IN THE SUPERIOR COURT

PINAL COUNTY, STATE OF ARIZONA

Date: May 3, 2022

THE HONORABLE ROBERT CARTER OLSON

IN RE THE MATTER OF: **STATE OF ARIZONA** PLAINTIFF AND **CLARENCE WAYNE DIXON** DEFENDANT	**S1100CR202200692** **RULING THAT DEFENDANT IS COMPETENT TO BE EXECUTED, pursuant to A.R.S. § 13-4021, *et seq.*** **(Capital Case)**

On this date, this Court presided over a competency for execution hearing; and at the conclusion of the hearing, this matter was taken under advisement,

Now, therefore,

The Court **FINDS** that Defendant filed his *Motion to Determine Competency to be Executed* in the county where the Defendant is located; the request for an examination was timely; and this Court has jurisdiction to decide this question, pursuant to *A.R.S.* § 13-4021, et seq.

The Court further **FINDS** that the Defendant made the minimum required showing that reasonable grounds exist for this examination, within the meaning of *A.R.S.* § 13-4022(C) and as otherwise required by *Ford v. Wainwright*, and that the Defendant, therefore, has a right under Arizona and Federal law to a full, fair, and adequate hearing, including the opportunity to present evidence, examine witnesses, and make arguments, which is now completed.

Without conceding the constitutionality of the standard set forth in *A.R.S.* § 13-4021(B), the parties stipulated at the start of the hearing to apply the following standard when assessing competency in this action:

> whether Clarence Wayne Dixon's mental state is so distorted by a mental illness that he lacks a rational understanding of the State's rationale for his execution.

Finally, as a matter of judicial economy (in light of the certain review of this decision by a higher court), the parties have consented to the Court making duplicate findings as to the standard of proof that is borne by the Defendant, pursuant to *A.R.S.* § 13-4022(F), which requires clear and convincing evidence, and the alternative standard of a preponderance of the evidence, which may arguably be required by Fourteenth and Eighth Amendments.

With respect to the hearing,

The evidence presented at the hearing consisted of 39 exhibits, admitted by stipulation, and the testimony of Dr. Lauro Amezcua Patiño, M.D., FAPA, and Dr. Carlos Vega, Psy.D., both of whom were qualified as experts and without objection, pursuant to Evidence Rule 702, and the expert witnesses examined the Defendant but presented conflicting opinions. Accordingly, their opinions are judged just as any other testimony, and the Court may give any such testimony as much credibility and weight as the Court thinks it deserves, considering the witness's qualifications and experience, the reasons given for the opinions, and all the other evidence in the hearing.

As a threshold determination, under both standards of proof, the Court **FINDS** that the Defendant has a mental disorder or mental illness of schizophrenia, albeit that this mental disorder or illness can fall within a broad spectrum, which the Defendant has shown through the testimony of Dr. Patiño and multiple exhibits. This determination, however, does not decide the question of competency. Rather, this threshold determination requires the Court to further consider whether Defendant's mental state is so distorted by this mental illness that he lacks a rational understanding of the State's rationale for his execution.

In an effort to meet this burden, the Defendant relies heavily on his "NAU legal challenge" to show that he lacks a rational understanding. Specifically, for several decades, the Defendant has immovably claimed that the NAU police department in some way initiated, without lawful authority, an investigation into a sexual assault

case in Flagstaff during 1985. And as a result, the Defendant argues that he is entitled to the suppression or reversal of everything that happened to him as a result of the claimed unlawful action by the NAU police department, including reversal of that conviction, nullification of the subsequent authority vested in the Department of Corrections to take a DNA sample from the Defendant while incarcerated for the 1985 case, and suppression of the resulting DNA evidence and reversal of his conviction in this case for which a warrant of execution is now pending.

On the one hand, this is an elegant theory that could make all of his legal problems go away; on the other hand, the chance of success with this argument was highly improbable (if not non-existent), yet the Defendant remains unbending in his commitment to this argument, whether due to hubris, poor judgment, a longshot strategy for lack of a better argument, or a delusion, as Defendant claims.

In support of his argument, Dr. Patiño opines that the NAU legal challenge is evidence of delusion as a result of his schizophrenia, noting the Defendant's claims that the judges and attorneys have conspired to wrongly deny his claim, as well as claiming that judges are denying his claims to protect the State or law enforcement from embarrassment or that judges are engaging in an "extra-judicial" killing of the Defendant, as well as other and cumulative evidence that was presented at the hearing.

For example, in Exhibit 2, Dr. Patiño expands on these observations with the following remarks from his interview on August 25, 2021: "They are not disagreeing with me; they just want to kill me for murder. They are ignoring the law." And later, on March 10, 2022, the Defendant communicated a different message, essentially that his claims were denied due to bias: "When questioned about the judicial system's rationale for denying his claims, Clarence stated that he did not think the judges, attorneys for the state, or his own attorneys were plotting against him, but stated his belief that this reflected that they are, "Not against me but have a firm and decided philosophy that the law enforcement should always be backed up." The Defendant went on to opine that this was a result of Arizona's judges coming from the "prosecutor services bar."

In simplest terms, when considered as a whole, the testimony and evidence about the NAU legal challenge is conflicting and ambiguous, includes inflammatory remarks and reflective observations by the Defendant, but it provides a window into arguably delusional thinking concerning the Defendant's rational understanding of the judiciary's rationale for denying his favored legal theory. The Court rejects Defendant's assertion that this is dispositive of the issue before this Court, but it

clearly provides some insight into the Defendant's rational understanding in regard to the State's rationale for his execution.

As for the remaining evidence presented at hearing, there were persuasive observations that were also offered by Dr. Vega, including the Defendant's statements that were memorialized by Dr. Vega, which provide insight into the rational understanding by the Defendant of the State's rationale for his execution, such as the Defendant reflecting that, if he had a memory of the murder, he would have a sense of relief on his way to his execution.

Furthermore, it is undisputed that the Defendant's intelligence is not less than average and probably classified in a high-average range. Dr. Patiño testified as to the different characteristics with schizophrenia that are typical for persons of low intelligence versus high intelligence, including the fact that persons of higher intelligence can have higher levels of functioning. And the Court notes that the Defendant has shown sophistication, coherent and organized thinking, and fluent language skills in the pleadings and motions that he has drafted and that were entered into evidence as exhibits, combined with the fact that he previously earned an income from other inmates for drafting pleadings for hire, although the Court is mindful that Dr. Patiño opines and cautions that such observations do not preclude his conclusion of incompetence.

Finally, although the Defendant claims that he has no memory of the murder that is the subject of this warrant of execution, which may be the result of a blackout, the Court notes that there is no evidence of dementia or a related impairment that would otherwise implicate an Eight Amendment consideration.

Now, after considering and weighing the substantial but conflicting testimony and evidence that was admitted at the hearing, and after considering the arguments of counsel, and being satisfied that a thorough and detailed examination has been completed by two qualified, expert witnesses, and being satisfied that the record adequately informs the decision about whether the Defendant can rationally understand the State's rationale for his death sentence and scheduled execution,

For this, and other good cause,

The Court **FINDS** that Clarence Wayne Dixon is presumed to be competent to be executed, pursuant to *A.R.S.* § 13-4022(F).

The Court **FINDS** that Clarence Wayne Dixon has NOT met his burden to rebut this presumption, by clear and convincing evidence, to show that his mental state is

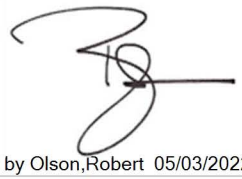
so distorted by a mental illness that he lacks a rational understanding of the State's rationale for his execution.

As a matter of judicial economy, although it is a much closer question,

The Court further **FINDS** that Clarence Wayne Dixon has NOT met his burden to rebut this presumption, by a preponderance of the evidence, to show that his mental state is so distorted by a mental illness that he lacks a rational understanding of the State's rationale for his execution.

IT IS HEREBY ORDERED that the warrant of execution in this cause is NOT stayed, pursuant to *A.R.S.* § 13-4022(G).

IT IS FURTHER ORDERED that no matters remain pending; this is a final judgment; and closing this file.



eSigned by Olson,Robert 05/03/2022 23:51:41 e1ow8ksn

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