

IN THE SUPREME COURT OF THE STATE OF OREGON

STATE OF OREGON,
Plaintiff-Adverse Party,

v.

JEREMIAH KYLE BLABER,
Defendant-Relator.

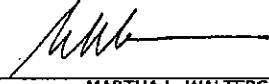
Multnomah County Circuit Court
19CR32657

S068477

**ORDER GRANTING MOTION TO WAIVE FILING FEE AND DENYING PETITION
FOR WRIT OF MANDAMUS**

Upon consideration by the court.

The motion to waive the filing fee is granted. The petition for writ of mandamus is denied.


MARTHA L. WALTERS
CHIEF JUSTICE, SUPREME COURT
6/24/2021 10:11 AM

DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS

Prevailing party: Adverse Party

No costs allowed

c: Benjamin Gutman
Carson L Whitehead
Jeremiah Kyle Blaber
Hon. Nan G. Waller

od

**ORDER GRANTING MOTION TO WAIVE FILING FEE AND DENYING PETITION
FOR WRIT OF MANDAMUS**

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563
Page 1 of 1

IN THE SUPREME COURT OF THE STATE OF OREGON

STATE OF OREGON,
Plaintiff-Adverse Party,

v.

JEREMIAH KYLE BLABER,
Defendant-Relator.

Multnomah County Circuit Court
19CR32657

S068477

APPELLATE JUDGMENT

Upon consideration by the court.

The motion to waive the filing fee is granted. The petition for writ of mandamus is denied.

June 24, 2021

DATE

/s/ Martha L. Walters

Chief Justice, Supreme Court

DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS

Prevailing party: Adverse Party.

No costs allowed.

Appellate Judgment

SUPREME COURT

Effective Date: July 21, 2021

(seal)

jjr

APPELLATE JUDGMENT

REPLIES SHOULD BE DIRECTED TO: State Court Administrator,
Records Section,

Supreme Court Building, 1163 State Street, Salem, OR 97301-2563

Page 1 of 1

**IN THE CIRCUIT COURT
FOR THE COUNTY OF MULTNOMAH**

STATE OF OREGON

CASE NO: 19CR32657

Plaintiff,

**ORDER AMENDING AUTHORIZATION
OF INVOLUNTARY ADMINISTRATION
MEDICATION**

V.

JEREMIAH KYLE BLABER
Defendant.

This matter came before the Court for a hearing at the request of the State to amend the order authorizing administration of involuntary medication issued on 12/14/20. The State was represented by Melissa Marrero and the Defendant was represented by Dylan Potter. The Court heard testimony from Dr. Les Christenson, Defendant's treating psychiatrist at Oregon State Hospital (OSH) and received a letter from OSH outlining the request for a change of medication authorized for involuntary administration as well as a change in the method of administration.

The Court incorporates all of the findings of the attached 12/14/20 order authorizing involuntary medication into this order. The 12/14/20 order was issued after hearings held on August 18, November 9, 10, 23 and December 7, 2020. The 12/14/20 order authorized only oral medications. After the 12/14/20 order was issued, Defendant has refused to take any of the medications authorized with the exception of one dose of Abilify that he took on December 28, 2020. Since then he has refused to take any medications. Based upon the testimony, evidence and argument at the hearing on 1/15/21 and the testimony, evidence argument and findings from the previous hearings the Court finds that:

- (1) Involuntary medication of the defendant is not otherwise authorized by Law;
- (2) There are important state interests at stake in the prosecution of the defendant;
- (3) The recommended medication will significantly further the important state interests because:
 - a. It is substantially likely that the medication will render the defendant fit to proceed
 - b. It is substantially unlikely that the medication will cause side effects that will impair the fairness of the criminal proceeding
- (4) Involuntary administration of medication is necessary to further the important state interests because there are no alternative, less intrusive treatments that would produce the same results as the medications ; and
- (5) Administration of the medication is medically appropriate because it is in the Defendant's best medical interest in light of the Defendant's medical condition.

19CR32657

Based upon the Court's previous findings and the evidence from the January 15, 2021 hearing and all prior hearings on this matter, the Court is approving the State's request for the change of medications and methods of administration as outlined below.

Based on the Court's findings, it is therefore ORDERED:

1. While committed to the custody of the superintendent of OSH pursuant to ORS 161.370, OSH may involuntarily administer the following medication or class of medications for purposes of restoring the Defendant's competency to stand trial:

Medication Name	Abilify / Aripiprazole (generic)
Recommended Maximum Dose	40 mg/day orally or 20 mg per day short-acting IM injection or long-acting injectable every 28 days
Route of Administration	Oral or IM injectable
Purpose	To treat symptoms of delusional disorder for the purpose of competency restoration
Benefits	To treat symptoms of delusional disorder for the purpose of competency restoration
Potential Side Effects:	Insomnia, restlessness, akathisia, weight gain, high blood sugar/diabetes, low white blood cell count, difficult swallowing, headache, Parkinsonism and dyskinesias (including tardive dyskinesia), Neuroleptic malignant syndrome and QTc prolongation, seizures, unusual urges/behaviors

Medication Name	Haldol/Haloperidol (generic)
Recommended Maximum Dose	40 mg/day orally or 20 mg per day short acting IM injections or long-acting decanoate injectable 200 mg every 28 days
Route of Administration	Oral or short-acting IM injections or long acting decanoate IM injections
Purpose	To treat symptoms of delusional disorder for the purpose of competency restoration
Benefits	To treat symptoms of delusional disorder for the purpose of competency restoration
Side Effects	Muscle stiffness in arms and legs, physical and/or mental restlessness such as in ability to still (akathisia), tremors in hands or fingers, other involuntary movement of various muscle groups such mouth, lips, tongue, jaw which could be tardive dyskinesia or more rarely dystonic-stuck muscles of the eyes or other muscle groups including difficulty swallowing. Constipation, dry mouth, difficulty urinating. Rare cases of neuroleptic malignant syndrome, seizures.

Medication Name	Geodon/Ziprasidone (generic)
Recommended Maximum dose	160 mg/day orally or 40 mg/day short-acting IM injection
Route of Administration	Oral or short-acting IM injection
Purpose	To treat symptoms of delusional disorder for the purposes of competency restoration

Benefits	To treat symptoms of delusional disorder for the purposes of competency restoration
Side Effects	Muscle stiffness in arms and legs, physical and/or mental restlessness such as inability to sit still (akathisia), tremors in hands and fingers, other involuntary movement of various muscle groups such as the mouth, lips, tongue, jaw which could be tardive dyskinesia or more rarely dystonic-stuck muscles of the eyes or other muscle groups including difficulty swallowing. QTc prolongation which could lead to serious cardiac arrhythmia.

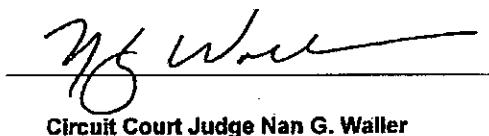
Medication Name	Risperdal
Maximum Medication Dose	6 mg/day orally or 50 mg long acting IM injection every 14 days
Purpose	To treat symptoms of delusional disorder for the purposes of competency restoration
Benefits	To treat symptoms of delusional disorder for the purposes of competency restoration
Side Effects	Muscle stiffness in arms and legs, physical and/or mental restlessness such as inability to sit still (akathisia), tremors in hands or fingers, other involuntary movement of various muscle groups such as the mouth, lips, tongue, jaw, which could be tardive dyskinesia or more rarely dystonic-stuck muscles of the eyes or other muscle groups including difficulty swallowing. Also, possible increase in prolactin hormone levels which can result in nipple discharge (galactorrhea) as well as breast tissue enlargement in males (gynecomastia).

2. The superintendent of OSH shall notify the Court if this court order should be altered as the result of changes in circumstances, including Defendant's response to the authorized medications.

3. This order shall expire when Defendant's commitment to the custody of OSH is terminated under the provisions of ORS 161.370.

Defendant requested that the Court stay this order. His attorney did not join in the request. The State objects to stay of the order. Having considered the arguments and factors to be considered in staying an order the Court denies Defendant's request.

Signed: 3/26/2021 12:42 PM



Circuit Court Judge Nan G. Waller

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

STATE OF OREGON) CASE NO: 19-CR-32657
) DA NO: 2402774-1D
)
Plaintiff,) SELL ORDER AUTHORIZING THE
) INVOLUNTARY ADMINISTRATION
) OF MEDICATIONS FOR THE
v.) PURPOSE OF RESTORING
) DEFENDANT'S TRIAL COMPETENCE
)
JEREMIAH KYLE BLABER)
Defendant.)

This matter came before Judge Nan Waller on five separate dates: August 18, November 9, 10, 23, and December 7, 2020, for a determination of whether the State may involuntarily administer medications to Defendant for the purpose of restoring Defendant's trial competence in relation to the below charges. Defendant appeared with counsel, Dylan Potter (OSB 104855). The State was represented by Deputy District Attorney Melissa Marrero (OSB 123846).

The defendant is charged with the following offenses:

<u>Crime Name:</u>	<u>Felony/Misdemeanor:</u>	<u>Class:</u>	<u>Incident Date:</u>
1. Assault II	Felony	B	5/18/2019
2. Unlawful Use of a Weapon	Felony	C	5/18/2019
3. Attempt to Commit Ass. II	Felony	C	5/18/2019
4. Unlawful Use of a Weapon	Felony	C	5/18/2019
5. UEMV	Misd.	A	5/18/2019
6. Att. To Commit Class C Fel.	Misd.	A	5/18/2019
7. Att. To Commit Class C Fel.	Misd.	A	5/18/2019
8. Crim Mis, II	Misd.	A	5/18/2019
9. Dis. Conduct II	Misd.	B	5/18/2019

THE COURT FINDS BY CLEAR AND CONVINCING EVIDENCE:

Defendant has been at Oregon State Hospital (OSH) for over a year under an ORS 161.370 commitment order for restoration to competency. At the outset of the hearing the Court was asked by the State to decide whether Defendant even has a qualifying mental health disorder based upon an opinion of his treating psychiatrist, Dr. Les Christenson. Dr. Christenson testified that he does not believe that Defendant suffers from a delusional disorder and, therefore, is able to aid and assist.

Based upon the forensic evaluations of Defendant done over the course of this case (both the evaluation done that led to Defendant's commitment and the 3 evaluations conducted while Defendant has been at OSH) and the testimony of Dr. Ingram, the Court finds that Defendant

does have a qualifying mental health disorder (delusional disorder) and as a result is unable to aid and assist in his own defense.

In her evaluations and testimony, Dr. Ingram distinguished Defendant's conspiratorial beliefs from his delusional thought process. The former, she explains, are normative beliefs in some portion of the population, the latter are "evidenced by his abnormal conviction and preoccupation with the beliefs." Dr. Ingram evaluation 12/19/19, p. 5.

Dr. Ingram found that Defendant had good factual knowledge of court-related information but that Defendant's rational understanding of his case, his ability to work with his attorney, and make decisions in his case continue to be severely impacted by his delusion beliefs. Over the course of the evaluations Dr. Ingram conducted, Defendant has been consistent in reporting that the current charges were falsified by the government in order to prevent him from revealing his discoveries about the government. Defendant has questioned whether his lawyer and the Court are part of the conspiracy and has been firm in his belief that the charges are a hoax and that evidence that doesn't exist is further proof of the government's efforts to suppress his discoveries.

Dr. Ingram testified that during his OSH commitment Defendant has consistently refused medication because he does not believe that he has a mental illness. In her December 2019 evaluation, Dr. Ingram found that Defendant's symptoms that impair his ability to aid and assist were unlikely to remit without administration of antipsychotic medication.

On June 9, 2019, Dr. Ingram completed her 3rd evaluation of Defendant, prompted by an email on May 30, 2019, from Defendant's new psychiatrist, Dr. Les Christianson, asking that an early evaluation of Defendant be conducted because it was unlikely that Defendant would improve or be restored without forced medication. (Defendant had moved to a new unit on May 27, 2020, for administrative reasons and Dr. Christianson became his psychiatrist). Dr. Christianson had noted in Defendant's medical record on May 30, 2019, that Defendant "has no insight into his delusion...prognosis is poor unless pt returns to OSH on a *Sell* order for involuntary medication treatment for the sole purpose of trial competency restoration." Dr. Ingram Report 7/1/20, p. 3.

On June 10, 2020, Dr. Christianson emailed Dr. Ingram to tell her that he no longer supported a *Sell* hearing because he no longer believed Defendant had a mental illness. On June 26, 2020, Dr. Christianson wrote in Defendant's medical record that he believed Defendant had suffered a brief psychotic episode at the time of the event that led to the charges but that the delusions leading to the events were no longer active. He wrote that he believed Defendant to be trial competent.

Notwithstanding Dr. Christianson's opinion, in her report dated July 1, 2020, Dr. Ingram found in her 3rd competency evaluation of Defendant that he did have a qualifying mental disorder (delusional disorder, mixed persecutory/grandiose type). Dr. Ingram found that while Defendant's delusional beliefs are related to historical experiences, they remain active and impede his ability to aid and assist in his defense. Dr. Ingram found that without a court order for administration of involuntary medication, there was no substantial likelihood that Defendant would gain fitness to proceed within the foreseeable future.

When Dr. Christenson testified in November, he said he had become more convinced since his August testimony that Defendant does not suffer from a mental illness and that as a result, he would not administer involuntary medication if it was court ordered. It should be noted that Dr. Christenson did not conduct competency evaluations of Defendant and is not a certified evaluator.

The Court finds Dr. Ingram's testimony on the issues of Defendant's diagnosis and competency to be persuasive. Dr. Ingram is a Certified Forensic Evaluator and has conducted 3 forensic evaluations of Defendant over the course of a year. She has reviewed the original evaluation of Defendant conducted by Dr. Milkey, that was the basis for the Court's commitment to OSH for competency restoration.

In her evaluation of Defendant, Dr. Ingram found Defendant to have good knowledge of the adversarial legal system, trial process, the various options for resolution of his cases, his rights and possible sentences. She also found that Defendant had a clear understanding of the charges against him. However, with regard to the other two competency prongs she found that:

"Mr. Blaber's delusional belief system continues to impact his rational appreciation of his legal circumstances. His entire understanding of the alleged events is based in his paranoid, grandiose, and religious beliefs surrounding that time period. He believes that he has been 'set up' by various unknown government entities and that his charges are 'falsified.' He noted that this was done to 'discredit' him or to 'silence' him. He further believes that his current finding of incompetency, and associated hospitalization, is also part of an effort to 'discredit' him. In this way, he believes he is still experiencing repercussions of the conspiracy against him. All his preferred and identified legal strategies are directly related to his delusional beliefs..... Despite reviewing the available evidence with him in detail during his last forensic evaluation, he continues to irrationally assert that there is additional exculpatory evidence available. He believes that the lack of this evidence is proof of the conspiracy against him. His understanding of his legal case is based in his delusional belief system, dependence on irrational circumstantial evidence, as well as ideas of reference, confabulation, and magical thinking.

The majority of the current evaluation was spent engaging Mr. Blaber in conversation about his beliefs and how they are connected to his current legal circumstances. He demonstrated no flexibility or willingness to consider other legal perspectives. He noted that his attorney has had similar conversations with him, and that he continues to believe that his attorney is working with the prosecution and is not working in Mr. Blaber's best interests.... He remained acutely delusional."

The Court also engaged in a colloquy with Defendant and allowed him to make a statement. While it is true that Defendant is articulate, pleasant, and knowledgeable about

the legal system, the Court is convinced from the evidence presented as well as the colloquy with Defendant that he does have a qualifying mental disorder that continues to render him incompetent.

The Court next turns to the *Sell* criteria.

The Court has authority to order forced medication for the purposes of restoring competency for a defendant if the court finds certain factors set out in *United State v. Sell*, 539 U.S. 166 (2003). The Oregon Supreme Court adopted the *Sell* factors in *State v. Lopes*, 355 Or. 72 (2014). The Oregon Supreme Court specifically made it clear that the factors are not to be balanced but are independent requirements each of which must be found true before involuntary medication of psychotropic drugs may be considered constitutionally permissible. The standard of proof is clear and convincing. The Oregon Legislature codified the *Sell* and *Lopes* criteria for the administration of involuntary medication in the context of competency proceedings in ORS 161.372:

- A) Involuntary medication is not otherwise authorized by law;
- B) There are important state interests at stake in the prosecution of the defendant;
- C) The recommended medication will significantly further the important state interests because:
 - (i)It is substantially likely that medication will render defendant fit to proceed **and**
 - (ii)It is substantially unlikely that the medication will cause side effects that will impair the fairness of the criminal proceeding
- D) Involuntary administration of medication is necessary to further the important state interests because there are no alternative, less intrusive treatments that would produce the same result as medication **and**
- E) Administration of the medication is medically appropriate because it is in the defendant's best medical interest in light of the defendant's medical condition.

The Court finds that the State has met its burden of proving each of the required factors for administration of involuntary medication of Defendant by clear and convincing evidence. The Defense concedes involuntary medication is not otherwise authorized by law for Defendant. Defendant has been committed to OSH for more than a year and there has been no progress in restoring him to competency despite his numerous individual sessions with his unit psychologist and treating psychiatrist and the participation in group sessions and classes Defendant has refused to take any antipsychotic medications. Defendant does not qualify for administration of involuntary medication under OSH's administrative process because in the hospital setting he does not present as a danger to himself or others. The Court finds that involuntary medication of Defendant is not otherwise authorized by law and that there is no less intrusive method to restore defendant to competency.

The Defense also concedes there are important state interests at stake as that has been defined in case law. Defendant is charged with nine crimes, the most serious is Assault II, a Class B Felony and a Measure 11 charge. Both the nature of the charge, allegedly causing physical injury by means of a dangerous weapon, and the mandatory sentence of 70 months, as a Measure 11

charge, support a finding by clear and convincing evidence that the State's interest in prosecuting Defendant is serious.

The dispute in this case is whether there is clear and convincing evidence that it is substantially likely that medication will restore Defendant to competency and whether that medication is medically appropriate because it is in Defendant's best medical interest in light of his medical conditions. Given Dr. Christenson's position on administration of involuntary medication for Defendant, Dr. Ingram consulted with Dr. Farris, Director of Forensic Evaluation Services at OSH, on the administration of involuntary medication for defendant. Dr. Farris is a psychiatrist and a certified Forensic Evaluator. Although not Defendant's treating psychiatrist, Dr. Farris, as part of his consultation with Dr. Ingram, reviewed the evaluations of Defendant, other OSH records of Defendant, and the literature on the use of antipsychotic medication for restoration of individuals with delusional disorders.

Dr. Farris testified, based on his consultation, review of the records, experience as a psychiatrist and review of the research, that the only option left to attempt to restore Defendant to competency is administration of antipsychotic medication. Dr. Farris opined that administration of antipsychotic medication is substantially likely to render Defendant competent. Dr. Farris has prescribed medication for delusional disorders for patients who have been civilly committed with positive results. Dr. Farris testified that antipsychotic medication could assist Defendant by lessening the rigidity in his thinking concerning delusion that is a barrier to restoration. He testified that it would take approximately 2 to 3 months for Defendant to reach a therapeutic level of medication. Beyond restoration to competency Dr. Farris testified that administration of antipsychotic medication will benefit Defendant's general wellbeing by reducing his anxiety.

At the hearing on November 23, 2020, the Court requested OSH arrange for Defendant to be examined by a psychiatrist at the Oregon State Hospital for a determination of whether antipsychotic medication is medically appropriate for Defendant to treat his delusional disorder and whether administration of medication is in Defendant's best medical interest in light of Defendant's medical conditions. Dr. Farris had reviewed Defendant's records but had not examined Defendant. Since Dr. Christenson testified that he would not administer medication to defendant if a *Sell* order is signed, the Court wanted to hear from a psychiatrist who examined Defendant on the efficacy of administration of involuntary medication for Defendant.

At the hearing on December 7, 2020, the Court heard testimony from Dr. Nanton, Interim Chief of Psychiatry at OSH. Dr. Nanton reviewed all of the forensic evaluations of Defendant, reviewed all of Defendant's medical records, and examined Defendant over 3 meetings.

Dr. Nanton submitted a report dated December 3, 2020, outlining his recommendations. Dr. Nanton found that Defendant meets the criteria for a diagnosis of Delusional Disorder and that administration of antipsychotic medication is the appropriate treatment for the diagnosis. Dr. Nanton acknowledged that there has been controversy surrounding treatment of Delusional Disorder with medication given the small numbers of people in the studies.

However, given the data available, Dr. Nanton testified that medication does appear to be an effective restoration treatment for persons with Delusional Disorders. Dr. Nanton said that the research indicates medication has a 75% efficacy rate for persons with Delusional Disorder, this

is similar to the rate of restoration for schizophrenia. Based upon a review of the studies admitted and the testimony of all of the doctors who testified, including Dr. Christenson, the Court finds that administration of antipsychotic medication to Defendant is substantially likely to restore him to competency.

The Court further finds by clear and convincing evidence that it is substantially unlikely that side effects of the recommended medications will impair the fairness of the criminal proceedings. The Defense argues that the State has not met its burden to show that the recommended medications are in the best medical interest of Defendant given his medical condition. Dr. Nanton testified that "the primary indication for the use of medication is restoration of competency. Mr. Blaber's suffering is related to continued hospitalization and restriction of his freedom, and his impairment in the hospital setting is related to the trial process. For this reason the analysis of risk and benefit is necessarily directly informed by his incompetency to stand trial. The primary suffering to be alleviated is due to incompetency resulting to lack of freedom. Similarly, assessment of risk is limited by lack of time in the community to determine if symptoms might become more prominent in that setting. He is otherwise not in marked distress and is able to attend to his in-hospital daily needs without notable impairment."

Dr. Nanton did make some modifications of Dr. Farris's medication recommendations based upon Defendant's weight, hypertension, and risk of diabetes. Dr. Nanton does not find that olanzapine or clozapine are appropriate but does recommend aripiprazole as the first medication to try, risperidone as the next medication to try if aripiprazole is not successful in restoring Defendant and finally quetiapine as the third medication in the event that risperidone or aripiprazole fail to restore Defendant to competency. Based upon Dr. Nanton's testimony the Court finds that it is in Defendant's best medical interest to be restored through the administration of antipsychotic medication.

Based on the Court's findings, it is therefore ORDERED:

1. While committed to the custody of the superintendent of OSH pursuant to ORS 161.370, OSH may involuntarily administer the following medication or class of medications for purposes of restoring the Defendant's competency to stand trial in the listed order:

Medication Name	1) Abilify / Aripiprazole (generic)
Recommended Maximum	60 mg/day
Route of Administration	Oral
Purpose	To treat symptoms of delusional disorder
Potential Side Effects:	Insomnia, restlessness, akathisia, weight gain, headache, Parkinsonism, and dyskinesias (including tardive dyskinesia), Neuroleptic malignant syndrome and QTc prolongation

Medication Name	2) Risperdal / Risperidone (generic)
Recommended Maximum	16 mg/day
Route of Administration	Oral
Purpose	To treat symptoms of delusional disorder
Potential Side Effects:	Weight gain, elevated heart rate, galactorrhea, cholesterol/triglycerides, akathisia, Parkinsonism, and dyskinesias (including tardive dyskinesia), Neuroleptic malignant syndrome and QTc Prolongation

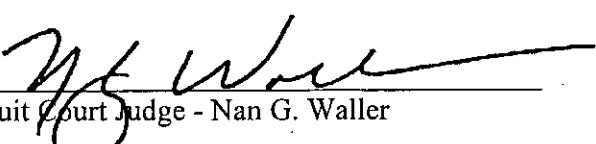
Medication Name	3) Seroquel / Quetiapine (generic)
Recommended Maximum	1200 mg/day
Route of Administration	Oral
Purpose	To treat symptoms of delusional disorder
Potential Side Effects:	Dry mouth, headache, weight gain, elevated heart rate, elevated cholesterol/triglycerides, akathisia, Parkinsonism, and dyskinesias (including tardive dyskinesia), Neuroleptic malignant syndrome and QTc Prolongation

2. The superintendent of OSH shall notify the Court if this court order should be altered as the result of changes in circumstances, including Defendant's response to the authorized medications.
3. This order shall expire when Defendant's commitment to the custody of OSH is terminated under the provisions of ORS 161.370.

Signed: 12/14/2020 04:03 PM

Date Signed

Case No: 19-CR-32657


Circuit Court Judge - Nan G. Waller

Circuit Court Judge Nan G. Waller

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