

STATE OF OHIO)
) SS:
CUYAHOGA COUNTY)

IN THE COURT OF COMMON PLEAS
CASE NO. CR-172340

STATE OF OHIO)
)
) Plaintiff)
)
) vs.)
)
) REGINALD BROOKS)
)
) Defendant)

FINDINGS AND JUDGMENT
ENTRY UNDER R.C. §2949.29

MICHAEL J. RUSSO, JUDGE

Defendant, Reginald Brooks, was convicted of the aggravated murders of his three sons and sentenced to death in November 1983. His conviction was affirmed by the Court of Appeals in 1985. The Ohio Supreme Court affirmed his conviction and death sentence in 1986. Subsequent state and federal litigation on his behalf has been unsuccessful. He is scheduled to be executed on November 15, 2011.

On August 23, 2011, defendant filed a post-conviction petition and a motion for evidentiary hearing, both pursuant to R.C. 2949.28, seeking to have this court determine whether defendant is incompetent to be executed. A pretrial was held on September 1, 2011. The Court granted defendant's request for appointment of counsel; granted defendant's request for retention of a mental health expert at state's expense; and authorized the state to obtain a mental health expert to examine defendant. The Court subsequently granted defendant's request for extraordinary fees for his expert witness, Dr. Rahn Bailey, and authorized funds for a defense investigator at state's expense. At a hearing held on September 26, 2011, the Court determined there was probable cause to believe that defendant was insane at the present time

within the meaning of R.C. 2949.28(A) and granted defendant's request to hold an inquiry. The inquiry was scheduled to commence on October 11, 2011 and notice was provided as required by statute. An order was issued to transport defendant to the Cuyahoga County Jail so that he could be examined by experts, prepare for the hearing with his counsel, and attend the inquiry. Prior to the hearing defendant was examined by Dr. Stephen Noffsinger, the state's expert, and the video of that interview and other discovery materials were exchanged by the parties. Reports of the expert witnesses also were exchanged prior to the hearing.

The inquiry commenced on October 11, 2011, pursuant to R.C. 2949.29, and testimony continued intermittently until October 18, 2011. Testifying at the inquiry were defendant, Dr. Rahn Bailey, and Dr. Stephen Noffsinger. A significant volume of documentary evidence was submitted and entered into evidence at the inquiry, including the original trial transcripts, defendant's post-trial correspondence, numerous psychiatric or psychological reports and source material, and relevant pleadings. Thereafter, the parties advised the court on October 20, 2011 that no further evidence or witnesses were being offered and the inquiry was closed.

The court is required to issue written findings with respect to this insanity inquiry no later than sixty days from the date that notice was given under R.C. 2949.28(B)(1). In this instance, notice was given by counsel for defendant by virtue of two pleadings filed on August 23, 2011. Findings are thus required to be filed on or before October 22, 2011.

In this proceeding, defendant is presumed not to be insane and the court shall not find him to be so unless the court finds by a preponderance of the evidence that he is insane. R.C. 2949.29(C). The term "insane," for purposes of the inquiry, is defined to mean "that the convict in question does not have the mental capacity to understand the nature of the death penalty and why it was imposed upon the convict." R.C. 2949.28(A). In proceedings

concerning competency to be executed, “[t]he ultimate issue on the question of competency to be executed is the prisoner’s *present* mental state when execution is imminent.” *Eldridge v. Thaler*, 2009 WL 3856672 (S.D. Tex.). The Ohio statutes at issue in this proceeding have met the test for constitutional fairness, in that a prisoner to be executed has an opportunity to be heard. *Bedford v. Bobby* (C.A. 6, 2011), 645 F.3d 372, 380. Subsequent to enactment of R.C. 2949.28 and R.C. 2949.29, the issue of whether a prisoner was mentally competent to be executed was reviewed in *Panetti v. Quarterman*, 551 U.S. 930 (2007). In *Panetti*, the Supreme Court held that the requirements for competence to be executed include not only an awareness by the prisoner of the state’s rationale for an execution, but a rational understanding of the connection between the underlying conviction and his sentence of execution.

The Court has considered all of the evidence relating to this inquiry, including prior testimony, documentary evidence, and the testimony of defendant, Dr. Bailey, and Dr. Noffsinger, in light of R.C. 2949.28 and R.C. 2949.29 and relevant case authority. The findings of the court from this inquiry are as follows:

1. Defendant is a convict in the Ohio penal system who is scheduled for execution on November 15, 2011 for the murders of his three sons on March 6, 1982.
2. Defendant is a mentally-ill person who is suffering from paranoid schizophrenia.
3. At trial in 1983, defendant was found to be competent to stand trial and sane at the time of the murders, despite suffering from schizophrenia, residual type. Throughout his period of incarceration, defendant has generally not been medicated nor subjected to treatment for mental illness.
4. Defendant does not suffer from psychogenic amnesia.

5. Consistent with defendant's schizophrenia, he presents with grandiose delusions regarding his past accomplishments and persecutory delusions that he has been framed for a crime that occurred while he was leaving town. These delusions are organized around coherent themes and he exhibits an attitude of superiority.
6. In a recorded phone call between the defendant and his brother on March 13, 2011, defendant exhibited the knowledge that he is going to be executed. He understood that a number of legal avenues were being pursued to forestall his execution, but he recognized that they were likely to be unsuccessful and that thirty days prior to his execution he would be moved into segregation. Defendant related that he was distributing his personal belongings because he would die on a date certain, unlike individuals who had died unexpectedly in a recent natural disaster. Defendant continued to dispute the key evidence (i.e., red suitcase and gun) underlying his conviction, but demonstrated an understanding of why he was sentenced to death.
7. Defendant's testimony on October 11, 2011 revealed he was oriented to time and place; that is, he understood he was participating in a competency hearing in the trial court to determine whether his mental illness rendered him incompetent to be executed on November 15, 2011. Despite a lengthy discourse in which he related a number of theories concerning the murder of his sons and denied participation, defendant was aware he had been convicted for the mass murder of his three sons. Defendant understood that his conviction was based upon circumstantial evidence and that the state determined he should be sentenced to death for this crime. He recognized he would die because he had killed his boys.

8. Defendant revealed during his recent examination by Dr. Noffsinger that he had the mental capacity to understand the nature of the death penalty and why it was imposed upon him. In particular, defendant understood that he had been charged with the murder of his three sons and convicted of the same by a three judge panel, after which that same panel sentenced him to death. Defendant further understood that his physical body would die upon receiving a lethal injection. Defendant was not psychotic or exhibiting signs of post-traumatic stress disorder.
9. Based upon the foregoing and all other available evidence, it is clear that defendant continues to be mentally ill, as he was at the time he committed these killings, but that he has both a factual and rational understanding of these crimes, is aware of his impending death, and is able to causally relate the murders with his punishment.

For all of the foregoing reasons, the Court does not find defendant to be insane by a preponderance of the evidence, and his execution shall proceed as scheduled.

IT IS SO DETERMINED.

MICHAEL J. RUSSO, JUDGE

DATE: October _____, 2011

SERVICE

A copy of the foregoing Findings and Judgment Entry Under R.C. §2949.29 has been mailed this _____ day of October, 2011 to:

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