

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA :  
 :  
 v. :  
 : CRIMINAL NO. 03-173-04  
 :  
 RAYMOND JACKSON :

**SURRICK, J.**

**OCTOBER 7, 2005**

**MEMORANDUM & ORDER**

Presently before the Court is the Government’s Revised Motion To Find Defendant Competent To Stand Trial (Doc. No. 242) and Defendant’s Memorandum Regarding Competency (Doc. No. 243). For the following reasons, the Government’s Motion will be granted.

**I. FACTUAL BACKGROUND**

On March 19, 2003, Defendant Raymond Jackson was indicted on charges of conspiracy to distribute cocaine base (“crack”) in violation of 21 U.S.C. § 846, distribution of cocaine base (“crack”), in violation of 21 U.S.C. § 841(a)(1) and distribution of cocaine base (“crack”) within 1000 feet of a school, in violation of 21 U.S.C. § 860(a). (Doc. No. 1.) On November 18, 2003, we authorized Defense Counsel to employ Dr. Elliot Atkins to perform a forensic psychological evaluation of Defendant. (Doc. No. 87.) After examining Defendant at the Federal Detention Center, Dr. Atkins concluded that Defendant was suffering from a psychotic disorder and was not competent to stand trial. (Doc. No. 243 at Ex. A, Atkins Letter of Jan. 12, 2004.) On January 19, 2004, based on Dr. Atkins’s evaluation, we entered an Order declaring that Defendant was

found that the Defendant was suffering from a mental disease or defect rendering him incompetent to the extent that he was unable to understand the nature and consequences of the proceedings against him and to assist properly in his defense. (Doc. No. 118.) We therefore ordered that the Defendant be committed to the custody of the Attorney General to be hospitalized for treatment in a suitable facility for a reasonable period of time, not to exceed 120 days pursuant to 18 U.S.C. § 4241(d), to determine whether a substantial possibility exists that in the foreseeable future he would attain the capacity to permit the trial to proceed. Defendant was transported to the United States Medical Center for Federal Prisoners in Springfield, Missouri. Defendant was evaluated and treated at the Springfield facility from April 8, 2004 until July 14, 2004. (*Id.*)

On July 14, 2004, Mark Carter, Ph.D., a staff psychologist at the Medical Center, completed a Forensic Psychological Report finding that while the Defendant meets the diagnostic criterion for adjustment disorder with mixed disturbance of emotions and conduct, and antisocial personality disorder, he is competent to proceed to trial. (Carter Report at 10.) On August 23, 2004, based on Dr. Carter's evaluation, we entered an Order declaring that Defendant was competent to stand trial. (Doc. No. 196.) On August 24, 2004, Defendant's counsel filed a Motion to Reconsider the August 23, 2004 Order. (Doc. No. 197.) The Motion alleges that after reviewing Dr. Carter's evaluation, and after reviewing Defendant's correspondence with his attorney, Dr. Atkins remained convinced that Defendant was not competent. (*Id.* at Ex. A.) A hearing was held on the Motion to Reconsider on September 17, 2004. (Doc. No. 205.) As a result of the hearing we vacated our Order of August 23, 2004, and Defendant was ordered to undergo an independent psychiatric evaluation by Dr. Pogos H. Voskanian (General and Forensic

Psychiatry) to assist in the competency determination. (Doc. No. 222.)

Dr. Voskanian examined the Defendant on February 2, 2005 and found him to be competent. Thereafter, Dr. Atkins reexamined the Defendant and upon analyzing Dr. Voskanian's report, Dr. Atkins again concluded that Defendant was not competent. A competency hearing was held for the purpose of taking the testimony of Drs. Voskanian, Carter, Atkins, and Dr. Ira Kedson, a forensic psychologist at the Federal Detention Center in Philadelphia, in order to make a final determination on Defendant's competency to stand trial. (Doc. No. 238.) The matter is now ripe for disposition.

## **II. LEGAL STANDARD**

It is well-settled that the test for legal competence to stand trial is whether “[the defendant] has sufficient present ability to consult with his lawyer to a reasonable degree of understanding—and whether he has a rational as well as factual understanding of the proceedings against him.” *Dusky v. United States*, 362 U.S. 402, 402 (1960). The due process right to a fair trial protects a defendant who cannot effectively consult with counsel or understand the nature of the proceedings against him. *Drope v. Missouri*, 420 U.S. 162 (1975). Accordingly, “court[s] must examine the unique circumstances of the case and decide whether the defendant ‘(1) has the capacity to assist in her or his own defense and (2) comprehends the nature and possible consequences of a trial.’” *United States v. Jones*, 336 F.3d 245, 256 (3d Cir. 2003) (citations omitted). When evaluating a defendant's competency, we “must consider a number of factors, including ‘evidence of a defendant's irrational behavior, his demeanor at trial, [and] any prior medical opinion on competence to stand trial.’” *Id.* (quoting *United States v. Leggett*, 162 F.3d 237, 242 (3d Cir. 1998)). A defendant's competency to stand trial must be established by a

preponderance of the evidence. *United States v. DiGilio*, 538 F.2d 972, 988 (3d Cir. 1976).

### **III. DISCUSSION**

#### **A. Conclusions of Mental Health Professionals**

In evaluating the competency of Defendant Raymond Jackson, we will focus on the first prong of the competency test, i.e., whether the Defendant has the capacity to assist in his own defense. Dr. Atkins, the only mental health professional to have found that Defendant is not competent to stand trial, agreed with the other experts that the Defendant comprehends the nature and possible consequences of a trial, the second prong of the competency test. Dr. Atkins reported:

I am not in disagreement with [Dr. Voskanian] that Mr. Jackson is capable of demonstrating a good understanding of his current legal situation, the roles of courtroom personnel, the concept of plea bargaining and the available defenses and possible verdicts that might be applicable to his situation.

(Doc. No. 243 at Ex. A, Letter of Mar. 14, 2005 at 1.) The crux of the disagreement between Dr. Atkins and Drs. Carter, Voskanian, and Kedson is whether the Defendant is able to assist in his own defense.

Defense counsel asserts that “Mr. Jackson can only be rendered competent while he is in a therapeutic setting and his mental illness is being treated and monitored.” Counsel suggests that Defendant is delusional and suffers from paranoid schizophrenia. (Doc. No. 243 at 1, 4, 5.) Counsel’s questioning during the competency hearing and his submissions to this Court indicate counsel’s understandable frustration with his inability to communicate effectively with his client.<sup>1</sup> Counsel submits that “Mr. Jackson will not accept what I say to him, regardless of what

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<sup>1</sup>During the hearing, while cross-examining Dr. Voskanian, defense counsel stated:

it is. And he persists in beliefs that are not founded in reality.” (July 14, 2005 Tr. at 30:14-16.) Moreover, Dr. Atkins found that “[a]s a result of [Defendant’s] mental illness, he perceives his own attorney (and myself, as well) to be major players in a grand conspiracy whose only objective is to ‘put me in jail for thirty years.’” (Doc. No. 243 at Ex. A, Letter of Jan. 12, 2004.) Dr. Atkins focused extensively on the Defendant’s ability to initiate and maintain a collaborative relationship with his attorney. He stated that, “[o]bviously, a defendant’s ability to initiate and maintain a collaborative relationship with his attorney is based primarily upon motivational and behavioral factors, and less upon cognitive and intellectual factors.” (*Id.*, Letter of Mar. 14, 2005.) Dr. Atkins noted that while Dr. Voskanian opined that “Mr. Jackson was able to calmly and logically present information ‘should he choose to do so,’” in Dr. Atkins’s opinion, “[t]he question must be raised—unless someone is psychotic, why wouldn’t he choose to do so.” (*Id.*) Dr. Atkins concluded, “[i]t is my opinion that Raymond Jackson, because of his significant mental illness, is not capable of assisting in his own defense and is, therefore, not competent to proceed.” (*Id.*)

In contrast, Dr. Voskanian concluded that “Mr. Jackson . . . was able to assist in his defense in a rational manner . . . [and] is competent to stand trial.” (Voskanian Report at 2.) Dr. Voskanian reported that the Defendant

cooperated well with the interview and, overall, maintained a pleasant and

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[L]et me certify to you, sir, that I’ve had dozens of conversations with Mr. Jackson regarding jurisdiction. I’ve written him lengthy letters explaining jurisdiction. I’ve read every case that he sent me, and explained the cases to him, both orally and in writing. Yet, he persists in this [belief that his counsel is “an officer of the court that’s a kangaroo courtroom. Mr. Surrick is not an Article 3 judge, and the prosecutor doesn’t have legislative jurisdiction].” (July 14, 2005 Tr. at 25:23-26:3 (quoting Defendant’s letter to his counsel)).

friendly attitude. His speech was clear, with normal tone, volume, and rate. Mr. Jackson established good eye contact. He described his mood as “all right.” His affect was appropriate. Throughout the interview, Mr. Jackson was logical, coherent, and goal-directed. There was some paranoid ideation. He tended to criticize the legal system. However, he did not express any delusions. Mr. Jackson did not have symptoms of thought disturbance, such as auditory or visual hallucinations.

(*Id.* at 8.) Regarding his attorney, Dr. Voskanian reported that “[t]he defendant agreed that his attorney is much more knowledgeable about legal matters. . . . The defendant further defined his attorney’s role as to be in the courtroom, ‘. . . more to help.’” (*Id.* at 10.) When discussing the Defendant’s ability to assist in his own defense, Dr. Voskanian reported:

Mr. Jackson had a clear understanding of his charges. He could discuss mitigating and aggravating circumstances in his case. He specifically understood that his prior legal history does not help in his current case.

The defendant is able to assist counsel in locating and examining witnesses. He mentioned a specific witness in his case.

Mr. Jackson is able to maintain consistent defenses and inform his attorneys of distortions and misstatements of others. The defendant was consistent with his accounts throughout the interview. When discussing hypothetical issues, the defendant was able to logically discuss relevant issues.

Mr. Jackson is able to initiate and maintain a collaborative relationship with his attorney. He knew his attorney by name. He defined the role of his attorney as, “. . . trying to help.”

(*Id.* at 11-12.) Dr. Voskanian concluded that the defendant “can maintain consistent defenses and a collaborative relationship with his lawyer and provide rational answers in response to questions concerning hypothetical situations.” (*Id.* at 17.)

Dr. Carter first examined the Defendant on April 22, 2004. (Carter Report at 1.) The Defendant was evaluated and treated by the Mental Health Treatment Team at the United States Medical Center for Federal Prisoners in Springfield, Missouri for approximately three months.

(*Id.*) Dr. Carter based his report on his observations and the routine observations by mental health professionals, nursing staff, and correctional staff on his housing unit. (*Id.*) Dr. Carter reported that “[i]t was clear from the outset in talking to Mr. Jackson that, should he choose to do so, he was able to calmly and logically present information regarding his background.” (*Id.* at 2.) Dr. Carter noted that “Mr. Jackson was fully aware of what the charges in reality are.” (*Id.* at 3.) Regarding his behavior, Dr. Carter reported that throughout his time at the facility, “if situational characteristics or circumstances did not please him, he was extremely quick to verbalize his displeasure . . . [yet] it was interesting to note that when Mr. Jackson received what he expected was fair treatment, such as being moved to open population housing, his demeanor changed dramatically.” (*Id.* at 4.) Dr. Carter did not observe “in any way evidence [of] any type of psychotic thinking.” (*Id.*) The Defendant “informed the evaluator and he was quick to ask the evaluator for his opinions regarding the possibility of Mr. Jackson seeking a diminished capacity defense.” (*Id.* at 5.) Dr. Carter noted that the Defendant had “further indicated to the evaluator on May 20 that he had spoken with his attorney recently and had been able to talk to [his attorney] about various legal questions. He stated he had actively sought the counsel of this attorney regarding plea agreements, the possibilities of an ultimate commitment.” (*Id.*) Dr. Carter further stated that:

When Mr. Jackson chose to talk with the evaluator, he was calm, easy going, and frequently polite and solicitous. This contrasted sharply, however with his presentation when he chose to verbalize his thoughts regarding anything which did not please him. When he chose to, he spoke in a normal rate and tone and his speech was clear, coherent, logical, and goal directed. In particular, he was goal directed when discussing what he hoped might be sought-after outcomes in his case, such as in talking to [his attorney] about seeking a diminished capacity defense.

(*Id.* at 7.) Dr. Carter determined that the Defendant’s “pattern of behavior is consistent with an individual exhibiting antisocial characterological traits and is not seen as secondary to any type of formal thinking disorder, such as one would see in psychosis.” (*Id.* at 6.) Dr. Carter pointed out that “Mr. Jackson is notably stressed regarding the possibility of having to do a significant amount of prison time. He verbalized this on at least two occasions during interview and there was clear congruence between his presentation (anxiousness at the time he made the statements) and the content of the statements.” (*Id.* at 8.) Dr. Carter found the Defendant competent to assist in his own defense, noting “that the defendant’s behavior in response to whatever his attorney discusses with him is not going to be a consequence of mental illness but, rather, his characterological issues.” (*Id.* at 9.)

While Dr. Carter found that because “his means of dealing with life are typically to become oppositional if confronted and it is highly possible he will continue in this vein in his dealings with the court,” he also found that the Defendant described discussions with his attorney regarding the possibility of a twelve year sentence, noting, “[i]t is just these types of points, however, that indicate he is capable of working with his attorney should he choose to do so.” (*Id.* at 9-10.) One example of the Defendant containing his behavior when he chose to do so was “[w]hen admonished to calm himself and stay on a non-disruptive track in his behavior during competency restoration group, Mr. Jackson was very adequately able to comport himself and thereby not prove to be a disruption in this setting.” (*Id.* at 10.) Dr. Carter warned that the Defendant “will argue his convoluted interpretations of statutes, jurisdictional issues, etc. are ultimately logical and compelling, but . . . none of this will be due to mental illness . . . [but rather] are the manifestations of his anxiety, relative immaturity, and antisocial traits.” (*Id.*) Dr.

Carter ultimately concluded:

Based on the above information, it is the evaluator's opinion that although Mr. Jackson has proven to be an obstreperous and often contentious individual with whom to deal, he has also shown himself fully capable of being polite, calm, and able to work with persons in authority. He has shown himself capable of discussing his case in a calm and quite logical fashion and to work with staff in gaining insight regarding his thinking. It is in light of these behavioral observations, as well as consideration of Mr. Jackson's stated comprehension of courtroom procedures and the legal consequences he faces, that the evaluator believes he is competent to proceed.

(*Id.* at 10.)

Finally, Dr. Kedson, a forensic psychologist of the Federal Detention Center in Philadelphia, who interacted with and examined the Defendant from the time he entered the Federal Detention Center in 2002 until the present, concluded that the Defendant does not suffer from serious mental illness, that he does suffer from an adjustment disorder with mixed disturbance of conduct and mood for which he takes antidepressant medication, and that he does not suffer from paranoid schizophrenia. (July 14, 2005 Tr. at 51-56.)

## **B. Analysis**

Determining a defendant's competency is "often a difficult [question] in which a wide range of manifestations and subtle nuances are implicated." *Drope*, 420 U.S. at 180. It is apparent in this case that because of Defendant's attitudes and conduct, counsel for Defendant has had a very difficult time representing his client's interests. However, after a thorough examination of the expert testimony, it appears that the crucial issue here is whether the Defendant is *choosing* not to participate in his own defense, or whether he is *unable* to do so. *See United States v. Salley*, No. 01-CR-0750, 2004 WL 170322, at \*5 (N.D. Ill. Jan. 16, 2004) ("the court must distinguish between the defendant's ability to consult his attorney and to

participate in his own defense and the defendant's desire and willingness to do so."). A court examining conflicting medical testimony regarding mental competency, may take into consideration the length of time each expert has spent with the defendant. *See United States v. Hoyt*, 200 F. Supp. 2d 790, 794 (N.D. Ohio 2002) (when two qualified court-appointed doctors reached opposite conclusions regarding a defendant's competence to stand trial, the court appropriately relied on the expert who had spent more time evaluating the defendant.). In this case, while Dr. Atkins found the Defendant unable to assist in his own defense, Drs. Voskanian, Kedson and Carter found that while Defendant has displayed antisocial and immature behavior in his interactions with his attorney, he has, in fact, chosen not to communicate effectively with his attorney but is fully able to do so. Dr. Carter examined the Defendant over the course of a three-month period and discussed the Defendant's behavior with the other professionals in the Springfield facility. Dr. Kedson has examined the Defendant periodically since 2002 at the Federal Detention Center in Philadelphia. Dr. Voskanian interviewed the Defendant for approximately three hours and spoke with his mother. Dr. Atkins evaluated the Defendant for approximately six hours. Obviously, Drs. Voskanian, Carter, and Kedson together had more of an opportunity to observe Mr. Jackson than did Dr. Atkins.

Dr. Voskanian indicated that "Mr. Jackson was able to calmly and logically present information 'should he choose to do so.'" Dr. Atkins responded: "The question must be raised—unless someone is psychotic, why wouldn't he choose to do so.'" (Doc. No. 243 at Ex A., Atkins Letter of Mar. 14, 2005.) Dr. Voskanian provided an answer to the question during the competency hearing when he explained that the Defendant "understands that sooner or later, he is going to be competent because he is indeed competent. But if he can entertain issues of

mental illness during his competency proceedings, and later use it in diminished capacity case, that would be a lot smarter approach. And I do believe that was what his approach was.” (July 15, 2005 Tr. at 15.) Dr. Voskanian further clarified his position when asked why Defendant wouldn’t choose to cooperate with his attorney stating “[b]ecause once he starts interacting with [his attorney], once his case starts going forward, eventually he’s going to sentence, and he’s going to get into that dull prison time. . . . At this point, when he has serious charges, and probably if them—if the case against him is strong, he has nothing to lose.” (*Id.* at 39-50.) Dr. Voskanian’s opinion finds support in Dr. Carter’s discussions with the Defendant where Defendant questioned Dr. Carter about the possibility of a “diminished capacity defense.” It is also significant that Dr. Carter found that during Defendant’s stay at the Springfield facility he was generally cooperative until something happened to displease him. However, when Defendant was reprimanded, he responded appropriately and was able to control his response.

Drs. Voskanian, Carter, and Kedson are all firm in their belief that the Defendant has the volitional ability to cooperate with his attorney but chooses not to. Dr. Atkins feels just as strongly otherwise. Such situations are evidently not uncommon. For example, in *United States v. Salley*, No. 01-CR-0750, 2004 WL 170322, at \*2 (N.D. Ill. Jan. 16, 2004), and in *United States v. Rivera*, No. 90-CR-1001-1, 1995 WL 20452 (N.D. Ill. Jan. 12, 1995), the court faced this same question of whether the defendant was unable to cooperate with counsel or was choosing not to do so. The defendant in *Salley* was similarly “suspicious of everybody involved in his case, including four appointed lawyers, the prosecutors, clerks of the court, the district judge, and the appellate judge.” 2004 WL 170322 at \*3. As in this case, the defendant’s “courtroom behavior [was] controlled in the sense that he is not disruptive and maintains a calm demeanor and is

responsive to directives from the court.” *Id.* at \*4. The court observed “it is not unusual for a defendant to assert that counsel is not properly representing him or to deflect blame from himself onto the lawyer or ‘the system’ for the predicament in which he finds himself.” *Id.* at \*5. In *Salley*, it was undisputed that the defendant had a factual understanding of the legal system, knew the roles and functions of courtroom personnel, understood the charges against him, and appreciated the seriousness of a potential conviction on those charges. *Id.* The court ultimately found that the defendant had the ability to cooperate with counsel but chose not to do so. *Id.* at \*6. Similarly, in the instant case, all the mental health professionals agree that the Defendant has a factual understanding of the legal system and the courtroom personnel, he understands the charges against him, and appreciates the seriousness of potential conviction, but there is disagreement as to the reason for his obstreperous conduct.

In *Rivera*, in dealing with the question whether the defendant was unable to consult his attorney, one doctor determined that the defendant was choosing not to cooperate, while another doctor found that the defendant was unable to communicate with his attorney due to his mental illness. *Id.* at \*5. The court weighed the testimony of the conflicting experts and concluded that the defendant chose not to communicate with his attorney and was competent to stand trial. *Id.*

In reaching this conclusion the Court observed that

The defendant appears to see no benefit in cooperating with anyone involved in the proceedings, including his attorneys. This refusal to participate is not, however, equivalent to an inability to assist in the preparation of his defense. Therefore, although it may be difficult to communicate with the defendant, the court finds that the defendant’s [mental illness] does not render him unable to consult with his attorneys.

*Id.* at \*6.

In this case, Defendant is dissatisfied with a legal system which is threatening to take away his liberty for an extended period of time, and over which he feels powerless. Apparently, his response is to make the process as difficult as possible in the hope that it will ultimately work to his benefit. We are satisfied after a full and careful consideration of the testimony offered at the competency hearing, a review of the expert reports, consideration of defense counsel's observations, and the behavior and demeanor of the defendant during the proceedings, that a preponderance of the evidence compels the conclusion that Defendant is choosing not to participate in his own defense. While we do not question the sincerity of counsel or his statements regarding Defendant's refusal to cooperate with him, we conclude that Defendant's conduct is volitional and designed to advance his own purposes, however ill-advised. Under the circumstances, we find the Defendant competent to stand trial.

#### **IV. CONCLUSION**

For the foregoing reasons, the Government's Revised Motion To Find Defendant Competent To Stand Trial will be granted.

An appropriate Order follows.

