14-0868

IN THE CIRCUIT COURT OF WAYNE COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA

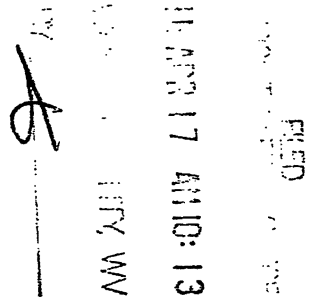
Plaintiff,

v.

Case No. 88-F-026
Judge James O. Holliday

STEPHEN WESTLEY HATFIELD,

Defendant.



ORDER DISMISSING THE INDICTMENT

On January 8, 2014, the State of West Virginia, by Thomas M. Plymale, and Stephen Westley Hatfield, via videoconferencing and by Lonnie C. Simmons, appeared for a hearing on Defendant's Motion to Dismiss the Indictment. The Court has considered the parties' arguments and filings as well as relevant case and statutory law, and finds as follows:

Findings of Fact

1. Defendant Hatfield was indicted on July 5, 1988, on one count of first degree murder and two counts of malicious wounding. This indictment followed Defendant Hatfield's involvement in the shooting death of his former girlfriend, Tracey Andrews, and the shooting of two individuals, Dewey Meyers, who was Ms. Andrews's boyfriend, and Roger Cox, a bystander, on May 8, 1988.[1]

2. Following indictment, and while he was recovering from gunshot wounds he sustained during his apprehension, Defendant Hatfield attempted suicide. This resulted in the

[1] The factual background of this case has been abbreviated where possible for the purposes of this Order. For a thorough recitation of the facts and procedural history of this matter, see *State v. Hatfield*, 186 W. Va. 507, 413 S.E.2d 162 (1991) ("Hatfield I"), *State v. Hatfield*, 206 W. Va. 125, 522 S.E.2d 416 (1999) ("Hatfield II"), *Hatfield v. Painter*, 222 W. Va. 622, 671 S.E.2d 453 (2009) ("Hatfield III"), and *Hatfield v. Ballard*, 878 F.Supp.2d 633 (S.D. W. Va. 2012) ("Hatfield IV"). These cases are hereby incorporated by reference.

initiation of proceedings directed at ascertaining the status of Defendant Hatfield's mental health. These proceedings entailed multiple evaluations and Defendant Hatfield's commitment for a period of time.

3. Defendant Hatfield was first evaluated by Dr. Johnnie Gallemore, who was the Chair of the Psychiatry Department at the Marshall University Medical Center. Dr. Gallemore ultimately opined that Defendant Hatfield was not competent to enter a plea, and that he was not criminally responsible for the acts with which he was charged.

4. While he was committed, Defendant Hatfield was also evaluated by Dr. Herbert C. Haynes, a psychiatrist, and Earnest Watkins, the Director of Psychology at Weston State Hospital. Mr. Watkins concluded that Defendant Hatfield was competent to stand trial, but not criminally responsible for his actions. Dr. Haynes found Defendant Hatfield not competent to stand trial due to his major depression and intense need for punishment as extreme as death. Dr. Haynes also found Defendant Hatfield not criminally responsible for his actions.

5. Dr. Ralph Smith also examined Defendant Hatfield. By letter only, dated January 23, 1989, Dr. Smith opined that Defendant Hatfield was competent to stand trial, but he did not make a determination as to criminal responsibility. Dr. Smith indicated that he was reviewing records to determine criminal responsibility, and that a full report would follow. To date, no such full report has been presented.

6. A competency hearing was held on January 27, 1989. Defendant Hatfield was found competent to stand trial, and a trial date was set for February 27, 1989. On February 7 or 8, 1989, however, Defendant Hatfield attempted suicide again.

7. On February 27, 1989, the date initially set for trial, Defendant Hatfield pled guilty to all three counts in the indictment. His plea was entered against the advice of his

counsel. On December 27, 1989, Defendant Hatfield was sentenced to life without mercy for the first degree murder charge and two to ten years for each malicious wounding charge.

8. Following his sentencing, Defendant Hatfield appealed. He took issue with the circuit court's finding him competent to stand trial and its subsequent acceptance of his guilty pleas. The Supreme Court of Appeals of West Virginia ("SCAWV") issued a written opinion, which held that

> [w]here a circuit court has found that a defendant in a criminal case where the possible punishment is life imprisonment without mercy is competent to stand trial, but subsequent to the competency hearing, the defendant attempts to commit suicide, then against advice of counsel indicates his desire to plead guilty to the charges in the indictment, before taking the plea of guilty, the trial judge should make certain inquiries of the defendant and counsel for the defendant in addition to those mandated in *Call v. McKenzie*, 159 W. Va. 191, 220 S.E.2d 665 (1975).

Syl. Pt. 6, *Hatfield I.* Because no such evidence was elicited from Defendant Hatfield prior to the entry of his pleas, the SCAWV remanded the case to circuit court "so that it may further develop the record[.]" *Id.*

9. Following remand in December of 1991, the circuit court again found Defendant Hatfield competent to enter his original guilty pleas.[2] It also denied his request to withdraw his guilty pleas and ratified the previous sentence imposed. Defendant Hatfield appealed these rulings arguing that the circuit court failed to follow the directives of the SCAWV on remand and that the circuit court deprived him of due process of law following its entry of convictions despite Defendant Hatfield's refusal to enter guilty pleas and demand for a jury trial.

10. In *Hatfield II*, the SCAWV found that the trial court made "the necessary inquiry directed in syllabus point six of *Hatfield I*," and still found Defendant Hatfield competent to have

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[2] A hearing was held on December 11, 1996. The record indicates that this was the first activity following the SCAWV's mandate order in *Hatfield I*. No explanation for the five year delay between *Hatfield I* and the resumption of proceedings is provided.

entered his original pleas. *Hatfield II*, 206 W. Va. at 130, 522 S.E.2d at 421. "Consequently, [the SCAWVA] conclude[d] that the lower court followed [its] directive on remand and did not deny the Appellant his due process rights in so doing." *Id.* It affirmed the lower court's decision.

11. Defendant Hatfield again challenged his conviction by initiating a habeas corpus proceeding. The Circuit Court of Wayne County granted summary judgment in Defendant's favor in that habeas action on January 31, 2005.[3] The circuit court concluded that Defendant Hatfield was incompetent at the time he entered his guilty pleas; accordingly, it set aside the convictions and ordered a new trial. This decision was appealed in 2007, resulting in *Hatfield III*.

12. In *Hatfield III*, the SCAWV relied on the law of the case doctrine in concluding that

> [t]he circuit court's conclusion that it could address the defendant's due process claims in the habeas action is clearly wrong in light of the record of the previous considerations in the previous reviews of the *Hatfield* cases. Implicit and explicit in *Hatfield I* and *Hatfield II* was this Court's concern with whether due process protections were implemented in accepting the defendant's guilty plea. Such a determination necessarily included an analysis of the defendant's competency at the time he entered the guilty plea. Thus, the circuit court in the habeas corpus proceeding was bound by the decisions previously reached by the circuit court in the criminal proceeding, which were affirmed by this Court.

Hatfield III, 222 W. Va. at 632, 671 S.E.2d at 465. On November 12, 2008, the court found the grant of summary judgment to be in error, and it reversed and remanded the order granting summary judgment.

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[3] An order was also entered in Defendant Hatfield's habeas corpus proceeding on March 16, 2007, that expanded upon the previously-entered order granting summary judgment.

13. On February 10, 2009, Defendant Hatfield initiated a federal habeas corpus proceeding. In *Hatfield IV*, the United States District Court for the Southern District of West Virginia found that Defendant Hatfield had never been afforded a constitutionally adequate hearing on his competency to enter a plea. 878 F.Supp.2d at 661. The court noted, however, that it

> need not decide at this time whether a determination of Mr. Hatfield's competency at the time he entered his guilty pleas is constitutionally permissible. The Court notes that, should Mr. Hatfield be tried and defend on the ground that he was not competent at the time of the murders, a court and jury may be required to engage in a retrospective evaluation of his criminal responsibility. While a competency determination at this late date would undoubtedly raise constitutional concerns, the issue has not been sufficiently briefed and is not essential to this Opinion.

Id. at 662. Accordingly, on July 10, 2012, the court granted Defendant Hatfield's motion for summary judgment, set aside his conviction, and ordered that Defendant Hatfield be discharged unless the State elected to try him in a timely fashion. *Id.* The State elected to try Defendant Hatfield, and he has remained incarcerated all the while.

14. In the nearly twenty-six years since Defendant Hatfield committed the crimes at issue here, several witnesses favorable to the defense have died. Dr. Gallemore, who found Defendant Hatfield not criminally responsible and not competent to stand trial, passed away on April 24, 2012. Dr. Haynes, who similarly found Defendant Hatfield to be neither criminally responsible nor competent to stand trial, died on July 24, 2013. Mr. Watkins, the psychologist who found Defendant Hatfield competent to stand trial but not criminally responsible, is no longer licensed. Additionally, Defendant Hatfield intended to call Jim York, Tom Ferrell, and Dr. Willard Daniels as witnesses at trial; however, these witnesses have also passed away.

Finally, it should also be noted that a majority of the physical evidence collected in this case has been destroyed.

15. As a result of the lengthy course of this case and the delay's potential to infringe upon Defendant Hatfield's constitutional rights, Defendant filed the instant Motion to Dismiss the Indictment. Defendant also moved to dismiss both of the malicious wounding counts due to the fact that Defendant Hatfield maxed out the sentences for these counts on or about June 28, 1993.

16. The pending motions, relevant case and statutory law, and the parties' arguments have been reviewed and considered by this Court. Accordingly, the pending motions are now ripe for disposition.

Conclusions of Law

17.

> There exists in the trial of an accused a presumption of sanity. However, should the accused offer evidence that he was insane, the presumption of sanity disappears and the burden is on the prosecution to prove beyond a reasonable doubt that the defendant was sane at the time of the offense.

Syl. Pt. 2, *State v. Milam*, 163 W. Va. 752, 260 S.E.2d 295 (1979).

18. "It is a fundamental guaranty of due process that a defendant cannot be tried or convicted for a crime while he or she is mentally incompetent." Syl. Pt. 1, *State v. Sanders*, 209 W. Va. 367, 549 S.E.2d 40 (2001). Additionally, a defendant will not be held criminally responsible for an act committed where, "at the time of the commission of the act, it was the result of a mental disease or defect causing the accused to lack the capacity either to appreciate the wrongfulness of his act or to conform his act to the requirements of the law." Syl. Pt. 6, *State v. Lockhart*, 208 W. Va. 622, 542 S.E.2d 443 (2000). This Court notes that, although the circuit

court initially found Defendant Hatfield competent to stand trial, albeit at a constitutionally inadequate hearing, it allowed Defendant to enter guilty pleas in the face of several doctors' uncontroverted opinions that Defendant lacked criminal responsibility.

19. In addressing the *Hatfield IV* Court's indication that a retrospective criminal responsibility evaluation may be necessary should the state elect to retry Defendant Hatfield, this Court notes that retrospective determinations of a defendant's mental competency to stand trial or enter a plea are disfavored. *State v. Sanders*, 209 W. Va. 367,381, 549 S.E.2d 40, 54 (2001). "While recognizing the inherent difficulty of making after-the-fact competency determinations, the federal courts have nevertheless permitted *nunc pro tunc* competency hearings 'whenever a court can conduct a meaningful hearing to evaluate retrospectively the competency of the defendant.'" *Id.* (Citation omitted.) "A 'meaningful' determination is possible where the state of the record, together with such additional evidence as may be relevant and available, permits an accurate assessment of the defendant's condition at the time of the original . . . proceedings." *Id.* (Citation and internal quotations omitted.) Although these pronouncements concern retrospective competency evaluations, this Court notes that all criminal responsibility determinations are, by definition, retrospective. As such, no similar pronoucements can be found regarding the ability to conduct criminal responsibility evaluations following the passage of long periods of time, such as the nearly 26 years that have elapsed since the crimes in this matter were committed. As a result, this Court looks to the law concerning the ability to conduct retrospective competency evaluations in determining whether a retrospective criminal responsibility evaluation following the passage of over 25 years can be made and in informing its decision generally.

20. In determining whether it is appropriate to remand a case to permit a retrospective competency hearing, courts consider four factors:

> (1) the passage of time, (2) the availability of contemporaneous medical evidence, including medical records and prior competency determinations, (3) any statements by the defendant in the trial record, and (4) the availability of individuals and trial witnesses, both experts and non-experts, who were in a position to interact with defendant before and during trial, including the trial judge, counsel for both the government and the defendant, and jail officials.

Id. (Citations omitted.)

21. In considering these factors, this Court finds that it would not be appropriate to permit a retrospective competency evaluation or, by extension, a retrospective criminal responsibility evaluation. First, more than 25 years have elapsed since Defendant Hatfield committed these crimes. The Supreme Court of the United States found that a defendant's due process rights would not be adequately protected should the Court remand the case for a retrospective competency evaluation where only six years had elapsed since the defendant's trial. *Drope v. Missouri*, 420 U.S. 162, 183, 95 S.Ct. 896, 909 (1975) ("Given the inherent difficulties of such a nunc pro tunc determination under the most favorable circumstances, we cannot conclude that such a procedure would be adequate here."). This length of time also plays in to consideration of the fourth factor: the availability of witnesses who interacted with Defendant. In the 25 years since the crime was committed, Drs. Gallemore and Haynes have died, and Mr. Watkins is no longer a licensed psychologist. Other witnesses, including Jim York, Tom Ferrell, and Dr. Willard Daniels, have also passed away. Moreover, the record on the minimal competency inquiry undertaken was not fully developed. Outside of Dr. Gallemore's brief testimony at that hearing, which was not subject to cross-examination, no other psychiatrist or psychologist testified. Also, medical reports reportedly forthcoming were not provided. In sum,

much contemporaneous medical evidence has been lost. Lastly, because this case did not proceed to trial, we do not have a trial record from which we can review any statements by Defendant Hatfield in the event he had taken the stand.

22. This Court also notes that "[t]he constitutional guaranty of due process is the primary constitutional protection against prejudice to the defense caused by passage or lapse of time." *State v. Bias*, 177 W. Va. 302, 310, 352 S.E.2d 52, 60 (1986). "The due process right to an investigation and a trial without unreasonable delay itself arises from the substantial prejudice that is presumed to affect a defendant's ability to respond to charges against him or her when the charges are grossly time-worn and stale." *Id.* (Internal quotations and citation omitted).

23. In considering delays occasioned by a defendant's incapacity to stand trial, the SCAWV has found that

> [w]hen prosecution is delayed because of the accused's mental incapacity to stand trial, the difficulty of determining whether the accused was mentally responsible at the time of the crime is increased. Passage of time makes proof of any fact more difficult. When the fact at issue is as subtle as a mental state, the difficulty is immeasurably enhanced. Courts must on occasion risk the increased difficulty of proof. But the interest of justice requires that there be no difficulty which is reasonably avoidable. There is a duty to minimize the difficulty so that the judgment, when ultimately reached, may be relied on as the closest approach to truth of which the judicial process is capable. That duty rests upon the accused as well as upon the Government – upon the accused because his is the burden, in the first instance of making some showing of insanity; upon the Government because it has the burden, once there has been some showing of insanity, of establishing beyond a reasonable doubt that the crime was not the product of mental illness.

Id. at 311, 352 S.E.2d at 61 (internal quotations and citation omitted). These same findings are relevant to the situation at bar.

24. Additionally, "[a] criminal trial is unwarranted when pre-trial psychiatric examinations clearly reveal by a preponderance of the evidence, that the accused at the time the crime was committed, was not criminally responsible for his acts." Syl. Pt. 1, *State ex rel. Walton v. Casey*, 163 W. Va. 208, 258 S.E.2d 114 (1979). Although both the prosecutor and judge should agree on dismissing the indictment, *State ex rel. Smith v. Scott*, 167 W. Va. 231, 237, 280 S.E.2d 811, 814 (1981), the Court nonetheless considers this point of law in reaching its decision that the indictment against Defendant Hatfield be dismissed.

25. In *State ex rel. Smith v. Scott*, 164 W. Va. 231, 280 S.E.2d 811 (1981), the SCAWV considered whether criminal proceedings should be dismissed against a defendant because pretrial psychiatric examinations clearly revealed that he was not criminally responsible for the malicious assault with which he was charged. The court noted that "[i]t is perfectly reasonable to let the question of insanity go to a jury after full development of the issue through, among other things, cross-examination concerning the medical philosophy upon which the opinions are founded as well as the methodology by which the opinions were formulated." *Id.* at 233-34, 280 S.E.2d at 813.

26. This Court notes, however, that a full development of the issue of Defendant Hatfield's sanity at the time the crimes were committed is nearly impossible and, therefore, unreasonable in this instance. Two of Defendant's evaluating physicians are deceased and therefore cannot be subjected to "cross-examination concerning the medical philosophy upon which the opinions are founded as well as the methodology by which the opinions were formulated." *Id.* Their opinions are confined to their reports, which do not fully explain how their findings relate to their conclusions on criminal responsibility. As a result, evidence regarding the medical philosophy upon which their opinions were based and of the methodology

used in formulating the opinions is not available. Additionally, an evaluating psychologist is no longer licensed. In short, too much time has elapsed and too many witnesses are unavailable for a meaningful development of this issue to take place during a trial.

27. Simply, due process mandates dismissal of the indictment. More than 25 years have elapsed since the crimes at issue here were committed. Defendant Hatfield's due process rights have already been infringed upon – first, by virtue of his constitutionally inadequate competency hearing, and second, by the circuit court's acceptance of Defendant Hatfield's guilty pleas and imposition of a life sentence in the face of uncontroverted evidence that Defendant Hatfield was not criminally responsible for his crimes. This Court finds that to allow this case to proceed to trial would further infringe upon Defendant Hatfield's constitutional protections for several reasons.

28. First, as discussed above, a criminal responsibility evaluation over 25 years after the crime was committed would be inappropriate and nearly impossible at this late juncture. As defense of this case would center primarily on Defendant Hatfield's mental state at the time the crimes were committed, to find otherwise would place Defendant Hatfield in the untenable position of defending against serious charges without the ability to put on evidence necessary for his defense. As stated above, "[w]hen the fact at issue is as subtle as mental state, the difficulty [of proving facts] is immeasurably enhanced. Courts must on occasion risk the increased difficulty of proof. But the interest of justice requires that there be no difficulty which is reasonably avoidable." *Bias*, 177 W. Va. at 311, 352 S.E.2d at 61. Here, the interest of justice mandates dismissal of the indictment in this case. Although "[i]t is perfectly reasonable to let the question of insanity go to a jury after full development of the issue," such development in this

instance would be unreliable at best given the length of time that has passed. *State ex rel. Smith v. Scott*, 164 W. Va. at 233-34, 280 S.E.2d at 813.

29. In addition to the inability to conduct a retrospective criminal responsibility evaluation, many non-expert witnesses are dead, evidence has been destroyed, and the length of time it took for Defendant Hatfield's constitutionally inadequate competency hearing to be rectified have further rendered defense of his case nearly impossible. Defendant's due process and speedy trial rights would once again be violated if this Court found otherwise.

30. In short, the passage of time has prejudiced Defendant Hatfield to such an extent that he cannot properly defend his case. Consequently, the indictment is hereby **DISMISSED WITH PREJUDICE.**[4]

31. The Court also **ORDERS** that Defendant Hatfield be discharged from Mt. Olive Correctional Complex; however, this Court **STAYS EXECUTION OF THE RELEASE** until expiration of the appeal period or, if an appeal is filed, a ruling is made by the Supreme Court of Appeals of West Virginia.

32. The Court further **ORDERS** that attested copies of this Order be distributed to the following counsel of record:

Thomas M. Plymale
Wayne County Prosecuting Attorney
P. O. Box 758
Wayne, West Virginia 25570

J. Timothy DiPiero
Lonnie C. Simmons
Katherine R. Snow
DiTrapano, Barrett & DiPiero, PLLC

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[4] This ruling renders moot Defendant's motion to dismiss the malicious wounding counts. Nonetheless, this Court notes that "[w]here a conviction and sentence are set aside and held to be void by motion of the defendant in the trial court, by an appeal, or by habeas corpus proceeding, double jeopardy is not applicable because in each instance it is waived and there is no inhibition to another trial for the same offense." Syl. Pt. 2, *State v. Holland*, 149 W. Va. 731, 143 S.E.2d 148 (1965).

604 Virginia Street, East
Charleston, West Virginia 25301

ENTER: April 15, 2014

JAMES O. HOLLIDAY, JUDGE

WAYNE COUNTY CIRCUIT COURT
WEST VIRGINIA

A COPY TESTE
Milton J. Ferguson II Clerk
By _____ Deputy