

UNITED STATES OF AMERICA :
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 v. : CASE NO. 3:12CR105 (RNC)
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 :
 TYRELL GARY :

By motion dated June 4, 2012, counsel for defendant Tyrell Gary requested that the court authorize funds for an expert witness to examine defendant's competency to stand trial. (Doc. #113.) The court granted that request on December 6, 2012. (Doc. #398.) Dr. Taiye Ogundipe, a fellow at the Yale Law and Psychiatry program in New Haven, CT, conducted that evaluation on October 17, 2012 and issued an evaluation report dated November 20, 2012. (Doc. #461.) District Judge Robert N. Chatigny referred the case to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(B) to conduct a competency hearing. (Doc. #400.)

Pursuant to 18 U.S.C. § 4241(c), the court held a competency hearing on January 10, 2013. (Doc. #460.) No witnesses were called. The parties jointly submitted Dr. Ogundipe's evaluation report as an exhibit. (Doc. 461.) This evidence supports a finding that the defendant "is presently suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the

nature and consequences of the proceedings against him or to assist properly in his defense." 18 U.S.C. § 4241(d).

For this reason, the undersigned recommends the following pursuant to 18 U.S.C. § 4241(d). Tyrell Gary should be committed to the custody of the Attorney General to receive necessary and appropriate treatment for mental illness, and for the Bureau of Prisons to determine whether there is a substantial probability that in the foreseeable future defendant Tyrell Gary will attain the capacity to permit the proceedings to go forward, for an initial period of time not to exceed four months. No later than four months after defendant Tyrell Gary is received into the custody of the Bureau of Prisons, the Bureau of Prisons should advise the court whether or not his competency has been restored. To assist the Bureau of Prisons in this process, a copy of the written report of Dr. Ogundipe should be provided to the director of the facility in which defendant Tyrell Gary will receive treatment and evaluation. Upon application of the defendant through counsel, to preserve and protect his rights to due process and against self-incrimination, the court should order that no statement, testimony, or other evidence made or provided by defendant Tyrell Gary during or as a result of any court-ordered competency evaluation or treatment, no testimony or report of any psychiatrist or other expert based on such statement,

testimony or evidence, and no other fruits of such statement, testimony or evidence shall be admitted in evidence or otherwise used against defendant Tyrell Gary in any criminal proceedings except on an issue respecting competency, or if defendant Tyrell Gary raises his mental status as a defense, or if defendant Tyrell Gary offers testimony inconsistent with statements made in the course of the competency process. Finally, the court should propose to the Bureau of Prisons that defendant Tyrell Gary be designated to Federal Medical Center Butner.

Any party may seek the district court's review of this recommendation. See 28 U.S.C. § 636(b) (written objections to proposed findings and recommendations must be filed within fourteen days after service of same); Fed. R. Civ. P. 6(a), 6(d) & 72; Rule 72.2 of the Local Rules for United States Magistrate Judges, United States District Court for the District of Connecticut; Thomas v. Arn, 474 U.S. 140, 155 (1985); Frank v. Johnson, 968 F.2d 298, 300 (2d Cir. 1992). Failure to timely object to a magistrate judge's report will preclude appellate review. Small v. Sec'y of Health and Human Serv., 892 F.2d 15, 16 (2d Cir. 1989).

A proposed Order is attached.

SO ORDERED at Hartford, Connecticut this 11th day of January, 2012.

_____/s/_____
Donna F. Martinez
United States Magistrate Judge