville. He worked for this company for approximately a year (1988) and then he went to work for Alright Parking Company. Most recently he has been employed at the Snowman Corporation as a machine tender, a job which he held until his arrest on the instant offense.

Mr. Vo reports no history of head injury, no difficulty in school, and no prior arrest record. He states that in 1987 he began experiencing bouts of depression and what he calls "feeling hurt." Mr. Vo says that he began using drugs, never intravenously, during this period in his life and he reports that he tried a variety of drugs including, cocaine, marijuana, heroin (snorting), and LSD (4 times). Of all these drugs, Mr. Vo states that he made the most use of cocaine by snorting, smoking, and eating it. Oddly, Mr. Vo reports that he listened to commercials on the television whose message was "if you do drugs, you will die." Mr. Vo says that when he was feeling bad, he took all types of drugs, thinking that the drugs would cause him to die and go to heaven. Mr. Vo states that he had one experience in which, after eating a quantity of cocaine, and after not having eaten any food for several days, he had blood to come out of his mouth and nose. Mr. Vo reports that sometime after this experience during the beginning of his relationship with Maureen Ambrose, he gave up drug abuse. Mr. Vo indicates that he may drink beer on occasion.

For a brief period, Mr. Vo says that he lived in Atlanta, Georgia where he helped his mother open a store. Other than this, Mr. Vo says that he has lived in Massachusetts, shuttling between his mother's home in Quincy and his sister's place in Sommerville.

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BRIDGEWATER STATE HOSPITAL

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Page

4

Name

VO, HUNG

No.

50-32111

OCTOBER 19, 1991

COMPETENCY EVALUATION

W.E. PROFIT, Ph.D.

MENTAL STATUS EXAMINATION: Mr. Hung Tan Vo is a small, well developed and well nourished young male who looks his stated age. He is clean shaven, without beard or moustache; he has acne and he is missing the small finger of his right hand; otherwise his facial features and general physical presentation are unremarkable.

Mr. Vo comes to the interview, unescorted, and with no noticeable problems of posture or gait. He is dressed in hospital garb but he is neat and attentive to appearance and grooming. He reports that he is working in the hospital kitchen and he says he likes being busy.

Mr. Vo speaks English well in that he appears able to make himself understood and he evinces no discomfort in carrying on a conversation in English. Mr. Vo also speaks Vietnamese. (Mr. Vo did not object to the interview being conducted in English.) His syntax sometimes is problematic when answering questions in that his answer is likely to be an endorsement of the question and not a specific answer to it. For instance, when asked, "Do you think you were feeling sorry for yourself or were you angry?", Mr. Vo responded, "yes." When asked to clarify the meaning of this respond, Mr. Vo replied, "I was angry."

Mr. Vo's affect is one of depression, apprehension, anxiety, and concern. His manner of speaking is open, easy, and trusting. He does not appear to be paranoid or suspicious and there is no display of hypervigilant or hypersurveillant symptoms. His gaze is focused but not direct. He looks askance when speaking. (This may well be a culturally determined mannerism.) During the course of the examination, he finds himself tearful, crying, and unable to stop despite some effort to do so.

Mr. Vo describes bouts of depression which appear at least in part attributable to his relocation to the United States, the difficulty he experienced in adjusting to the cultural changes, loneliness, rejection, and the problem of establishing appropriate peer relationships. To some extent, Mr. Vo's adolescence reflects the ordinary and usual turmoil associated with growth but his situation is unusual in that

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BRIDGEWATER STATE HOSPITAL

Page

5

Name

VO, HUNG

No.

50-32111

OCTOBER 19, 1991

COMPETENCY EVALUATION

W.E. PROFIT, Ph.D.

he was neither entirely accepted in the Vietnamese community nor was he readily embraced in his father's country. In addition, according to Mr. Vo, he had fallen in love with his girlfriend who is not Vietnamese and had experienced for the first time a powerful attraction and desire to be with someone who seems to have been equally enthralled.

Mr. Vo's history is negative for bouts of mania and there is no evidence of paranoia or of a paranoid delusion system.

Mr. Vo's cognitive skills appear largely intact. He is able to speak in goal directed sentences without prompting. He tracks information well and can carry on a conversation without great difficulty. Mr. Vo's speech does not reveal any of the symptomatology usually associated with an underlying psychotic process or formal thought disorder. When relating a story, his narrative does not wander off target by loose associations, nor does his speech betray the use of neologisms or other examples of disorganization.

Mr. Vo denies experiencing any auditory or visual hallucinations nor does he show any evidence of a delusional system. His religious views should be mentioned in this context, however, since he believes firmly in a hereafter or "heaven" and his belief is almost palpable when he describes himself as wanting to "die and go to heaven." Mr. Vo indicates that he is currently not suicidal but his ideas about whether or not he should die and under what circumstances form a broad area of concern and continued monitoring of his mental status in this area appears warranted and prudent. It is not clear, given his religious beliefs, that Mr. Vo's contemplation of suicide matches in essential regard the views that are commonly subscribed to by mental health professionals. That is, Mr. Vo views suicide to some extent as a way to move to a happier state. It should be noted that he discusses a "suicide pact" with his girlfriend in which they would be "buried in the same casket," or failing that, Mr. Vo would be "buried on the mattress on which she and I slept."

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BRIDGEWATER STATE HOSPITAL

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Page

6

Name

VO, HUNG

No.

50-32111

OCTOBER 19, 1991 COMPETENCY EVALUATION W.E. PROFIT, Ph.D.CLINICAL IMPRESSION:

Mr. Vo shows evidence of an on-going depression whose origins may be traced to problems of dislocation and relocation to a foreign country and culture but which is also fueled by feelings of low self-esteem, hopelessness, helplessness, and general dysphoria. At this point, the depression appears chronic. Mr. Vo's is depressed in part because he cannot help his family, feels he has become a burden to them, cannot make people understand his view of what led to the instant offense, and cannot fathom what is happening between him and his girlfriend.

STANDARD FOR DETERMINING COMPETENCY TO STAND TRIAL:
(Commonwealth v. Vailes, 1971; Commonwealth v. Hill, 1978.)

"Whether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational as well as factual understanding of the proceedings against him."

CLINICAL EXAMINATION OF ISSUES RELATED TO COMPETENCY TO STAND TRIAL:

Mr. Vo is aware of the fact that he has been charged with murder which he believes to be a very serious offense. Mr. Vo also thinks that he is not guilty of the charge which has been brought against him and he wishes to defend himself in Court against these charges. Mr. Vo has a basic understanding of the criminal justice system as an adversary process. He knows that he has a right to an attorney and he understands that it is his attorney's responsibility to defend him against the charges. Mr. Vo also is aware of the District Attorney as a person who will try and prove that he is guilty of the charge. Mr. Vo understands the importance of telling the truth and he appears to understand the importance of working with his attorney in the preparation of a defense.

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BRIDGEWATER STATE HOSPITAL

Page

No. 50-32111

Name

VO, HUNG

OCTOBER 19, 1991

COMPETENCY EVALUATION

W.E. PROFIT, Ph.D.

In this examination, Mr. Vo indicated that he had recently learned that he was eligible for the death penalty and he stated to this examiner his concern that the District Attorney would be trying to put him to death. When questioned further about this matter, Mr. Vo appeared to be under the mistaken impression that if a law were passed authorizing the use of the death penalty that all of the those individuals currently facing a murder charge would be executed without trial, simply as a result of their being charged with a capital offense. This notion of "summary" justice may reflect an on-going misunderstanding within the Vietnamese community of the death penalty debate currently raging within the Commonwealth or it may be represent some hybrid merger of Vietnamese (French) ideas of justice and American talk of swift and certain punishment. Mr. Vo was easily disabused of this belief but wished to hear about this matter from more people than just this examiner. Mr. Vo may have other ideas about the American judicial system which are equally erroneous but they did not surface in this examination.

Mr. Vo appears highly motivated to cooperate with his attorney in the preparation of a defense and he has considerable material which he would like to make his attorney aware of as part of his effort to defend himself.

DISCUSSION OF CLINICAL FINDINGS:

Although Mr. Vo is depressed and this depression appears to have preceded his current circumstances, Mr. Vo's depression does not appear to interfere with his ability to have a rational as well as factual understanding of the proceedings against him. Nor does it appear that this depression has created a lack of trust or lack of desire to cooperate with his attorney in the preparation of a defense. Nor does it appear that Mr. Vo's depression has resulted in a lack of desire to defend himself although it is certainly the case that Mr. Vo's thinking sometimes borders on feelings of hopelessness and the taking of his own life as another way to resolve his present emotional pain.

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BRIDGEWATER STATE HOSPITAL

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Name

VO, HUNG

No.

50-32111

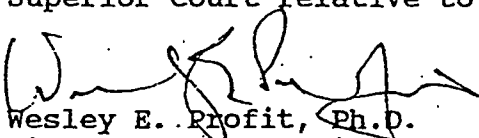
OCTOBER 19, 1991 COMPETENCY EVALUATION W.E. PROFIT, Ph.D.

RECOMMENDATIONS AND CONCLUSIONS:

1. Mr. Vo is depressed and the depression is of sufficient weight and impact that Mr. Vo continues to meet the clinical criteria for involuntary hospitalization under Section 18A and Sections 7 and 8 of Chapter 123. That is, Mr. Vo is presently suffering from a mental illness which renders him a danger to himself and others and were Mr. Vo not to be hospitalized in a setting of strict security, there is a likelihood of danger to himself and others. Mr. Vo's involuntary commitment to Bridgewater State Hospital under Section 18A should remain in force and effect. His need for further hospitalization [and the possibility of his return to the Middlesex Jail at Cambridge] will be explored during the periodic assessments required under Chapter 123.

2. Mr. Vo's depression while impacting on his thinking about his trial and his current circumstance, nevertheless, does not appear to interfere with his ability or motivation to work with his attorney in the preparation of a defense. Further, Mr. Vo does not show any of the usual signs, symptoms, or deficits ordinarily associated with a lack of competency to stand trial.

3. Mr. Vo should be returned to Bridgewater State Hospital in accordance with the current order of commitment from the District Court of Brockton after any proceedings in the Superior Court relative to his instant offense.


Wesley E. Profit, Ph.D.
Director of Forensic Services and
Designated Forensic Examiner and Supervisor,
Division of Forensic Mental Health,
Department of Mental Health,
Commonwealth of Massachusetts.

RA-25

100

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS:

SUPERIOR COURT
NO. 91-808

COMMONWEALTH

V

HUNG TAN VO

)
) MOTION FOR MENTAL EXAMINATION PURSUANT

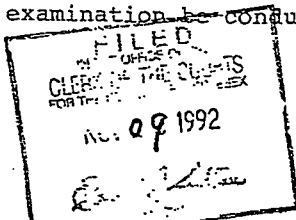
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) TO M.G.L. 123, SECTION 19

Now comes the Defendant, Hung Tan Vo, in the above-entitled matter and respectfully requests this Honorable Court to order the facility at Bridgewater to conduct a mental examination of said defendant by a qualified physician, psychologist or psychiatrist to determine the Defendant's mental condition at the present time and at the time of ~~the commencement~~^{RS} of his trial.

This examination is requested under Massachusetts General Laws, Chapter 123, Section 19 wherein said defendant alleges that because of very upsetting testimony by the Commonwealth's first witness wherein this witness indicated in open court that she was presently living with a man and was giving witness against said Defendant, this testimony was a tremendously disturbing factor and one which rendered him incapable of understanding the proceedings or assistance of counsel in his own defense.

Doctor Profit of the Bridgewater facility has indicated that he is willing to conduct this examination and is well qualified not only because of his educational background but also because Mr. Hung Tan Vo was in the Bridgewater facility prior to the commencement of the trial and at the time of his trial.

I believe the interests of justice dictates that this mental examination be conducted.



Dated: November 5, 1992

Hung Tan Vo
by his attorney

Lawrence R. Glynn
Lawrence R. Glynn
2600 Massachusetts Avenue
Cambridge, Mass. 02140
491-7777

RA-29

Reviewed as amended.
Robert W. Blum
12-21-92

55A

COMMONWEALTH OF MASSACHUSETTS

101

MIDDLESEX, SS:

SUPERIOR COURT
NO. 91-808

COMMONWEALTH)
V)
HUNG TAN VO)

AFFIDAVIT IN SUPPORT OF MOTION FOR
POST CONVICTION EXAMINATION OF DEFENDANT

I, Lawrence R. Glynn, hereby depose and state under oath that on Tuesday, March 17, 1992 I proceeded to the Bridgewater Correctional Institute and to the hospital where Mr. Vo had been detained and spoke with a Doctor Profit who was very familiar with Mr. Vo's case.

In conferring with Dr. Profit and examining the up-to-date records as they pertain to Hung Tan Vo, I discovered that on February 25, 1992 a commitment hearing was conducted at Bridgewater; said hearing conducted by Justice Kane and Hung Tan Vo was at that time being represented by Attorney Maureen Devine of Hingham, Massachusetts, and, after a full hearing, Judge Kane committed Hung Tan Vo to a further commitment at Bridgewater for a period not to exceed one year and stating that this decision was based on the fact that the patient suffered from a major mental illness and Mr. Vo was diagnosed as having a major depression problem.

Judge Kane also stated that the failure to hospitalize Mr. Hung Tan Vo as of February 25, 1992 would create a great likelihood of serious harm to himself or others and that the patient requires hospitalization with strict security.

Dr. Profit also stated that Hung Tan Vo as of March 14, 1992 stated that he does what his girlfriend wants him to do including rejection of any offer of a lenient sentence. The hospitalization notes also indicated that Hung Tan Vo ate toilet paper in order to induce choking.

The hospital admission notes also stated that Hung Tan Vo was quoted as saying "I do everything for her--she says kill myself in front of the judge, I do it--she says do not plea bargain".

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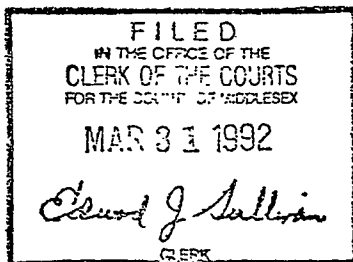
For these and other matters I feel that the Defendant,
Hung Tan Vo, should be examined by the staff at Bridgewater
Hospital and file a report with this Honorable Court.

By the Defendant's attorney

Lawrence R. Glynn

Lawrence R. Glynn
2600 Massachusetts Avenue
Cambridge, Mass. 02140
491-7777

54.



58.

No. of Pages: 11

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

SUPERIOR COURT

No. 91-808

Before: Bohn, J

COMMONWEALTH OF MASSACHUSETTS

VS

HUNG TAN VO

FILED
IN THE OFFICE OF THE
CLERK OF THE COURTS
FOR THE COUNTY OF MIDDLESEX

NOV 12 1992

Edward J. Sullivan
CLERK

Friday, April 3, 1992

Cambridge, Massachusetts

AGCY OF WM BEAUPRE, 81 WASHINGTON ST., STE 2, SALEM, MA 01970

JAL 508-741-1474 FAX 508-741-0021 1-800-852-0313 JAL

1 APPEARANCES:

2 JOHN MCEVOY, Esq.

3 Assistant District Attorney

4 40 Thorndike Street

5 Cambridge, MA 02140

6
7 LAWRENCE GLYNN, Esq.

8 2600 Massachusetts Avenue

9 Cambridge, MA 02140

10 Counsel for Defendant

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1 THE CLERK: Your Honor, this is the Commonwealth
2 versus Hung Tan Vo, number 91-808, present is John McEvoy
3 for the Commonwealth and Attorney Lawrence Glynn on behalf
4 of the defendant. Mr. Glynn is filing a post trial
5 motion.

6 THE COURT: Yes, sir?

7 MR. GLYNN: Yes, Your Honor, I'm asking based on the
8 affidavit I have filed and a motion that I have filed that
9 my client, Hung Tan Vo, is presently at Bridgewater and
10 under the treatment of Dr. Profit be further examined,
11 Your Honor, for two reasons, further examined for the post
12 conviction release based upon my motion of required
13 finding of not guilty and number two, I was never informed
14 that he was examined in a hearing held on February 25,
15 1992 at the institution. I was never notified of that
16 hearing. I contacted the attorney, Mrs. Hingham, who
17 represented Mr. Vo in that hearing and asked for a meeting
18 with her and the results of that hearing were set forth in
19 my affidavit.

20 I'm asking, Your Honor, that the court, although he
21 was examined and found competent to stand trial eight
22 months ago I wasn't there. That was done in the normal
23 course. He demonstrated his inability by braking up at
24 the time of the young ladies testimony. In my affidavit

1 or they will provide an affidavit that when I went to
2 prepare him for his own testimony he would not listen to
3 me, would not take my advice and I believe even the record
4 will show that his testimony while on the stand in his own
5 behalf was erratic, not set forth in a straight pattern
6 where he started from and where it lead up to. And for
7 these reasons, Your Honor, not for post conviction relief
8 I will file further motions to Your Honor just to help the
9 Court to understand what his state of mind was during the
10 course of the trial.

11 THE COURT: Well, I'm a little confused. Why do you
12 say you weren't aware of Judge Cain's order?

13 MR. GLYNN: I was not aware of that hearing on the
14 25th, Your Honor.

15 THE COURT: There was an order from Judge Cain and as
16 far as I knew a copy was given to both of you, Mr. McEvoy
17 and Mr. Glynn, that basically said that Mr. Vo should
18 continued to be held at Bridgewater pending trial. That
19 was the purpose of the commitment order from Judge Cain,
20 indicating he should be held at Bridgewater pending trial
21 and not return to a penal setting. And that order was
22 give to you and Mr. McEvoy.

23 MR. GLYNN: Well the order -- --

24 THE COURT: And the only reason I bring that up to

1 you, I'd like you to think about that.

2 MR. GLYNN: The order I believe, Your Honor, that he
3 be committed to the Bridgewater facility for a period not
4 less than one year because of depression.

5 THE COURT: That's correct, that is not be returned
6 to a penal setting. It didn't address examinations so as
7 to stand trial or criminal responsibility.

8 MR. GLYNN: There were other facts I have in my
9 affidavit, what his statements were and why to Dr. Profit.

10 THE COURT: I'm concerned with your affidavit and I
11 would like you, I suppose to -- --

12 MR. GLYNN: Amend it?

13 THE COURT: No, not an amendment, recall back through
14 your recollection of -- --

15 MR. GLYNN: Well, Your Honor, let me put it this way,
16 I didn't know there was a hearing. I thought I should
17 have been contacted by the Bridgewater facility and with
18 the attorney, and if she knew I was representing him in
19 the murder charge, I should have been present.

20 I had some participation in that hearing which was
21 held some five days or six days before the beginning of
22 this murder trial. I can make further inquiry of the
23 court and the doctor and the treating physician, but no
24 one ever told me there was a hearing at the Bridgewater

1 facility on February 25th when I began a trial here in
2 this courtroom on March third.

3 THE COURT: No, I'm sorry what I -- --

4 MR. GLYNN: I didn't know anything about that hearing
5 that was conducted in Bridgewater, Your Honor, until after
6 it was over.

7 THE COURT: That may be true. I don't know that. I
8 don't know anything about that. But your memo, your
9 affidavits suggest that somehow the court knew about it
10 and didn't advise you that Judge Cain had ordered that Mr.
11 Vo be retained at Bridgewater.

12 Judge Cain committed him to Bridgewater to not
13 exceed, it says here patient mental, major mental illness
14 diagnosis, depression, further hospitalization to treat
15 the patient. Very likely of having to settle for others
16 of required hospitals with direct security of Bridgewater
17 State Hospital not very likely. Did not address the
18 competency to stand trial.

19 MR. GLYNN: Under chapter 123 section 19 the court
20 ordered to an evaluation by Dr. Profit and I talked to you
21 about this matter.

22 THE COURT: Why doesn't Dr. Profit evaluate without
23 an order from me? I don't understand why he needs an
24 order from me?

1 MR. GLYNN: I will address that. With Dr. Profit, if
2 he would like to do that, his own examination, his
3 examination of the records while I was with Dr. Profit, he
4 brought out some startling facts that Mr. Vo stated to Dr.
5 Profit during the course of the trial and post trial.

6 THE COURT: I'm looking to see if there is any cases
7 that allows section 19 evaluation following a jury
8 verdict.

9 MR. GLYNN: Well although there has been a jury
10 verdict, Your Honor, there has been no final ruling by
11 this Court on my post conviction relief. I have asked for
12 a ruling, Your Honor, before the jury came in with a
13 verdict on a required finding of not guilty of first
14 degree murder and second degree murder. At the end of the
15 trial when the jury gave its verdict, I again renewed that
16 motion and you stated on the record that you wouldn't
17 receive anything. I would wish to file further motions,
18 Your Honor, and you would have a hearing if necessary in
19 several weeks after the jury came in.

20 THE COURT: Mr. McEvoy, what is your position?

21 MR. MCEVOY: Judge, a couple of things, one as far as
22 Judge Cain's ruling regarding the 18A, certainly I
23 remember being informed of that by the clerk. That wasn't
24 to whether I was going to wait, that has nothing to do

1 with competency, second, from Mr. Glynn, I recall the
2 Court after the jury verdict opinion his motion for
3 required finding, commencing that motion on the record and
4 then saying if you want to file any post conviction
5 motions, I will entertain those at a later time.

6 My memory is that you denied that prior to the
7 sentence. It's still left open and finally, Judge, in
8 terms of the defendant's motion for examination, I don't
9 think there is any jurisdiction for this court. The case
10 is finished, there is nothing pending in this court.

11 My view is the next step would be in the SJC when the
12 appeal goes up on motion for a new trial, for example, for
13 funds or examination. I don't think there is anything
14 pending for you to make that determination. I think the
15 case is finished and there is nothing here.

16 THE COURT: I tend to agree with you. The problem o
17 course is if he was not competent, mentally competent at
18 the time of trial I would be responsible for it. I feel
19 responsible on behalf of all of us, Mr. Vo having been
20 found guilty of first degree murder in a situation in
21 which he was offered a change of plea to manslaughter.
22 That's a significant gap.

23 MR. GLYNN: The question, Your Honor, did he
24 understand?

1 THE COURT: Well?

2 MR. GLYNN: Did he understand it and the
3 psychiatrists at Bridgewater have told me they do not
4 believe he fully understands what that plea would have
5 meant. I recommended it, his parents recommended,
6 everyone recommended that he take it.

7 THE COURT: If that's true, that position with out me
8 further ordering or conducting the evaluation, as far as
9 I'm concerned, the case is over. The jury returned a
10 verdict. My recollection of your motion is the same as
11 Mr. McEvoy, I denied the motion for finding of not guilty,
12 and I do suggest if you want to file a motion for me to
13 reconsider that, I would accept both of the motions and
14 memoranda at that time. But the section 19 provides that,
15 section 19 of chapter 123 provides that I may request a
16 psychiatric evaluation of a party or witness before the
17 verdict. And in my understanding there is no longer a
18 party or a witness before the court in the case of
19 Commonwealth versus Vo.

20 This is not to say I'm not sympathetic with the
21 position you are having, Mr. Glynn. On behalf of all of
22 us, I feel responsible for Mr. Vo's trial including the
23 jury verdict of guilty. But it seems to me that Dr.
24 Profit can evaluate Mr. Vo with or without my order and I

1 simply don't have any authority, jurisdiction, whatever
2 you want to call it, to order the evaluation or allow the
3 motion to stay.

4 MR. GLYNN: Yes, sir.

5 MR. MCEVOY: Thank you, Your Honor.
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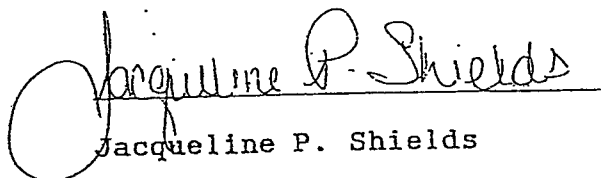
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CERTIFICATE

I, Jacqueline P. Shields, a Notary Public in and for the Commonwealth of Massachusetts, do hereby certify that the foregoing record, Pages 1 to 10, inclusive, is a true and accurate transcript of my stenographic notes to the best of my knowledge, skill and ability.

In Witness Whereof, I have hereunto set my hand and Notarial Seal on this 19th day of April, 1992.


Jacqueline P. Shields
Notary Public

My commission expires May 22, 1998.

Skandha v. Middlesex Superior Court 7 another,

[No. 19-P-0693]

"[I]f an infant, or incompetent person, or an incapacitated person as defined in G.L. c. 190B does not have a duly appointed representative, he may sue by his next friend or by a guardian ad litem...."

Because the plaintiff in this case is not an attorney, or a Judge, he interprets this rule literally, as it was written by the Rules Committee.

The Supreme Judicial Court holds that the Rules of Court are just as binding on the Court as would be a statute. Berkwitz, petitioner, 323 Mass. 41, 47 (1948) Perhaps not on Justice Vuono?

Justice Vuono's claim is that the plaintiff has no standing to sue for his next friend. The United States Supreme Court and the First Circuit Court of Appeals disagrees. [Appendix 3, pp. 1-3]

A next friend (to the real party in interest) may sue by his next friend. Till v. Hartford Acci & Indem. Co., 124 F.2d 405 (1941); Travelers Indem. Co. v. Bengston, 231 F.2d 263 (1956); (Same) Child v. Beame, 412 F.Supp. 593 (SD NY 1976) (Same); Danny B. v. Raimondo, 784 F.3d 825, 828 (1st Cir. 2015); (Same) Sam M. v. Carcieri, 608 F.3d 77, 85 (1st Cir. 2010) (reversed on the "standing" issue)

See, Whitmore v. Arkansas, 495 U.S. 149, 162-164 (1989) where the Court held that if the next friend has a significant relationship with the party who has a disability, standing is prevalent. Gollust v. Mendell, 501 U.S. 115, 124-125 (1990)

Apparently, Justice Vuono is not beholden to the Rule of Law, where the "real party in interest" is unable to litigate his own cause due to mental capacity, lack of access to the Court, or other similar disability, and the plaintiff is allowed, by the Rules of Civil Procedure to seek relief for his incompetent friend. Whitmore, 495 U.S. at 151, 165.

The Superior Court never made arrangements to ascertain Mr. Wampler's competency. There were only two questions to be answered in declaring rights, duties, and legal obligations:

1. Is it proper to put a mental patient on trial?
- *2. Does an attorney have to tell his client that the Commonwealth has offered to plead the case out rather than go to trial?

These are legitimate questions for a declaratory remedy. Boston v. Keane Corp., 406 Mass. 301 (1989) A hearing should have been held. Superior Court Rule 9A(c)(3).

Because Justice Vuono raised the previous Order of Associate Justice Haggerty from 2011, Skandha v. Clerk of the Superior Court for Civil Business in Suffolk County, 472 Mass. 1017, 1018 (2015), it must be the "principle of least effort" to just kick the plaintiff out with no ruling on the merits, labeling the complaint as "frivolous," and thus failed to state a claim for relief. That's what happened in Sam M. v. Carcieri, ante, which was reversed by the First Circuit. This Court should "get with it."