

Confidential

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

POSTED
R

No. 2018-0318

State of New Hampshire

v.

Mohammad Salimullah

RECEIVED
NEW HAMPSHIRE
SUPREME COURT
2019 APR -5 P 3:16

Appeal Pursuant to Rule 7 from Judgment of the
Hillsborough County Superior Court, Southern District

BRIEF FOR THE DEFENDANT

Thomas Barnard
Senior Assistant Appellate Defender
Appellate Defender Program
10 Ferry Street, Suite 202
Concord, NH 03301
NH Bar # 16414
603-224-1236
(Fifteen minutes oral argument)

TABLE OF CONTENTS

	<u>Page</u>
Table of Authorities	3
Text of Relevant Authority	5
Questions Presented.....	8
Statement of the Case	9
Statement of the Facts.....	11
Summary of the Argument	15
Argument	
I. THE COURT ERRED BY DENYING SALIMULLAH’S MOTION TO DISMISS THE NEW INDICTMENTS.	16
II. THE COURT ERRED BY DENYING SALIMULLAH’S REQUEST FOR A HEARING TO DETERMINE WHETHER HE WAS COMPETENT TO BE SENTENCED.....	27
III. THE COURT ERRED BY IMPOSING A NO- CONTACT CONDITION ON THE ATTEMPTED-MURDER SENTENCE.	34
Conclusion.....	37
Appendix.....	39

TABLE OF AUTHORITIES

	<u>Page</u>
Cases	
<u>Cooper v. Oklahoma</u> , 517 U.S. 348 (1996)	29
<u>Drope v. Missouri</u> , 420 U.S. 162 (1975)	30
<u>Hart v. Warden</u> , ___ N.H. ___ (Jan. 24, 2019)	30
<u>Ryan v. Gonzales</u> , 568 U.S. 57 (2013)	30
<u>State v. Bertrand</u> , 123 N.H. 719 (1983)	30
<u>State v. Decato</u> , 165 N.H. 294 (2013)	20
<u>State v. Demesmin</u> , 159 N.H. 595 (2010)	<u>passim</u>
<u>State v. Kincaid</u> , 158 N.H. 90 (2008)	31
<u>State v. Towle</u> , 167 N.H. 315 (2015)	34, 35
<u>State v. Veale</u> , 158 N.H. 632 (2009)	19, 30
<u>Appeal of Town of Belmont (New Hampshire Bd. of Tax & Land Appeals)</u> , ___ N.H. ___ (Mar. 19, 2019)	20

<u>United States v. Collins,</u> 949 F.2d 921 (7th Cir. 1991)	29
<u>United States v. Pellerito,</u> 878 F.2d 1535 (1st Cir. 1989).....	29
<u>United States v. Rickert,</u> 685 F.3d 760 (8th Cir. 2012)	29
<u>In re Warden,</u> 168 N.H. 9 (2015).....	35

Statutes

RSA 135:17	25
RSA 135:17-a	<u>passim</u>
RSA 651:2	35
RSA 651-A:4	35

Other Authorities

New Hampshire Constitution, Part I, Article 15	27, 29
United States Constitution, Fourteenth Amendment	27, 29

TEXT OF RELEVANT AUTHORITY

RSA 135:17-a. Competency Hearing; Commitment for Treatment.

I. If, after hearing, the district court or superior court determines that the defendant is not competent to stand trial, the court shall order treatment for the restoration of competency unless it determines, by clear and convincing evidence, that there is no reasonable likelihood that the defendant can be restored to competency through appropriate treatment within 12 months. If the court finds, by clear and convincing evidence, that the defendant cannot be restored to competency within 12 months, the case against the defendant shall be dismissed without prejudice and the court shall proceed as provided in paragraph V.

II. If the defendant is to undergo treatment to restore competency, he or she may be treated in the state mental health system or at the secure psychiatric unit only under an order for involuntary admission or involuntary emergency admission ordered by the district court or probate court having jurisdiction pursuant to RSA 135-C. In all other cases, the accused shall, if otherwise qualified, be admitted to bail. The court may order bail supervision by the division of field services and impose such conditions, in addition to the appropriate course of treatment to restore competency, as the court deems necessary to ensure the appearance of the defendant for further proceedings in the case, and the safety of the defendant and the community.

III. Except for good cause shown, a further hearing to determine the defendant's competency shall be held no later than 12 months after the order committing the defendant for treatment. The hearing may be held earlier if the court is notified that the defendant has been restored to competency, or that there is no longer a reasonable likelihood of such restoration. Prior to the scheduled hearing, the qualified

psychiatrist or psychologist who conducted the initial competency evaluation shall conduct a further evaluation pursuant to RSA 135:17, and furnish a copy of the report of such evaluation to the court and the parties. If that qualified psychiatrist or psychologist is unavailable or unable to conduct such further evaluation, the court may order that the evaluation be conducted by another qualified psychiatrist or psychologist other than the treating qualified psychiatrist or psychologist.

IV. If following the hearing, the court determines that the defendant has regained competency, the court shall docket the matter for trial. If the court finds that the defendant has not regained competency, the case against the defendant shall be dismissed without prejudice.

V. If the court has determined that the defendant has not regained competency, and the court determines that he or she is dangerous to himself or herself or others, the court shall order the person to remain in custody for a reasonable period of time, not to exceed 90 days, to be evaluated for the appropriateness of involuntary treatment pursuant to RSA 135-C:34 or RSA 171-B:2. The court may order the person to submit to examinations by a physician, psychiatrist, or psychologist designated by the state for the purpose of evaluating appropriateness and completing the certificate for involuntary admission into the state mental health services system, the state developmental services delivery system, or the secure psychiatric unit, as the case may be. If a defendant who was charged with a sexually violent offense, as defined in RSA 135-E:2, XI, has not regained competency, the court shall proceed pursuant to RSA 135-E.

VI. If the person is ordered to be involuntarily committed following proceedings pursuant to RSA 135-C or RSA 171-B, the court may, upon motion of the attorney general or county attorney at any time during the period of the involuntary commitment and before expiration of the limitations period

applicable to the underlying criminal offense, order a further competency evaluation, to be conducted as prescribed in paragraph III. Such further competency evaluations may be ordered if the court finds that there is a reasonable basis to believe that the person's condition has changed such that competency to stand trial may have been affected. During proceedings authorized by this paragraph, the person is entitled to the assistance of counsel, including appointed counsel under RSA 135-C:22.

VII. Upon a finding that the defendant is not competent to stand trial, the court, at the competency hearing, shall determine if the competency report shall be available to the receiving facility, as defined in RSA 135-C:26, or the secure psychiatric unit. Before the court determines whether to provide the competency report to the receiving facility or the secure psychiatric unit, the court shall provide the defendant with an opportunity to object. The court shall consider the defendant's privacy interest in the content of the competency report and the receiving facility's, or the secure psychiatric unit's, need to review the competency report for purposes of treatment.

QUESTIONS PRESENTED

1. Whether the court erred by denying Salimullah's motion to dismiss the new indictments.

Issue preserved by Salimullah's motion to dismiss, H1* 3–8, 13, the State's objection, H1 9–14, and the court's order, DB 41.

2. Whether the court erred by denying Salimullah's request for a hearing to determine whether he was competent to be sentenced.

Issue preserved by Salimullah's motion for a new competency determination, DB 82, the State's objection, DB 87, the parties' oral arguments, S 3–11, and the court's oral ruling, S 14–15, and written order, DB 45.

3. Whether the court erred by imposing a no-contact condition on the attempted-murder sentence.

Issue preserved by Salimullah's objection to the condition, S 54, the court's ruling, S 55, and the sentence, DB 96.

* Citations to the record are as follows:

"DB" refers to this brief;

"H1" refers to the transcript of Salimullah's first appearance on the new indictments on February 18, 2016.

"H2" refers to the transcript of Salimullah's arraignment on the new indictments on March 1, 2016.

"T" refers to the transcript of trial on March 12–15, 2018.

"S" refers to the transcript of sentencing on May 4, 2018.

STATEMENT OF THE CASE

In October 2013, the State obtained from a grand jury in Hillsborough County, Southern District, indictments charging Mohammad Salimullah with attempted murder, first-degree assault, second-degree assault and reckless conduct. DB 53–56. The court (McGuire, J.) found that Salimullah was not competent. DB 57. One year later, the court (Colburn, J.) found that he had not been restored and dismissed the case without prejudice. DB 58.

Three months later, the State returned to the grand jury and obtained four indictments, identical to those that had been dismissed. DB 60–63. The court (Ignatius, J.) denied Salimullah’s motion to dismiss and ordered a new competency evaluation. DB 41, 64. After a hearing, the court (Colburn, J.) found that Salimullah was competent to stand trial. DB 68. The State then obtained an indictment alleging a new count of first-degree assault and replacement indictments alleging attempted murder and second-degree assault. DB 79–81.

At the conclusion of a four-day trial on March 12–15, 2018, the jury found Salimullah guilty of all five pending charges. DB 60, 63, 79–81. On May 4, 2018, the court (Smukler, J.) sentenced Salimullah on the attempted-murder conviction to thirty years to life, to serve, and on a first-degree-assault conviction to seven-and-a-half to fifteen years,

consecutive, suspended for twenty years from release. DB 95, 97. The court did not issue sentences on the other charges, apparently because they were brought in the alternative.

STATEMENT OF THE FACTS

Mohammad Salimullah and S.S., both members of the Rohingya ethnic group, were married in Malaysia in 2007. T 43–46, 371. In 2012, they moved from Malaysia to Nashua as refugees. T 41, 50. In 2013, they moved in with S.S.’s sister, Aisha, and her husband, Mustak Arif, in a two-bedroom apartment in Nashua. T 43, 51–54, 119–20, 259, 261, 373–74. The situation was not ideal; Aisha had objected to S.S. marrying Salimullah, T 116, and Arif and Salimullah disliked each other. T 120–21. S.S. and Salimullah sometimes argued. T 58–59, 263.

About two months later, in early August 2013, Salimullah and S.S. discussed getting a divorce. T 59, 120–22, 374, 405, 452. Arif summoned three elders from Nashua’s Rohingya community to discuss the issue. T 60, 123–24, 264–66, 375–76. Because it was Ramadan, the elders recommended that Salimullah and S.S. wait before making any decisions. T 61–62, 125, 266–67, 378.

Three or four days later, in the early morning hours of August 13, 2013, the police were dispatched to the apartment for a report of a domestic disturbance. T 122, 164, 174, 213, 299, 481. They arrived to find blood everywhere. T 178. S.S. had a 4-inch long laceration to her neck, which ultimately required 19 sutures, but her jugular vein and carotid artery were intact. T 82, 166, 237, 460, 464, 467, 472. The fingers

on her left hand were more deeply lacerated and required ten stitches and two surgeries. T 82–85, 166, 459, 470. At the 2018 trial, S.S. reported that she continued to experience pain and numbness in her fingers and was unable to straighten them. T 85.

The police found Salimullah on a bedroom floor, wrapped in a blanket, with two lacerations to his abdomen. T 180–81, 215–16, 548. He was slipping in and out of consciousness. T 217, 225. One of the lacerations, an inch long, required 5 surgical staples, but they were not considered serious injuries. T 548–49.

The police obtained a knife from the kitchen sink. T 327. The knife had blood on just one side and only near its tip. T 518, 545. The police sent the knife to the State Laboratory for analysis. T 327, 491. The blood had multiple contributors. T 527–28. Salimullah was the major contributor. T 531. The analyst could not draw any conclusions about the identity of the minor contributors. T 532–33.

S.S. alleged that Salimullah was responsible for the injuries. She claimed that she woke up in the middle of the night to Salimullah's hand over her mouth and a knife to her throat. T 68–69, 132–33. She claimed that her fingers were cut when she tried to grab the knife. T 69, 71, 138. She claimed that she pushed Salimullah away, turned on a light,

and saw Salimullah, seated, stabbing himself in the stomach. T 71-73, 92-93, 141-42.

S.S., Aisha and Arif claimed that, between 2:30 and 3:30 a.m., S.S. entered Aisha and Arif's bedroom holding her neck, with blood everywhere, and told them that Salimullah attacked her and was trying to kill himself. T 75-76, 91, 147, 270-71, 275-76, 382-83, 409-15, 446. They claimed that Arif entered Salimullah's and S.S.'s bedroom and took the knife from Salimullah. T 76-78, 91, 276-77, 384-85, 418-24. They gave conflicting statements and testimony as to who placed the knife in the sink. T 276, 283, 385-87, 427, 564-66. They denied wiping or washing it. T 395.

According to S.S., Aisha, and Arif, a considerable amount of time passed between S.S. suffering the lacerations to her neck and hand and Arif calling for help. During much of this time, they claimed, Arif had fainted. T 100, 277, 388, 437-38. From 4:03 a.m. to 4:12 a.m., Arif made at least nine calls to community elders, but, they claimed, no one answered. T 79-80, 280, 310-11, 353-54, 389-90, 438-441. Finally, at 4:13 a.m., Arif called 911. T 80, 310, 389-90, 549.

Salimullah's lawyer argued that S.S., Aisha and Arif put forth a story that "doesn't make sense." T 569. The laceration to S.S.'s neck, he noted, must have appeared "horrific" and life-threatening. T 568-69. The "homicidal" perpetrator of the attack, moreover, remained in the apartment. T 569, 575.

But despite describing such an “urgent situation,” they waited, inside the apartment, for up to an hour or more before calling anyone for help. T 569–70.

The “natural human instinct [for] survival,” counsel noted, “isn’t cultural,” but universal. T 570, 572. Trying to reconcile S.S., Aisha and Arif’s story with their actions, he argued, was “like trying to jam a round peg into a square hole.” T 569. “Nobody,” he urged, “waits like that under these circumstances.” T 573. “The only reason not to call the police,” he told the jury, “was if something else had happened in that house. Something that they’re not telling you. Something that they’re trying to cover up.” T 576.

SUMMARY OF THE ARGUMENT

1. RSA 135:17-a sets forth prerequisites for reevaluating the competency of a defendant who has previously been found incompetent and either unrestorable or unrestored. That statute authorizes the court to order a new evaluation only if it “finds that there is a reasonable basis to believe that competency to stand trial may have been affected.” Here, the State circumvented this prerequisite by obtaining new indictments. By denying Salimullah’s motion to dismiss the new indictments, the court erred.

2. A defendant must be competent to be sentenced. The court must hold an evidentiary hearing on the defendant’s competency “whenever a bona fide or legitimate doubt arises.” Here, Salimullah’s attorney raised a bona fide or legitimate doubt that Salimullah was competent to be sentenced. The court erred by denying his request for a hearing.

3. A court cannot impose a no-contact order as part of a sentence of imprisonment. Here, the court erred by imposing a no-contact order on the attempted-murder sentence.

I. THE COURT ERRED BY DENYING SALIMULLAH'S MOTION TO DISMISS THE NEW INDICTMENTS.

In October of 2013, the State obtained four indictments charging Salimullah with attempted murder, first-degree assault, second-degree assault, and reckless conduct. DB 53–56. Two experts, one from the Office of the Forensic Examiner and one retained by the State, evaluated Salimullah. DB 69. One diagnosed Salimullah with an adjustment disorder with depressed mood, and the other diagnosed him with a major depressive disorder. DB 69. Both concluded that he lacked an understanding of the legal system and was not competent to stand trial. DB 69.

In September 2014, the court (McGuire, J.), by agreement, found that Salimullah was not competent to stand trial, but potentially restorable. DB 57. In October 2014, Salimullah was transferred to the Secure Psychiatric Unit at the New Hampshire State Prison, where he was civilly committed and received medication and treatment. DB 58, 70. In August 2015, however, he continued to suffer from suicidal ideations, depression, and auditory hallucinations. DB 58. In September 2015, the court (Colburn, J.) found that Salimullah had not been restored to competency and dismissed the case without prejudice. DB 59. In November 2015, Salimullah was transferred from the Secure Psychiatric Unit to the New Hampshire Hospital. DB 41.

In January 2016, the State obtained four new indictments that were in all respects identical to the 2013 indictments. DB 60–63. At Salimullah’s first court appearance following the new indictments, his lawyers argued that RSA 135:17-a, VI, sets forth the procedure to be followed if the State seeks to relitigate the competency of a defendant who, like Salimullah, has already been found incompetent and not restorable or restored. H1 3–7. That provision, they argued, does not entitle the State to automatically obtain a new competency determination simply by reindicting the defendant. H1 5–7. Rather, they argued, the provision requires “the State to bring evidence before Court” that “there’s a change in circumstances,” a “reason to believe that he has been restored to competency.” H1 3, 7–8.

Salimullah’s lawyers argued that “it is for the Court to make a finding,” following “an evidentiary hearing,” “as to whether or not another competency evaluation should be ordered.” H1 3, 6–8. Otherwise, they noted, paragraph VI “becomes meaningless”; “the State can just keep reindicting and reindicting and reindicting” until it obtains its desired competency determination. H1 7–8. They moved to dismiss the indictments, noting that “the State hasn’t put forward any evidence to suggest that there’s a reasonable basis to believe that his condition has changed such that he’s competent to stand trial.” H1 13.

The prosecutor objected. H1 9. She acknowledged that paragraph VI “provides for a different avenue” to revisit the issue of competency. H1 11. She argued, however, that “the statute [does not] require[] me to take that avenue.” H1 11. She explained that she reindicted Salimullah because he had been transferred from the Secure Psychiatric Unit at the State Prison to the State Hospital, but she acknowledged that she did not know why Salimullah had been transferred. H1 12, 14. She added that she was concerned that Salimullah would soon be discharged. H1 12.

The court (Ignatius, J.) initially ruled that it would not proceed with arraignment on the new indictments. H1 17. It ordered that Salimullah’s treatment records be provided to the State. H1 17–18. Then, “if [the State] feels it’s appropriate to request a subsequent competency evaluation,” the Court ruled, “I am open to a review of a motion to that effect.” H1 19, 29–30.

Later that day, however, the court reversed itself in a written order. DB 41. State v. Demesmin, 159 N.H 595 (2010), the court asserted, “stands for the proposition that a trial court loses jurisdiction once the charges have been dismissed.” DB 43. Thus, the court concluded, “once the charges [were] dismissed, the State los[t] its ability to petition for re-evaluation under [paragraph VI],” and “the State [was] required to re-indict in order to reassess the defendant’s

competency.” DB 43. The court ordered that arraignment on the new indictments would proceed. DB 44. It added that it “anticipate[d] that the defendant will raise his competency to stand trial, and he is free to do so.” DB 44.

At the arraignment, Salimullah’s lawyer noted that the law required him to file a formal, written motion for a competency evaluation. H2 14; see also State v. Veale, 158 N.H. 632, 640 (2009) (“Raising the issue of competency is an ethical obligation incumbent upon defense counsel in certain circumstances.”). The court noted, “[W]e know that the issue of competency is central to this case,” H2 18, and ordered a new competency evaluation sua sponte. H2 18; DB 64. The court did not find that “there [wa]s a reasonable basis to believe that [Salimullah]’s condition ha[d] changed such that competency to stand trial may have been affected.” RSA 135:17-a, VI.

In June 2016, the State’s retained expert reevaluated Salimullah, found that he was malingering, and opined that he was competent to stand trial. DB 70. In August and September 2016, an expert retained by the defense evaluated Salimullah and concluded that he remained incompetent. DB 70–71. Both experts maintained their conflicting opinions. DB 71.

In January 2017, the court (Colburn, J.) conducted a competency hearing at which both experts testified. DB 72.

The court credited the State’s expert’s testimony and found that Salimullah was competent to stand trial.¹ DB 72–78. By denying Salimullah’s motion to dismiss, the court erred.

A defendant must be competent to stand trial. State v. Decato, 165 N.H. 294, 296 (2013). RSA 135:17-a sets forth the procedure to be followed if the trial court determines that the defendant is not competent to stand trial.

This Court reviews issues of statutory construction de novo. Appeal of Town of Belmont (New Hampshire Bd. of Tax & Land Appeals), ___ N.H. ___ (Mar. 19, 2019). It is “the final arbiter of the intent of the legislature as expressed in the words of the statute considered as a whole.” Id. It “first look[s] to the language of the statute itself, and, if possible, construe[s] that language according to its plain and ordinary meaning.” Id. It “interpret[s] legislative intent from the statute as written and will not consider what the legislature might have said or add language that the legislature did not see fit to include.” Id. It “construe[s] all parts of a statute together to effectuate its overall purpose and avoid an absurd or unjust result.” Id. It “do[es] not consider words and phrases in isolation, but rather within the context of the statute as a whole.” Id.

¹ Salimullah and his lawyers disagree that he was competent to stand trial. However, given the fact-bound nature of the court’s competency determination — and the deferential standard of review that applies to such determinations — he does not challenge that finding on appeal.

If a trial court determines that a defendant is not competent, it “shall order treatment for the restoration of competency unless it determines, by clear and convincing evidence, that there is no reasonable likelihood that the defendant can be restored to competency through appropriate treatment within 12 months.” RSA 135:17-a, I. If the court determines either (a) that “the defendant cannot be restored to competency within 12 months,” or (b) that “the defendant has not,” in fact, “regained competency” after twelve months, then “the case against the defendant shall be dismissed without prejudice.” RSA 135:17-a, I, IV.

The statute envisions that the court’s jurisdiction will continue even after the case is dismissed. RSA 135:17-a, I (“the case against the defendant shall be dismissed without prejudice and the court shall proceed as provided in paragraph V.”). If, for instance, “the court determines that [the defendant] is dangerous to himself or herself or others, the court shall order the person to remain in custody for a reasonable period of time, not to exceed 90 days, to be evaluated for the appropriateness of involuntary treatment.” RSA 135:17-a, V. Additionally, “[t]he court may order the person to submit to examinations by a physician, psychiatrist, or psychologist designated by the state for the purpose of evaluating appropriateness and completing the certificate for involuntary admission into the state mental

health services system, the state developmental services delivery system, or the secure psychiatric unit, as the case may be.” Id. Finally, “If a defendant who was charged with a sexually violent offense, as defined in RSA 135-E:2, XI, has not regained competency, the court shall proceed pursuant to RSA 135-E.” Id.

The statute expressly envisions that, even after the case is dismissed, the court may, under certain circumstances, reevaluate the defendant’s competency. RSA 135:17-a, VI. The statute sets forth three prerequisites for reevaluating the competency of a defendant who has been found incompetent and either unrestorable or unrestored. First, the defendant must “be involuntarily committed following proceedings pursuant to RSA 135-C or RSA 171-B.”² Id. Second, the State must file a motion to reevaluate the defendant’s competency “during the period of the involuntary commitment and before expiration of the limitations period applicable to the underlying criminal offense.” Id. Third, the court must “find[] that there is a reasonable basis to believe that the person’s condition has changed such that competency to stand trial may have been affected.” Id.

Here, the State circumvented these requirements by obtaining new indictments. Although the first two

² Even if the defendant has not been involuntarily committed, the court may still reevaluate competency if there is evidence of malingering. Demesmin, 159 N.H. at 601.

requirements were clearly satisfied, the State did not claim that there was “a reasonable basis to believe that the [Salimullah]’s condition ha[d] changed such that competency to stand trial may have been affected,” and the court made no such finding prior to ordering a new competency evaluation.

Salimullah’s lawyers argued that any reevaluation of competency must satisfy the requirements of RSA 135:17-a, VI, and that the new indictments must, therefore, be dismissed. The court, however, rejected that argument. It held that Demesmin “stands for the proposition that a trial court loses jurisdiction once the charges have been dismissed.” DB 43. Thus, the court reasoned, “the State [was] required to re-indict in order to reassess the defendant’s competency.” DB 43.

The court misinterpreted Demesmin. In Demesmin, the defendant, who was indicted for first-degree assault, was initially found incompetent to stand trial due to an intellectual disability. Demesmin, 159 N.H. at 596. The court did not address restorability, but it did find the defendant dangerous and ordered that he be evaluated for involuntary commitment. Id. at 596–97. That evaluation concluded that the defendant did not have an intellectual disability. Id. at 597. In response, the State moved for a second competency evaluation, arguing that the defendant malingered during the first evaluation. Id. Over the

defendant's objection, the court ordered a second competency evaluation. Id. It later found the defendant competent, and, following conviction, the defendant appealed. Id.

The premise of the defendant's argument was that, by ordering an evaluation for involuntary commitment, the court impliedly found that he was not restorable and thus impliedly dismissed the indictment. Id. Based on that premise, the defendant further argued that the State had to reindict him before the court could reevaluate competency. Id.

This Court rejected the premise of the defendant's argument. Id. at 598–99. It held that a finding of non-restorability “must be explicit” and cannot be “infer[red] from silence.” Id. at 598. Because the trial court did not find that the defendant was not restorable, this Court held, “[t]he trial court . . . never dismissed the original indictment.” Id. Having rejected the premise of the defendant's argument, this Court did not address his argument that, if the indictment had been dismissed, reindictment was required. Id. at 598–99.

The court here was mistaken when it found that Demesmin “stands for the proposition that a trial court loses jurisdiction once the charges have been dismissed.” DB 43. To the contrary, in Demesmin, this Court noted that “[t]here is a presumption against divesting a court of its jurisdiction once it has properly attached, and any doubt is resolved in

favor of retaining jurisdiction.” Id. at 598–99. It further observed that “once a court has acquired jurisdiction, no subsequent error or irregularity will remove that jurisdiction, so that a court may not lose jurisdiction because it makes a mistake in determining either the facts, the law, or both.” Id. at 599 (brackets omitted).

The court here also found that:

even if [it] were to accept [Salimullah’s] interpretation of the statute, it is unclear in which court the State would move for re-evaluation. It could be the Superior Court, which initially ordered the competency evaluation and dismissed the charges, or the Probate Court, which ordered the civil commitment. Thus, by reading the statute as requiring a re-indictment under the circumstances, the Court avoids this issue.

DB 43–44.

There is no ambiguity in the statute as to which court determines the defendant’s competency to stand trial. RSA 135:17 authorizes “the circuit or superior court before which [the defendant] is to be tried” to order a competency evaluation. RSA 135:17, I. RSA 135:17-a sets forth the procedure to be followed if “the district court or superior court determines that the defendant is not competent.” RSA 135:17-a, I. Thus, every subsequent reference to “the

court” in RSA 135:17-a is to the circuit or superior court in which the criminal trial would take place.

RSA 135:17-a clearly envisions that, even if “the case” against a defendant who has been found incompetent and not restorable or not restored is “dismissed,” the court retains jurisdiction to reevaluate the defendant’s competency if certain requirements are satisfied. One of those requirements is that “the court finds that there is a reasonable basis to believe that the person’s condition has changed such that competency to stand trial may have been affected.”

RSA 135:17-a, VI. By permitting the State to avoid that requirement by reindicting the defendant, the court erred.

II. THE COURT ERRED BY DENYING SALIMULLAH'S REQUEST FOR A HEARING TO DETERMINE WHETHER HE WAS COMPETENT TO BE SENTENCED.

In April 2018, after trial but before sentencing, Salimullah's lawyer filed a motion for a new competency evaluation and determination. DB 82. He noted that, under the Due Process clauses of Part I, Article 15 of the New Hampshire Constitution and the Fourteenth Amendment to the United States Constitution, a defendant must be competent to be sentenced. DB 84. He also noted that, if there is a "bona fide or legitimate" doubt about competency, the court must conduct a hearing. DB 85. He expressed "concern that . . . Salimullah's mental state [wa]s affecting his ability to rationally work with defense counsel on the question of sentence and on the development of additional potential mitigation," DB 83, and stated that "a legitimate doubt exist[ed] as to [his] competency with respect to sentencing." DB 85.

The prosecutor objected. DB 87. She argued that Salimullah's lawyers did not make a sufficient showing to justify relitigating the issue of his competency. DB 89–93. The prosecutor asserted, "A court is not required to order a competency evaluation just because someone asks for one." DB 92. The prosecutor did not attempt to reconcile her objection with her earlier position, taken successfully, that

the State may obtain a new competency evaluation merely by reindicting the defendant.

At the scheduled sentencing hearing, Salimullah's lawyer told the court that he had spoken to Salimullah multiple times since trial and continued to believe that Salimullah's mental state "may be affecting his decision-making with respect to the sentencing process." S 3. He informed the court that Salimullah had instructed him to ask for a sentence of life without parole. S 3-4. He added that he did not re-raise the issue of competency lightly. S 4.

The court stated, "I'm not sure I really see any difference between what you raised before and what you're raising now." S 6. It then asked, "[I]s there a material difference between what you saw as a basis for a competency [evaluation] previously and what you are raising now as a basis for [a] competency [evaluation]?" S 6. Salimullah's lawyer explained that, since the trial, Salimullah had exhibited a level of "resignation" that may be preventing him from making "logical or rational" choices. S 8-9. The State maintained its argument that Salimullah's lawyer had not demonstrated a "material difference" since the previous competency determination. S 10-11.

The court denied Salimullah's request for a new competency determination, stating, "I don't think the threshold has been crossed." S 14-15. The court further

explained, “I do not believe . . . that I am hearing enough to depart from the previous adjudications.” S 15.

At the subsequent sentencing argument, Salimullah’s lawyer argued mitigating factors, but did not recommend a specific sentence. S 47. The court “accept[ed] the State’s recommended sentences,” including thirty years to life on the attempted-murder conviction. S 48.

After sentencing, the court issued a written order reiterating its denial of Salimullah’s lawyers’ request for a competency determination. DB 45. It reasoned that “[t]he instant competency issue is almost identical to the one raised and adjudicated in the court’s February 8, 2017 order on competency,” over a year earlier. DB 49. The court concluded that “no bona fide doubt existed as to [Salimullah’s] competency at the time of sentencing.” DB 52. By denying Salimullah’s lawyer’s request for a competency determination prior to sentencing, the court erred.

The Due Process clauses of Part I, Article 15 of the New Hampshire Constitution and the Fourteenth Amendment to the United States Constitution prohibit the prosecution of an incompetent defendant. Veale, 158 N.H. at 644; Cooper v. Oklahoma, 517 U.S. 348, 354 (1996). A defendant must be competent to be sentenced. United States v. Pellerito, 878 F.2d 1535, 1544 (1st Cir. 1989); United States v. Rickert, 685 F.3d 760, 765 (8th Cir. 2012); United States v. Collins,

949 F.2d 921, 924 (7th Cir. 1991); see also Hart v. Warden, ___ N.H. ___ (Jan. 24, 2019) (“Neither the due process clause of the United States Constitution, nor Part I, Article 15 of the New Hampshire Constitution mandate different standards of competency at various stages of or for different decisions made during a criminal proceeding.”). To be competent, a defendant must “have a sufficient present ability to consult with and assist his or her lawyer with a reasonable degree of rational understanding” and “a rational as well as a factual understanding of the proceedings against him or her.” Hart, ___ N.H. at ___; accord Ryan v. Gonzales, 568 U.S. 57, 66 (2013).

A trial court must hold an evidentiary hearing on the defendant’s competency “whenever a bona fide or legitimate doubt arises.” Veale, 158 N.H. at 640; State v. Bertrand, 123 N.H. 719, 725 (1983). The hearing must include “the opportunity to introduce evidence, cross-examine witnesses, and have specific factual findings made on the record which may be reviewed on appeal.” Bertrand, 123 N.H. at 725. “In determining whether to order a competency hearing, the trial court should consider evidence of a defendant’s irrational behavior, his demeanor at trial, and any prior medical opinion on competency.” Id.; accord Drope v. Missouri, 420 U.S. 162, 180 (1975). “Even when a defendant is competent at the commencement of his trial, a trial court must always be alert

to circumstances suggesting a change that would render the accused” incompetent. Drope, 420 U.S. at 181. A trial court’s decision as to whether to order a competency hearing is reviewed with deference. State v. Kincaid, 158 N.H. 90, 93 (2008). Here, for four reasons, the trial court erred by finding that “no bona fide doubt existed as to the defendant’s competency at the time of sentencing.” DB 52.

First, the prior competency evaluations raised legitimate doubts about Salimullah’s competency. Three experts — one retained by the State, one retained by the defense, and one employed by the Office of the Forensic Examiner — had evaluated Salimullah. Two of the three concluded that Salimullah was incompetent. Only the expert retained by the State concluded that he was competent. That expert had previously concluded that Salimullah was not competent; he changed his opinion “based largely on a determination that [Salimullah] was malingering.” DB 70. This history was inconsistent with the court’s finding that “no bona fide doubt existed as to [Salimullah’s] competency.”

Second, Salimullah told his attorney that he wanted the court to impose a sentence of life without parole, “well above the State’s recommendation.” DB 49. The court discounted this fact, explaining that what it called Salimullah’s “petulant behavior” was “situational” and “opportunistic.” DB 50. But even after the Court held that he was competent, Salimullah

still did not authorize his counsel to request a sentence other than life without parole, a fact that undermines the court's attribution of ulterior motives. In the context of this case, Salimullah's request that the court impose the maximum possible sentence raised a legitimate doubt as to his competency.

Third, a significant period of time — over one year — had passed since the court found Salimullah competent to stand trial. In 2017, the court ruled that “the question is only the degree to which the defendant is depressed, and whether it is severe enough to interfere with his ability to work with his attorney.” DB 76. Even the State's expert “agree[d] that [Salimullah] [wa]s depressed, [just] not nearly as depressed as he [wa]s presenting himself.” DB 77. In 2018, Salimullah's lawyer acknowledged that guilty convictions and the prospect of a lengthy prison sentence are naturally depressing. DB 83. He noted, however, that Salimullah was “suffering significant depression” and “ha[d] reached a troubling level of resignation with respect to the sentencing.” DB 83–84. Particularly where Salimullah's competency was subject to conflicting rulings prior to trial, and where his lawyer noticed an increase in his depression and resignation after trial, there was nothing speculative about the possibility that, even if Salimullah was competent during trial, the trial and guilty

verdicts rendered him temporarily incompetent to be sentenced.

Finally, the court's denial of Salimullah's request for a new competency evaluation was particularly unsustainable given its previous ruling that the State could obtain a new competency evaluation merely by reindictment, with no showing of any changed circumstance. This combination of rulings creates a double-standard: a finding of incompetency can be relitigated at the prosecutor's whim, but a finding of competency can only be revisited if the defendant makes a unique, heightened showing. Affirmance of both rulings would result in systemic bias that would critically undermine the fundamental, constitutional right not be tried and sentenced unless competent.

III. THE COURT ERRED BY IMPOSING A NO-CONTACT CONDITION ON THE ATTEMPTED-MURDER SENTENCE.

On the attempted-murder conviction, the court sentenced Salimullah to thirty years to life. S 51; DB 95. No portion of this sentence was suspended or deferred, and the court did not impose probation. S 51–52, DB 95. On the first-degree-assault conviction, the court sentenced Salimullah to seven-and-a-half to fifteen years, all suspended until 20 years from release. S 52, DB 97.

Although the State requested a no-contact condition on only the first-degree-assault sentence, the court imposed the condition on both sentences. S 52–53, DB 96, 98. The provision prohibited Salimullah from having contact with “S.S., [Arif], [Aisha], or their children, parents or siblings either directly, or indirectly, including but not limited to contact in-person, by mail, phone, email, text message, social networking sites or through third parties.” DB 98; S 53.

Salimullah’s lawyer objected to the no-contact condition on the attempted-murder sentence. S 54. He noted that under State v. Towle, 167 N.H. 315 (2015), a court cannot impose conditions on a stand-committed sentence. S 54. The court overruled the objection, stating, “[I]f the [S]upreme [C]ourt disagrees we will vacate it.” S 55. By

imposing the no-contact condition on the stand-committed sentence, the court erred.³

“[P]ursuant to RSA 651:2 . . . , a trial court cannot impose a no-contact order as part of a sentence of imprisonment.” Id. at 326. “[I]t can impose such a condition only on suspended or probationary sentences or conditional discharges, where violation of the condition may lead to imposition of the sentence or revocation of probation.” Id.

The court here reasoned that, because “it’s a life sentence on parole,” “a no contact provision is appropriate.” H 55. But in Towle, the defendant was sentenced to 57 to 114 years in prison, id. at 327, also, for all practical purposes, “a life sentence on parole.” This Court nevertheless held that, “by imposing the no-contact order in addition to the term of imprisonment, the trial court exceeded its statutory authority.” Id. at 328.

“[T]he legislature has granted broad authority to the parole board to enact . . . conditions for parolee conduct.” In re Warden, 168 N.H. 9, 14 (2015); see also RSA 651-A:4, III(c). If and when Salimullah is released, the parole board may impose whatever conditions it deems appropriate, including a no-contact condition. But a trial court has no authority to dictate to the parole board, decades in advance, what parole

³ Salimullah does not challenge the no-contact condition on the suspended sentence for first-degree assault.

conditions to impose. By imposing the no-contact condition on the attempted-murder sentence, the court erred. This Court should vacate the condition from that sentence.

CONCLUSION


WHEREFORE, Mohammad Salimullah respectfully requests that this Court reverse and vacate the convictions, or alternatively vacate the sentences, or alternatively vacate the no-contact order on the attempted-murder sentence.

Undersigned counsel requests fifteen minutes oral argument.

The appealed decisions on the first two issues are in writing and are appended to the brief. The appealed decision on the third issue was not in writing and therefore is not appended to the brief.

This brief complies with the applicable word limitation and contains 5,362 words.


Respectfully submitted,

By 
Thomas Barnard, #16414
Senior Assistant Appellate Defender
Appellate Defender Program
10 Ferry Street, Suite 202
Concord, NH 03301

CERTIFICATE OF SERVICE

I hereby certify that two copies of the foregoing brief have been mailed, postage prepaid, to:

Criminal Bureau
New Hampshire Attorney General's Office
33 Capitol Street
Concord, NH 03301


Thomas Barnard

DATED: April 5, 2019

APPENDIX

APPENDIX — TABLE OF CONTENTS

	<u>Page</u>
Order on Defendant’s Motion to Dismiss	41
Order on Defendant’s Motion for Competency Determination (under seal).....	45
Indictment, Charge ID 826505C	53
Indictment, Charge ID 826506C	54
Indictment, Charge ID 854329C	55
Indictment, Charge ID 854330C	56
Order finding Defendant incompetent	57
Order finding Defendant not restored.....	58
Indictment, Charge ID 1181405C	60
Indictment, Charge ID 1181406C	61
Indictment, Charge ID 1181407C	62
Indictment, Charge ID 1181408C	63
Order for Competency Evaluation	64
Order finding Defendant competent	68
Indictment, Charge ID 1440528C	79
Indictment, Charge ID 1440530C	80
Indictment, Charge ID 1441529C	81
Defendant’s Motion for Competency Determination (under seal)	82
State’s Objection to Defendant’s Motion for Competency Determination (under seal).....	87
Sentence, Charge ID 1440528C	95
Sentence, Charge ID 1440529C	97

THE STATE OF NEW HAMPSHIRE

**HILLSBOROUGH, SS.
SOUTHERN DISTRICT**

**SUPERIOR COURT
No. 226-2016-CR-00040**

State of New Hampshire

v.

Mohammed Salimullah

ORDER

The defendant is charged with attempted murder, first degree assault, and second degree assault in connection with an alleged confrontation with S.S. in 2013. The Court scheduled the defendant's arraignment for February 18, 2016, and arranged for transport of the defendant, as well as an interpreter who speaks Hindi, the defendant's native language. The defendant has also been appointed counsel to represent him in the criminal charges. Pending before the Court is whether the State is entitled to proceed with arraignment and other actions associated with new criminal indictments.

Background

Based on the February 18, 2016, hearing, the background of the disputed legal issue is as follows: The Nashua Police Department arrested and charged the defendant in connection with these events in 2013. The defendant was evaluated for competency to stand trial. The Court (McGuire, J.) found him not competent but potentially restorable. On September 1, 2015, the Court (Colburn, J.) found him not competent and not restorable. In addition to the finding regarding competence, the Court dismissed the charges without prejudice. The defendant was then civilly committed and placed in the Secure Psychiatric Unit of the New Hampshire State Prison. In November of 2015, he was transferred to the New Hampshire Hospital, which is a less secure facility.

At the hearing, the defendant argued that the Court lacks the authority to arraign the defendant and moved to dismiss the new indictments. According to the defendant, the only avenue available to reinstate the charges against the defendant is for the State to petition the Court to obtain a new competency evaluation pursuant to RSA 135:17-a, VI. Otherwise, the defendant argues, the State would be free to repeatedly seek new indictments even though a person has already been found not competent or not restorable. The defendant asserts that, by bringing new indictments, the State has acted contrary to the intent of the statute. The State objects, arguing that without bringing new indictments, it is unclear how the State could come before the Court to seek a new competency evaluation. The State also maintains that, without the defendant's medical records, it cannot assess the degree to which his transfer to New Hampshire Hospital is an indicator of restored competency.

At the hearing, Connie Easterling, a psychiatric social worker from New Hampshire Hospital, offered additional information regarding the defendant's status. She stated that he resides in a locked unit but until the transport order for the hearing was received, he had privileges to walk into other parts of the building. New Hampshire Hospital Staff are currently working with him on a discharge plan, involving housing, medication and other conditions, presumably for release in a few months. Prior to release, he would be granted increasingly greater privileges, including leaving the New Hampshire Hospital building.

Analysis

The Court orally presented its ruling at the conclusion of the hearing. On further review of the statute and case law, however, the determination of the Court is not the same as was announced in Court. See, e.g., N.E. Redlon Co. v. Franklin Square Corp., 91 N.H.

502, 505 (1941) (superior court has discretion to review its orders at any time prior to final judgment).

State v. Demesmin, 159 N.H. 595 (2010) appears to be the only case that has addressed some of the issues raised by this case. In Demesmin, the defendant was found not competent but potentially restorable. However, unlike in this case, the trial court never dismissed the charges. During the period of treatment to determine if his competence could be restored, the State sought a new competency evaluation, believing the defendant was malingering. The trial court granted the request for a new competency evaluation, in which he was found competent. After a jury found the defendant guilty, he appealed, arguing that the trial court lacked jurisdiction over him. The court explained that because the trial court “never dismissed the original indictment against the defendant, [] the State was not required to re-indict him to continue prosecuting him.” Demesmin, 159 N.H. at 598. As such, it concluded that the trial court could conduct “necessary proceedings to determine whether a defendant is malingering.” Id. at 601.

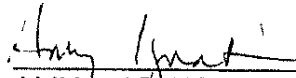
Thus, Demesmin stands for the proposition that a trial court loses jurisdiction once the charges have been dismissed. Under this reading of the case, the State would be required to re-indict in order to reassess the defendant's competency. Although the statute is not entirely clear, it can be interpreted in harmony with Demesmin. That is, once the charges have been dismissed, the State loses its ability to petition for re-evaluation under RSA 135:17-a,VI. Moreover, even if the Court were to accept the defendant's interpretation of the statute, it is unclear in which court the State would move for re-evaluation. It could be the Superior Court, which initially ordered the competency evaluation and dismissed the charges,

or the Probate Court, which ordered the civil commitment. Thus, by reading the statute as requiring a re-indictment under these circumstances, the Court avoids this issue.

In sum, based on Demesmin, the Court finds that the State has properly re-indicted the defendant. Therefore, the Court orders that, notwithstanding the September 1, 2015, order finding the defendant not competent to stand trial, the defendant shall be arraigned on the new felony indictments. The Court will notify the defendant of the new arraignment date and arrange for transport from the New Hampshire Hospital. The defendant is free to file a written motion to dismiss for consideration after the arraignment and after the State has had an opportunity to respond in writing. The Court also anticipates that the defendant will raise his competency to stand trial, and he is free to do so.

So ordered.

February 18, 2016



AMY L. IGNATIUS,
Presiding Justice

THE STATE OF NEW HAMPSHIRE

**HILLSBOROUGH, SS.
SOUTHERN DISTRICT**

SUPERIOR COURT

The State of New Hampshire

v.

Mohammad Salimullah

No. 2016-CR-0040

ORDER

The defendant, Mohammad Salimullah, was indicted on charges of attempted murder, first degree assault, second degree assault and reckless conduct. On March 15, 2018, after a four-day trial, the jury returned verdicts of guilty on all counts. On April 30, 2018, four days before sentencing, the defendant filed a motion to determine competency. The state objected. The court heard argument before the start of the May 4, 2018 sentencing hearing and, thereafter, declined the defendant's request for an additional competency evaluation. Because the issue of competency is of constitutional dimension, the court indicated that it would provide its analysis in a written order. This is that order.

Background

The defendant is Rohingya. He is originally from Burma (now known as Myanmar). In 2006, while he was a refugee in Malaysia, he married the victim, Shamshida Sultan. The marriage was arranged by the victim's parents. The defendant was 30 years old and the victim was 17 years old at the time. In 2012, the couple immigrated to the United States. On the evening of August 12, 2013, the defendant and the victim became engaged in an argument about her desire for a divorce. Later that night, while the victim was asleep, the defendant used a knife to slit her throat. After she escaped, he stabbed himself multiple times in the abdomen. Both the defendant and the victim survived.

The defendant first raised the issue of competency in 2014. Dr. Dennis Becotte from the Office of the Forensic Examiner and Dr. Albert Drukteinis, who was retained by the state, evaluated the defendant. Both doctors concluded that the defendant was not competent to stand trial. Dr. Becotte diagnosed the defendant with an adjustment disorder with depressed mood, and found that he lacked an understanding of the legal system. Dr. Drukteinis diagnosed the defendant with a major depressive disorder ("MDD") without psychotic features and also found that he lacked an understanding of the legal system. Both doctors agreed, however, that the defendant had the ability to learn about the legal system. Based on these evaluations, the court (*McGuire, J.*) issued a September 11, 2014 order finding the defendant not competent but potentially restorable. The defendant was transferred to the Secure Psychiatric Unit ("SPU") at the New Hampshire State Prison.

On September 1, 2015, the court (*Colburn, J.*) held a hearing on the defendant's competency following an updated evaluation by Dr. Becotte. The court determined that the defendant had not been restored. Consequently, the charges against him were dismissed, without prejudice. *See Doc. # 226-2013-CR-00626.*

On November 23, 2015, the defendant was transferred from the SPU to the New Hampshire Hospital ("NHH"). The defendant improved. On January 21, 2016, the state re-indicted. Claiming that he had no memory of the charged conduct, the defendant again raised the issue of competency.

On June 7, 2016, Dr. Drukteinis reevaluated the defendant and concluded that he was competent to stand trial. Dr. Drukteinis based his finding largely on a determination that the defendant was malingering (faking or exaggerating) symptoms, was capable of learning about the trial process and assisting his attorney, but refused to do so.

On August 1, 2016, and September 13, 2016, the defendant was evaluated by his own expert, Dr. Fabian Saleh. Dr. Saleh disagreed with Dr. Drukteinis. He concluded that the defendant remained incompetent to stand trial.

On December 21, 2016, Dr. Drukteinis again evaluated the defendant and again found him competent to stand trial. On December 30, 2016, Dr. Saleh reviewed Dr. Drukteinis' findings but was steadfast in his belief that the defendant remained incompetent.

On January 5, 2017, the court (*Colburn, J.*) convened a competency hearing and heard testimony from Dr. Drukteinis and Dr. Saleh. Based on the record, the court credited the analysis of Dr. Drukteinis and, thus, found that the defendant competent to stand trial. The court observed that it was not coincidental that the defendant's newly claimed memory loss occurred immediately after he was re-indicted. In this context, the court found that the defendant was unwilling, rather than unable, to recall the incident. Indeed, even Dr. Saleh believed that the defendant's claimed memory loss was not genuine, although his view was that the defendant was using this claim as a coping mechanism. The court also found that the defendant's depression was situational and subject dependent, and that he was "putting on a show to avoid undesirable topics." Additionally, the court determined that the defendant was able to learn about the trial process and actively participate in his case, but chose not to do so.

The court's determination was supported by the overwhelming evidence of malingering. The defendant's cognitive test results were highly inconsistent with his otherwise demonstrated cognitive ability. Namely, the results suggested that the defendant had severe dementia, could not count dots, and had the drawing ability of a small child. From this, the court found that the defendant was likely feigning impairment.

As indicated, the defense counsel raised again his concern about the defendant's competency after trial and conviction. The court heard argument on the issue at the defendant's May 4 sentencing hearing. At the hearing, defense counsel represented that the defendant was exhibiting signs of depression and overall resignation, and that he had essentially given up and refused to interact substantively with his attorneys on sentencing issues. After reviewing the totality of the competency record, the representations of defense counsel and the state's response, the court determined that there was

not a *bona fide* doubt as to the defendant's competency and denied his request for a further competency evaluation.

Analysis

The defendant argues that there was a *bona fide* doubt as to his competency at sentencing. Because the New Hampshire Constitution is at least as protective as the United States Constitution in this area, the court will address the defendant's claims under the State Constitution, citing federal cases only for guidance. *State v. Ball*, 124 N.H. 226, 231-33 (1983). In any event, the court's analysis would be the same because there is no meaningful difference between the New Hampshire competency standard and its federal counterpart. *Compare Dusky v. United States*, 362 U.S. 402, 402 (1960) ("[T]he test must be whether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him."); *with State v. Kincaid*, 158 N.H. 90, 93 (2008) ("The test for competency, as formulated by the United States Supreme Court in *Dusky v. United States*, 362 U.S. 402, 402, (1960), and adopted by this court, is two pronged. First, the defendant must have a sufficient present ability to consult with and assist his lawyers with a reasonable degree of rational understanding. Second, the defendant must have a factual as well as a rational understanding of the proceedings against him."); *and Pate v. Robinson*, 383 U.S. 375, 387 (1966) ("In the event a sufficient doubt exists as to [the defendant's] present competence ... a[n] [evidentiary] hearing must be held."); *with State v. Zorzy*, 136 N.H. 710, 715-16 (1993) ("Under the New Hampshire Constitution ... the trial court must, on its own initiative, order an evidentiary hearing whenever a *bona fide* or legitimate doubt arises whether a criminal defendant is competent to stand trial.") (quotation and alterations omitted).

As stated above, the trial court must order a competency hearing whenever a *bona fide* or legitimate doubt exists as to the defendant's competency to stand trial. *Kincaid*, 158 N.H. at 93. Whether this standard applies at sentencing is an issue of first impression in New Hampshire. *See*

State v. Wheat, No. 2012-0765, 2014 N.H. Lexis 153, *7 (N.H. Nov. 21, 2014) (assuming, without deciding, that the *Dusky* competency standard applied at sentencing).¹ For the purposes of this order, the court assumes that the same competency standard applies.

As mentioned above, the test for competency is two pronged: (1) “the defendant must have a sufficient present ability to consult with and assist his lawyers with a reasonable degree of rational understanding”; and (2) “the defendant must have a factual as well as a rational understanding of the proceedings against him.” *Kincaid*, 158 N.H. at 93.

In determining whether to order a competency hearing, the trial court should consider evidence of a defendant’s irrational behavior, his demeanor at trial, and any prior medical opinion on competency. Where a trial court has before it only a tentative speculation that the defendant is incompetent, it need not order an evidentiary hearing into the defendant’s competence. In addition, a trial record void of any indication that the defendant could not assist in his defense, or rationally comprehend the nature of the proceedings, provides substantial evidence of the defendant’s competence.

Id. (quotation omitted). “This list of factors, however, is not exclusive.” *Id.* “[The court] should exercise its discretion based upon the particular facts and circumstances of the case before it and order a competency hearing as it deems necessary, so as to uphold a defendant’s right to due process.” *Id.*

Here, the defense’s claim is that depression caused the defendant to exhibit a profound feeling of resignation in the lead up to his sentencing, and that this feeling of resignation, in turn, caused him to lack a “sufficient present ability to consult with and assist his lawyers with a reasonable degree of rational understanding.” *Kincaid*, 158 N.H. at 93. To support his claim, defense counsel represented that the defendant requested a life sentence in this case—a figure well above the state’s recommendation. The court is not persuaded.

The instant competency issue is almost identical to the one raised and adjudicated in the court’s February 8, 2017 order on competency. *See* Doc. #73. Again, the record reflects, and the court

¹ *Wheat* is a 3JX order. *See State v. Diallo*, 169 N.H. 355, 360 (2016) (“[A]lthough a 3JX order has no precedential value, it may be cited or referenced in pleadings or rulings in any court in this state, as long as it is identified as a non-precedential order.” citing Sup. Ct. R. 12-D(3)); *see also* Sup. Ct. R. 20(2) (explaining non-precedential status of final orders).

finds, that the defendant has the present ability to consult with and assist his attorneys, but has made the conscious and intentional decision not to do so. This decision, although unwise, does not render him incompetent. Similarly, a finding of incompetency does not follow from his request that he be given a life sentence. *See, e.g., Patterson v. Com.*, 551 S.E.2d 332, 334–35 (Va. 2001) (defendant who, against the advice of counsel, pled guilty to capital murder, refused to present mitigating evidence, and asked the court to impose a death sentence was, nevertheless, competent); *Akers v. Com.*, 535 S.E.2d 674, 676–77 (Va. 2000) (same). In fact, the defendant’s petulant behavior is consistent with Dr. Drukteinis’s opinion that he is malingering, and that his depression is situational and opportunistic. Moreover, feelings of depression and resignation on the eve of sentencing for a crime as serious as attempted murder are abundantly rational under the circumstances. *See Com. v. Goodreau*, 813 N.E.2d 465, 473 (Mass. 2004) (“Even an entirely rational defendant would be depressed, and might be suicidal, during a murder trial where the proof against him is substantial, and where he is facing life imprisonment with no possibility of parole.”) (quotation omitted); *see also* RSA 629:1 (“[I]n the case of attempt to commit murder the punishment shall be imprisonment for life or such other term as the court shall order.”).

The court’s determination is reinforced by the sentencing record, which is “void of any indication that the defendant could not ... rationally comprehend the nature of the proceeding[].” *Kincaid*, 158 N.H. at 93. The defendant’s behavior at sentencing—including, his volitional decision to rip up the sentence review form in open court—as well as his sentence request, belies his claim that he did not rationally comprehend the nature of the proceeding. Put simply, the defendant’s conduct clearly indicates that he understood the nature of the proceeding. The sentencing record is likewise devoid of any indication that the defendant was unable to assist his counsel. *See id.* Indeed, defense counsel presented extensive mitigating evidence to the court during the sentencing hearing. Much of this evidence was highly personal and specific to the defendant’s life, which suggests that it was provided to counsel by the defendant himself. This evidence included a description of the defendant’s

third-world upbringing as a persecuted Rohingya refugee in the country of Myanmar and elsewhere in Southeast Asia. Defense counsel highlighted the fact that the defendant grew up in abject poverty, that he is illiterate, and that he witnessed state-sponsored brutality carried out against his Muslim peers during his upbringing. Moreover, the court heard extensive argument from the defendant that Muslim marriages in Southeast Asia are patriarchal, and that the defendant would have been "culturally shocked" by Sultan's decision to divorce him. Defense counsel also presented evidence concerning the specifics of defendant's marriage with Sultan. Finally, the court was informed that the defendant did not have a criminal record prior to this incident, and that the crimes he committed were not premeditated. Thus, it appears from the record that the defendant was, in fact, able to assist his counsel before sentencing. See *Kincaid*, 158 N.H. at 93.

Indeed, the defendant's claim and the representations supporting it are strikingly similar to those made in *Wheat*.

The record shows that six days before the September 26, 2012 sentencing hearing, the defendant's sentencing counsel filed a motion to determine his competency. In the motion, counsel stated that the defendant "has refused to provide information that could assist in mitigation preparation for his sentencing hearing" and that he "has expressed some paranoid thoughts" as to counsel's role "in relation to the justice system." At the hearing, defense counsel asserted that she had a "legitimate doubt" as to the defendant's competency. In denying the motion, the trial judge noted that he had presided over the six-day trial in July 2011, during which the defendant was "represented by competent counsel," and over the three subsequent hearings on October 14, 2011, January 4, 2012, and May 4, 2012, during which the defendant, "for the most part, for purposes of those hearings represented himself," and that "at no time did [the court] make any observations that indeed [the defendant] was not competent." The court added that "it seemed absolutely clear to me the Defendant was competent under the applicable standards of New Hampshire and federal law." Based upon these observations, and the discussion at the sentencing hearing, the trial court denied the defendant's motion. Upon this record, we cannot conclude that the trial court erred in its decision. See *Kincaid*, 158 N.H. at 95.

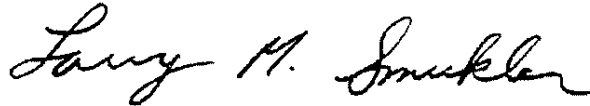
Wheat, at *7-8. Similarly, in this case, defense counsel raised a competency issue on the eve of sentencing based on representations about the defendant's unwillingness to assist in sentencing mitigation preparation, which the court rejected on the basis of insufficiency in light

of the record, the defendant's competency history (including the finding of malingering) and the court's own observations of the defendant.

Based on the foregoing, the court finds and rules that no *bona fide* doubt existed as to the defendant's competency at the time of sentencing. *See Kincaid*, 158 N.H. at 93. Accordingly, his request for an additional competency evaluation is DENIED.

So ORDERED.

Date: May 29, 2018



LARRY M. SMUKLER
PRESIDING JUSTICE

D.O.B. 3/3/1977
NPD #: 13-64863-OF
HCSC#: 2013-CR-00626 (826505C)
NDC#: 2013-CR-05128

RSA Ch 631:1
First Degree Assault
Class A Felony
7 ½ to 15 years, \$4000 fine

STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.

SUPERIOR COURT

INDICTMENT

At the Superior Court, holden at Nashua, within and for the County of Hillsborough aforesaid, in the month of **October** of the year **two thousand and thirteen**, the **GRAND JURORS FOR THE STATE OF NEW HAMPSHIRE**, on their oath, present that

MOHAMMAD SALIMULLAH

LKA 445 WILLOW STREET
MANCHESTER, NH 03101

226-2013-CR-626
\$26,525

on or about the **13th** day of **August** in the year **2013**, at **Nashua** in the County of Hillsborough aforesaid, **did commit the crime of FIRST DEGREE ASSAULT**, in that **MOHAMMAD SALIMULLAH** knowingly caused bodily injury to **S.S.** by cutting **S.S.** in the neck with a knife, a deadly weapon as defined in RSA 625:11, thereby causing **S.S.** to sustain a **laceration to her neck** contrary to the form of the Statute, in such case made and provided, and against the peace and dignity of the State.

This is a true bill.

15 Oct 2013
Date

Patricia M. LaFrance
Foreperson

Patricia M. LaFrance
Hillsborough County Attorney

by: *Michele A. Battaglia*
Michele A. Battaglia, Assistant County Attorney

HSCS-OCT16'13am10:23

D.O.B. 3/3/1977
NPD #: 13-64863-OF
HCSC#: 2013-CR-00626 (826506C)
NDC#: 2013-CR-05128

RSA Ch 631:1
Second Degree Assault
Class B Felony
3 1/2 to 7 years, \$4000 fine

STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.

SUPERIOR COURT

INDICTMENT

At the Superior Court, holden at **Nashua**, within and for the County of Hillsborough aforesaid, in the month of **October** of the year **two thousand and thirteen**, the **GRAND JURORS FOR THE STATE OF NEW HAMPSHIRE**, on their oath, present that

MOHAMMAD SALIMULLAH

*226-2013-CR-626
826506C*

**LKA 445 WILLOW STREET
MANCHESTER, NH 03101**

on or about the **13th** day of **August** in the year **2013**, at **Nashua** in the County of Hillsborough aforesaid, **did commit the crime of SECOND DEGREE ASSAULT**, in that **MOHAMMAD SALIMULLAH** recklessly caused bodily injury to **S.S.** by cutting **S.S.** in the hand with a knife, a deadly weapon as defined in RSA 625:11, thereby causing **S.S.** to sustain a laceration to her hand contrary to the form of the Statute, in such case made and provided, and against the peace and dignity of the State.

This is a true bill.

15 Oct 2013
Date

Thomas R. Paoli
Foreperson

Patricia M. LaFrance
Hillsborough County Attorney

by: *Michele A. Battaglia*
Michele A. Battaglia, Assistant County Attorney

HCSC=OCT16*13AM10*23

D.O.B. 3/3/1977
NPD #: 13-64863-OF
HCSC#: 2013-CR-00626
NDC#: 2013-CR-05128

RSA Ch 629:1, 630:1-a 5
Attempted Murder
Class A Extended Term Felony
Life Imprisonment

STATE OF NEW HAMPSHIRE
HILLSBOROUGH, SS. SUPERIOR COURT

INDICTMENT

At the Superior Court, holden at **Nashua**, within and for the County of Hillsborough
aforesaid, in the month of **October** of the year **two thousand and thirteen**,
the **GRAND JURORS FOR THE STATE OF NEW HAMPSHIRE**, on their oath, present that

MOHAMMAD SALIMULLAH

LKA 445 WILLOW STREET
MANCHESTER, NH 03101

2013-00626-03

8543290

on or about the 13th day of **August** in the year 2013, at **Nashua**
in the County of Hillsborough aforesaid, did commit the crime of **ATTEMPTED MURDER**, in that,
with the purpose that the crime of **MURDER** be committed, **MOHAMMAD SALIMULLAH**
attempted to cause the death of **S.S.**, when after stating words to the effect of "if you want a
divorce, we will die together", he placed one hand on her mouth and then cut her neck with a
knife near the carotid artery and jugular vein, which, under the circumstances as
MOHAMMAD SALIMULLAH believed them to be, constituted a substantial step toward the
commission of the crime of **MURDER**,
contrary to the form of the Statute, in such case made and provided, and against the peace and
dignity of the State.

This is a true bill.

15 Oct 2013
Date

Terence R. Parks
Foreperson

Patricia M. LaFrance
Hillsborough County Attorney

HCSC-DCT18*13AM10:25

by: Michele A. Battaglia
Michele A. Battaglia, Assistant County Attorney

D.O.B. 3/3/1977
NPD #: 13-64863-OF
NDC#: 2013-CR-05128
HCSC#: 2013-CR-00626

RSA Ch 631:3
Reckless Conduct
Class B Felony
3 1/2 - 7 years NHSP, \$4,000 fine

STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.

SUPERIOR COURT

INDICTMENT

At the Superior Court, holden at **Nashua**, within and for the County of Hillsborough aforesaid, in the month of **August** of the year **two thousand and thirteen**, the **GRAND JURORS FOR THE STATE OF NEW HAMPSHIRE**, on their oath, present that

MOHAMMAD SALIMULLAH

226-2013-CR-626

**LKA 445 WILLOW STREET
MANCHESTER, NH 03101**

854330L

on or about the **13th** day of **August**
in the year **2013**, at **Nashua**

in the County of Hillsborough aforesaid, **did commit the crime of RECKLESS CONDUCT** in that **MOHAMMAD SALIMULLAH** recklessly engaged in conduct which placed another in danger of serious bodily injury when he used a knife to assault S.S., thereby causing her to push the knife away from herself and causing her to sustain lacerations to her hands contrary to the form of the Statute, in such case made and provided, and against the peace and dignity of the State.

This is a true bill.

15 Oct 2013
Date

Patricia M. LaFrance
Foreperson

Patricia M. LaFrance
Hillsborough County Attorney

by:

Michele A. Battaglia
Michele A. Battaglia, Assistant County Attorney

HCSC-OCT16*13AM10:22

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
ST. NO. 226-2013-CR-00626

SUPERIOR COURT
SOUTHERN DISTRICT

THE STATE OF NEW HAMPSHIRE

V.
MOHAMMAD SALIMULLAH

AGREEMENT/PROPOSED ORDER REGARDING COMPETENCY

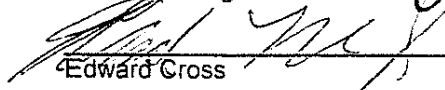
Now comes the State of New Hampshire, by and through the Hillsborough County Attorney's Office, and the defendant, through his counsel Edward L. Cross, and Stephen Rosecan, with the following proposed disposition regarding the competency issued raised by defense:

1. The defendant is charged with multiple counts of domestic violence related crimes, including Attempted Murder. The defense filed a motion raising the issue of the defendant's competency. The defendant was evaluated by Dr. Becotte and Dr. Drukteinis. Based on the reports, the parties ask the court to approve the following:
 - A. **The defendant is presently not competent;**
 - B. **The defendant's competency is potentially restorable;**
 - C. **The restoration/treatment of the defendant shall be conducted at a secure facility. The defendant shall be held at the secured facility;**
 - D. **The State shall commence with the procedures set forth in RSA 135-C:34 to have the defendant civilly committed**
2. The court shall schedule a status hearing on this matter in 120 days;
3. At this time, all bail orders/conditions remain in effect.

DATED: 9/11/14


Michele Battaglia

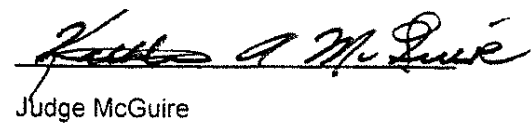
DATED: 9/11/14


Edward Cross

NH BAR ID #547

Approved and so ordered:

DATED: 9/11/14


Judge McGuire

copy to VJSJ 9/11/14

THE STATE OF NEW HAMPSHIRE

**HILLSBOROUGH, SS.
SOUTHERN DISTRICT**

**SUPERIOR COURT
NO. 226-2013-CR-626**

STATE OF NEW HAMPSHIRE

v.

MOHAMMAD SALIMULLAH

ORDER

The defendant has previously been determined incompetent, but potentially restorable (See Order, McGuire, J., 9/11/14). A hearing to determine if the defendant has been restored to competency was held on today's date. The defendant was present, represented by counsel. Dr. Dennis Becotte, Ph.D., a forensic examiner with the Department of Corrections' Office of the Forensic Examiner testified. Additionally, the parties agreed that this Court could adopt the findings reached in Dr. Becotte's report dated August 11, 2015.

As is reflected in Dr. Becotte's testimony, and further detailed in his report, he opines that the defendant has not been restored to competence. Specifically, he finds that the defendant continues to suffer from suicidal ideations, depression, and auditory hallucinations. This is so, despite being medicated and receiving treatment since October 2014 while in the Secure Psychiatric Unit at the New Hampshire State Prison ("SPU").¹ Additionally, Dr. Becotte considers the defendant to have a "fatalistic attitude," and as a result, has no desire to improve his lack of understanding about the criminal justice system and his present role in it. Some of his lack of understanding is

¹ The defendant was civilly committed to that facility by the Probate Division of the Circuit Court on October 10, 2014.

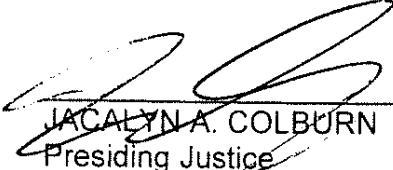
46

directly attributable to considerable cultural differences between the U.S. legal system and that of his native country, Malaysia.

In light of the doctor's testimony, reported findings and opinions, the Court concludes that the defendant has not been restored to competence. Accordingly, the case against the defendant shall be dismissed without prejudice. See RSA 135:17-a, IV. Although it is clear that the defendant remains a danger to himself, no further orders of this court are necessary, as he has already been deemed appropriate for involuntary admission into the state's mental health services, and has been committed to the SPU for a period of three years, as previously referenced. See RSA 135:17-a, V. Lastly, Dr. Becotte's report, dated August 11, 2015, shall be released to SPU to facilitate the defendant's ongoing treatment.

So ordered.

September 1, 2015


JACALYN A. COLBURN
Presiding Justice

D.O.B. 3/3/1977
NPD #: 13-64863-OF
HCSC#: 2013-CR-00626
NDC#: 2013-CR-05128

RSA Ch 629:1, 630:1-a,b
Attempted Murder
Class A Extended Term Felony
Life Imprisonment



STATE OF NEW HAMPSHIRE
HILLSBOROUGH, SS. SUPERIOR COURT

INDICTMENT

At the Superior Court, holden at **Nashua**, within and for the County of Hillsborough aforesaid, in the month of **January** of the year **two thousand and sixteen**, the **GRAND JURORS FOR THE STATE OF NEW HAMPSHIRE**, on their oath, present that

MOHAMMAD SALIMULLAH

*226-2016-CR-40
1181405C*

**LKA 445 WILLOW STREET
MANCHESTER, NH03101**

on or about the **13th** day of **August** in the year **2013**, at **Nashua** in the County of Hillsborough aforesaid, **did commit the crime of ATTEMPTED MURDER**, in that, with the purpose that the crime of **MURDER** be committed, **MOHAMMAD SALIMULLAH** attempted to cause the death of **S.S.**, when after stating words to the effect of "if you want a divorce, we will die together", he placed one hand on her mouth and then cut her neck with a knife near the carotid artery and jugular vein, which, under the circumstances as **MOHAMMAD SALIMULLAH** believed them to be, constituted a **substantial step toward the commission of the crime of MURDER**, contrary to the form of the Statute, in such case made and provided, and against the peace and dignity of the State.

This is a true bill.

1/21/16
Date

[Signature]
Foreperson

Dennis C. Hogan
Hillsborough County Attorney

by: *[Signature]*
Michele A. Battaglia, Assistant County Attorney

*in
Prosecutor
WILLIAM
ACTA
3-8-16*

2016 JAN 21 10:50 AM

D.O.B. 3/3/1977
NPD #: 13-64863-OF
HCSC#: 2013-CR-00626 (826505C)
NDC#: 2013-CR-05128

RSA Ch 631:1
First Degree Assault
Class A Felony
7 1/2 to 15 years, \$4000 fine



STATE OF NEW HAMPSHIRE
HILLSBOROUGH, SS. SUPERIOR COURT

INDICTMENT

At the Superior Court, holden at **Nashua**, within and for the County of Hillsborough aforesaid, in the month of **January** of the year **two thousand and sixteen**, the **GRAND JURORS FOR THE STATE OF NEW HAMPSHIRE**, on their oath, present that

MOHAMMAD SALIMULLAH

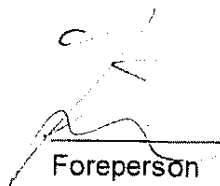
LKA 445 WILLOW STREET
MANCHESTER, NH03101

*226-2016-CR-40
11814066*

on or about the **13th** day of **August** in the year **2013**, at **Nashua** in the County of Hillsborough aforesaid, **did commit the crime of FIRST DEGREE ASSAULT**, in that **MOHAMMAD SALIMULLAH** knowingly caused bodily injury to S.S. by cutting S.S. in the neck with a knife, a deadly weapon as defined in RSA 625:11, thereby causing S.S. to sustain a laceration to her neck contrary to the form of the Statute, in such case made and provided, and against the peace and dignity of the State.

This is a true bill.

1/21/16
Date


Foreperson

Dennis C. Hogan
Hillsborough County Attorney

by: 
Michele A. Battaglia, Assistant County Attorney

*March 15, 2018
Jury Verdict: Guilty
Judge Smukler*

D.O.B. 3/3/1977
NPD #: 13-64863-OF
HCSC#: 2013-CR-00626 (826506C)
NDC#: 2013-CR-05128

RSA Ch ~~631~~ 631:2
Second Degree Assault
Class B Felony
3 1/2 to 7 years, \$4000 fine



STATE OF NEW HAMPSHIRE
HILLSBOROUGH, SS. SUPERIOR COURT

INDICTMENT

At the Superior Court, holden at **Nashua**, within and for the County of Hillsborough aforesaid, in the month of **January** of the year **two thousand and sixteen**, the **GRAND JURORS FOR THE STATE OF NEW HAMPSHIRE**, on their oath, present that

MOHAMMAD SALIMULLAH

226-2016-CR-40
1181407C

LKA 445 WILLOW STREET
MANCHESTER, NH03101

on or about the **13th day of August** in the year **2013**, at **Nashua** in the County of Hillsborough aforesaid, did commit the crime of **SECOND DEGREE ASSAULT**, in that **MOHAMMAD SALIMULLAH** recklessly caused bodily injury to **S.S.** by cutting **S.S.** in the hand with a knife, a deadly weapon as defined in **RSA 625:11**, thereby causing **S.S.** to sustain a laceration to her hand contrary to the form of the Statute, in such case made and provided, and against the peace and dignity of the State.

This is a true bill.

1/21/16
Date

[Signature]
Foreperson

Dennis C. Hogan
Hillsborough County Attorney

by: [Signature]
Michele A. Battaglia, Assistant County Attorney

name
prosecutor
W. W. M. M. M.
ACA
3-8-16

D.O.B. 3/3/1977
NPD #: 13-64863-OF
NDC#: 2013-CR-05128
HCSC#: 2013-CR-00626

RSA Ch 631:3
Reckless Conduct
Class B Felony
3 1/2 - 7 years NHSP, \$4,000 fine



STATE OF NEW HAMPSHIRE
HILLSBOROUGH, SS. SUPERIOR COURT
INDICTMENT

At the Superior Court, holden at **Nashua**, within and for the County of Hillsborough aforesaid, in the month of **January** of the year **two thousand and sixteen**, the **GRAND JURORS FOR THE STATE OF NEW HAMPSHIRE**, on their oath, present that

MOHAMMAD SALIMULLAH
LKA 445 WILLOW STREET
MANCHESTER, NH03101

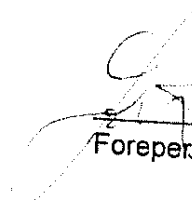
226-2016-CR-40
118/408C

on or about the 13th day of August
in the year 2013, at **Nashua**
in the County of Hillsborough aforesaid, did commit the crime of **RECKLESS CONDUCT** in
that **MOHAMMAD SALIMULLAH** recklessly engaged in conduct which placed another in
danger of serious bodily injury when he used a knife to assault S.S., thereby causing her
to push the knife away from herself and causing her to sustain lacerations to her hands
contrary to the form of the Statute, in such case made and provided, and against the peace and
dignity of the State.

This is a true bill.

1/2/16
Date

March 15, 2018
Jury Verdict: Guilty
Judge Smukler



Foreperson

Dennis C. Hogan
Hillsborough County Attorney

by: 
Michele A. Battaglia, Assistant County Attorney

MAR - 3 2016

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT**

Hillsborough Superior Court Southern District
30 Spring Street
Nashua NH 03060

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
<http://www.courts.state.nh.us>

NOTICE OF DECISION

**Edward L. Cross, Jr., ESQ
NH Public Defender
44 Franklin Street 2nd Floor
Nashua NH 03064**

Case Name: **State v. Mohammad Salimullah**
Case Number: **226-2016-CR-00040**

Enclosed please find a copy of the court's order of March 01, 2016 relative to:

Order for Competency Evaluation

March 03, 2016

Marshall A. Buttrick
Clerk of Court

(568)

C: Michele A. Battaglia, ESQ; NH STATE HOSPITAL; Stephen Rosecan, ESQ; Forensic Examiner

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
SOUTHERN DISTRICT

SUPERIOR COURT
NO. 226-2016-CR-0040

THE STATE OF NEW HAMPSHIRE

v.

Mohammad Salimullah

ORDER FOR COMPETENCY EVALUATION

The defendant is charged with the criminal offense(s) of:

attempted murder, first degree assault and second
degree assault

- Defense Counsel has filed a motion
- The State has filed a motion
- The Court seeks

to determine the competency of the defendant. Based on the representations contained in the motion, or on the observations of the Court, the Court determines that *bona fide* doubt exists regarding the defendant's competency to stand trial. Accordingly, the defendant is referred to the New Hampshire Department of Corrections, Office of the Forensic Examiner, for an evaluation under the standards for competency as set forth in State v. Champagne, 127 N.H. 266 (1985); State v. Gagne, 129 N.H. 93 (1986); and Dusky v. United States, 362 U.S. 402 (1960). The Office of the Forensic Examiner is ordered to conduct an evaluation of the defendant and file a report of its examination with the Court pursuant to RSA 135:17. If the evaluator opines that the defendant is currently not competent to stand trial, then the evaluator shall also include in the report an opinion

on the defendant's restorability pursuant to RSA 135:17 and 135:17-a. Should the evaluator opine that the defendant is not competent to stand trial and is not restorable, then the evaluator shall also include in the report an opinion as to the defendant's dangerousness to himself or others as defined in State v. Lavoie, 155 N.H. 477 (2007). This opinion as to dangerousness shall specifically address whether there exists "a threat of, a likelihood of, an attempt to inflict, or an actual infliction of serious bodily injury to oneself or another or a lack of capacity to care for one's own welfare such that there is a likelihood of serious debilitation if admission is not ordered." Id. at 479-480. The Court orders that the competency evaluation be completed and filed with the Court within 45 days of the clerk's notice of decision of this order if the defendant is incarcerated or within 90 days if the defendant is not incarcerated.

- The defendant is ^{held} incarcerated at the New Hampshire Hospital ~~County House of Corrections~~. The Office of the Forensic Examiner shall notify the Court and the parties of the date, time and location of the competency evaluation and the Court shall arrange for transportation of the defendant.
- The defendant is incarcerated at the New Hampshire State Prison. The Office of the Forensic Examiner shall notify the Court and the parties of the date, time and location of the competency evaluation and the Court shall arrange for transportation of the defendant.
- The defendant has been released on bail. Defendant's counsel shall contact the Office of the Forensic Examiner (P.O. Box 1806, Concord, NH 03301 / Telephone 271-7457 / Fax 271-7458) for instructions as to the time, date and location of the competency evaluation.

Within twenty (20) days of the date of the clerk's notice of decision of this order, counsel for the defendant shall provide the Office of the Forensic Examiner with all of the records required by that

Within twenty (20) days of the date of the clerk's notice of decision of this order, the State shall provide the Office of the Forensic Examiner with all of the records required by that office to complete the evaluation, including:

1. The defendant's criminal history record(s);
2. Relevant police reports;
3. Copies of the charges pertinent to the offense(s); and
4. Any records regarding the dangerousness of the defendant that are available to the State.

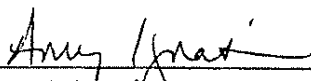
A failure to obtain necessary records after a good faith effort shall not be grounds for the Forensic Examiner to delay the examination of the defendant.

The contents of the records produced shall be used only to determine competency and may not be used in any other proceeding, or further disclosed, without order of the Court. Once the evaluation is filed, it shall remain under seal.

The hearing to determine competency shall be held on 4/18/16. All issues unrelated to competency currently pending in this matter are stayed pending further order of the Court. The Clerk shall send a copy of this order and the hearing notice to the Office of Forensic Examiner.

SO ORDERED.

Date:



Amy L. Ignatius
Presiding Justice

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
SOUTHERN DISTRICT

SUPERIOR COURT
No. 226-2016-CR-00040

State of New Hampshire

v.

Mohammad Salimullah

ORDER ON DEFENDANT'S COMPETENCY TO STAND TRIAL

The defendant, Mohammad Salimullah, is charged with one count each of attempted murder, first degree assault, second degree assault, and reckless conduct. Currently pending before the Court is the defendant's motion to be declared incompetent to stand trial and dismiss the pending charges. The Court conducted a hearing on this matter on January 5, 2017 and heard testimony from Dr. Albert Drukteinis and Dr. Fabian M. Saleh. The defendant was present, represented by counsel. For the reasons stated in this order, the defendant's motion is DENIED.

Background

The Court finds the following facts relevant for the purposes of this order. The defendant is originally from Burma (now known as Myanmar). In 1991 the defendant moved to China, but returned to Myanmar in 1993. In 1995, after briefly living in Thailand, the defendant moved to Malaysia. While living in Malaysia, the defendant married his wife in 2007. He and his wife immigrated to the United States in 2012.

In August 2013, the defendant and his wife were living in Nashua, New Hampshire, sharing an apartment with his wife's sister and brother-in-law. The defendant's relationship with his wife had become strained after their move to the United States. At some point, his wife announced that she wanted a divorce. The

defendant opposed this idea. On the evening of August 12, 2013, the defendant and his wife became engaged in an argument about a potential divorce. The defendant allegedly became angry and attempted to cut his wife's throat. The wife was able to free herself, after which the defendant stabbed himself in the abdomen. The wife alerted her sister and brother-in-law to what was happening, and the brother-in-law called the police.

The defendant was then transported to the Southern New Hampshire Medical Center (SNHMC) for treatment for his self-inflicted wounds. At SNHMC, the defendant made suicidal comments to his treating physicians and was evaluated for mental health issues. The defendant was eventually released to the custody of the Nashua Police Department (NPD). The police were advised of his suicidal comments and to watch him carefully. The defendant was subsequently transported to the Hillsborough County House of Corrections (HCHOC).

The defendant's counsel first raised the issue of competency in 2014, after which he was evaluated by both Dr. Dennis Becotte from the Office of the Forensic Examiner and Dr. Albert Drukteinis, the State's expert. Both doctors concluded that the defendant was not competent to stand trial. Dr. Becotte diagnosed the defendant with an Adjustment Disorder with depressed mood, and found that he lacked an understanding of the American legal system. Dr. Drukteinis diagnosed the defendant with a Major Depressive Disorder ("MDD") without psychotic features, and also found that the defendant lacked an understanding of the American legal system. Both doctors agreed that the defendant had the ability, however, to learn about the legal system. Dr.

Drukteinis recommended that the defendant receive proper treatment and medication for his depression, which was untreated until that point.

Based on these evaluations, on September 11, 2014, the Court (McGuire, J.) found the defendant not competent but potentially restorable. On October 10, 2014, the defendant was transferred from the HCHOC to the Secure Psychiatric Unit (SPU) at the state prison, following an evaluation by Dr. Timothy Breitholtz. On September 1, 2015, following another evaluation by Dr. Becotte, this Court held another hearing on the defendant's competency, finding that the defendant had not been restored to competency, and dismissed the charges without prejudice. (See Docket #226-2013-CR-00626.) In the interim, the defendant had been civilly committed through the involuntary admission process and remained in the SPU. On November 23, 2015, he was transferred from SPU to the New Hampshire Hospital (NHH). While at NHH, the defendant reportedly experienced some improvement. On January 21, 2016, the State re-indicted the defendant on the instant charges. Again, defense counsel raised the issue of competency.

On June 7, 2016 Dr. Drukteinis evaluated the defendant a second time, again with the assistance of a Hindi interpreter. Dr. Drukteinis concluded in his subsequent report that the defendant was now competent to stand trial. He based this finding largely on his conclusions that the defendant was malingering (faking or exaggerating) symptoms and was, in fact, capable of learning about the trial process and assisting his attorney. (State's Ex. 6.)

On June 9, 2016 the defendant was discharged from NHH and transferred to HCHOC. Dr. Fabian Saleh, retained by the defendant's counsel, interviewed the

defendant on August 1, 2016 and September 13, 2016 with the assistance of a Hindi interpreter (in person for the August visit, and over the phone for the September visit). Dr. Saleh concluded that while the defendant has some rational and factual understanding of the proceedings against him, he lacks "sufficient present ability to consult with and assist his lawyer on the case with a reasonable degree of rational understanding," and thus that he is not competent to stand trial. (Def.'s Ex. A at 3.)

On December 21, 2016, Dr. Drukteinis completed his third evaluation of the defendant to assess if the defendant's mental status had changed since his last evaluation. He concluded that it had not, and that the defendant remained competent to stand trial. (State's Ex. 7.) On December 30, 2016, Dr. Saleh sent a letter to the defendant's attorney stating that after reviewing Dr. Drukteinis' latest evaluation of the defendant, he "continue[s] to be of the opinion that [the defendant's] mental illness together with his lack of understanding and appreciation of the judicial system and his reportedly limited educational background limits those abilities typically associated with competency to stand trial." (Def.'s Ex. B.)

Analysis

"The test of competency is whether a criminal defendant has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding -- and whether he has a rational as well as a factual understanding of the proceedings against him." State v. Champagne, 127 N.H. 266, 270 (1985) (quotation omitted). Determining a defendant's competency involves a two-pronged test. "First, the defendant must have a sufficient present ability to consult with and assist his lawyer with a reasonable degree of rational understanding. Second, he must have a rational

as well as a factual understanding of the proceedings against him." *Id.* "By rational understanding, [courts] mean that the defendant must have sufficient contact with reality." State v. Haycock, 146 N.H. 5, 6 (2001) (quotation omitted).

At the January 5th hearing, both parties presented testimony from their respective experts – Dr. Drukteinis for the State, and Dr. Saleh for the defendant. Dr. Drukteinis testified, and further details in his reports, that he believes the defendant to be competent to stand trial. Dr. Saleh testified, and also further details in his report, that the defendant is not competent to stand trial. The Court agrees with Dr. Drukteinis' conclusion that the defendant is competent to stand trial.

Dr. Drukteinis bases his finding of competency largely on his conclusion that the defendant is malingering, i.e., faking and/or exaggerating his symptoms. Dr. Drukteinis did not consider the possibility of malingering during his first evaluation of the defendant when he concluded that he was not competent, but became suspicious of it during the second evaluation, when the defendant began claiming memory loss, saying that he did not remember anything about the incident or events leading to his arrest. Importantly, the defendant began claiming memory loss only after the charges against him had been reinstated. Dr. Drukteinis saw claiming memory loss as the defendant's new way of approaching the charges – during the first interview, the defendant had spoken of Jadoo, or black magic, as the cause of his alleged actions against his wife. After the charges were reinstated, however, the defendant mentioned Jadoo rarely, if ever.

This new claim of memory loss was inconsistent with the defendant's prior demonstrated ability to recall details of the incident leading to his arrest. Specifically, Dr. Drukteinis noted that during the defendant's interview with the Nashua Police

immediately after the incident, he had no trouble recounting the events. This is inconsistent with the defendant's later claimed inability to remember anything at all about the incident. It was also inconsistent with the defendant's demonstrated ability to recall the events during previous interviews. These statements demonstrate that the defendant is capable of recalling the events, and that he is unwilling, rather than unable, to do so now.

The Court finds it particularly telling that even Dr. Saleh, the defendant's expert, believes that the defendant's claimed memory loss is a coping mechanism rather than actual amnesia (although Dr. Saleh declined to opine as to whether this was deliberate on the defendant's part). Additionally, Dr. Saleh notes in his evaluation that the defendant has at least a rudimentary factual understanding of the trial process. Dr. Saleh also states that the defendant "lack[s] the motivation and the desire to have a favorable outcome in these proceedings" and that he may be able to remedy "any factual deficits . . . based on a lack of experience and familiarity with the judicial system . . . through continued education and instruction from his attorney." (Def.'s Ex. A. at 22.) Unlike Dr. Drukteinis, however, Dr. Saleh attributes this to the defendant's depression, rather than to a deliberate effort on the defendant's part, arguing that the depression renders the defendant incapable of wanting to engage. The Court is not persuaded.

Alerted to the possibility of malingering, Dr. Drukteinis conducted several tests during his second interview, designed to identify malingering/exaggeration. Specifically, he administered a Mini Mental Status Examination (MMSE), a Rey's 15-Item Memorization Test, a Test of Memory Malingering (TOMM), and a Miller-Forensic Assessment of Symptoms Test (M-FAST). The defendant performed poorly on all tests.

On the MMSE, his score was so low (even after Dr. Drukteinis raised his score slightly to compensate for language difficulty) as to suggest "severe dementia." (State's Ex. 6 at 9.) The defendant clearly does not have dementia, let alone severe dementia. The results strongly suggest malingering or exaggeration. The defendant scored 8 out of 15 on Rey's 15-Item Memorization Test, on which scores of 9 or below "suggest malingering or exaggeration of memory impairment." (*Id.*) The defendant's scores on the TOMM all "approach[ed] chance" (a score of 25 out of 50), which "represent a deliberate attempt to appear impaired with regard to memory function." (*Id.*) Lastly, on the M-FAST, the defendant scored 12, on which scores of 6 or above suggest malingering. (*Id.*)

In his third interview with the defendant, Dr. Drukteinis conducted three more tests: another MMSE, a Dot Counting Test, and a Draw a Person Test. On the MMSE, the defendant again scored "very low." (State's Ex. 7 at 2.) The Dot Counting Test is specifically designed to test for malingering; the defendant's scores on this test also suggest "exaggeration or malingering of cognitive function." (*Id.*) Lastly, on the Draw a Person Test, the defendant "produced a primitive and incomplete figure." (*Id.*) Dr. Drukteinis explained that the results of these three tests are highly inconsistent with the defendant's otherwise demonstrated cognitive ability. These results paint a picture of a man with severe dementia, an inability to count dots, and a drawing ability on par with that of a small child. These results are not consistent with, for instance, the defendant's ability to successfully run a restaurant in Malaysia, and instead strongly suggest that the defendant is either refusing to put any effort into the tests, or is outright faking his symptoms.

Dr. Saleh discounted the results of these tests, arguing that they are not reliable as to this defendant because they are not suited for the defendant's cultural and lingual background (the tests were conducted with the aid of a Hindi interpreter; the defendant's second language being Hindi, when the defendant's primary language is Rohingya). Dr. Drukteinis conceded in his testimony that the results of the language-based tests he administered may be skewed due to the language barrier. However, three of these tests specifically engineered to diagnose malingering are not language-based: the TOMM and the Draw a Person test are entirely visually-based, and the Dot Counting Test is based on visuals and numbers. The defendant did not need any sort of language proficiency to take these tests, and thus their reliability is not diminished by the defendant's language barrier.

While discounting Dr. Drukteinis' tests, Dr. Saleh concluded, without administering any tests of his own, that the defendant is *not* malingering. Dr. Saleh explained that he declined to administer any tests because of the defendant's lingual and cultural barriers. However, as explained above, several of the tests are not at all based on lingual or cultural knowledge, rendering Dr. Saleh's explanation rather unsatisfying. The Court thus does not credit Dr. Saleh's conclusion that the defendant is not malingering. Rather, the Court credits Dr. Drukteinis' conclusions – that the results of the administered tests show either a lack of effort by the defendant or an outright attempt to feign impairment.

The Court also credits Dr. Drukteinis' evaluation of the defendant's claims of hallucinations. Throughout his evaluations, the defendant has claimed to have visual and auditory hallucinations. During Dr. Drukteinis' third interview, the defendant

"claim[ed] that he could see outside of the building and saw . . . 'cold and ice.' He also alluded to hearing his wife's voice but would not elaborate on what she might have said. He sometimes hears the 'sound of a motorcycle' when there is nothing there." (Id.) According to Dr. Drukteinis, the defendant's descriptions of these hallucinations differed greatly from what would generally be expected. Dr. Drukteinis therefore viewed these "hallucinations" more as descriptions of the defendant's thoughts, rather than actual hallucinations. He also noted that while the defendant had been placed on antipsychotic medications when he arrived at NHH, he consistently improved under NHH's care, and the hallucinations did not return when he was later taken off of the antipsychotic medications. In cases of true psychosis, symptoms return when medications are stopped. Seeing this, "concerns were raised [at NHH] about the reliability of his symptoms." (State's Ex. 6 at 5.) NHH later concluded that the defendant had not been suffering from any psychosis. Dr. Saleh also eventually reached the conclusion that the defendant is no longer suffering from any psychosis. (Def.'s Ex. B.)

Lastly, there is the question of the defendant's diagnosis. Because both doctors at this point agree that the defendant is not suffering from any psychosis, the question is only the degree to which the defendant is depressed, and whether it is severe enough to interfere with his ability to work with his attorney. At the hearing, Dr. Saleh disputed Dr. Drukteinis' diagnosis of an Adjustment Disorder with depressed mood, rather than a Major Depressive Disorder (MDD). Dr. Drukteinis testified that the two competing diagnoses are really a distinction without a difference, due to the agreed-upon lack of psychosis.

Dr. Drukteinis agrees that the defendant is depressed, but believes that he is not nearly as depressed as he is presenting himself. He bases this conclusion on the apparent situational nature of the defendant's depression. During Dr. Drukteinis' interviews with the defendant, while the defendant was "poorly interactive in the early part of the interview, responding with short and redundant phrases" and "appeared quite withdrawn, and projected depression and hopelessness," "when he spotted an acquaintance walk by the interview room, he waved, smiled, and became momentarily quite animated." (State's Ex. 7 at 2.) Furthermore, "toward the end of the evaluation, as the discussion shifted to whether he would like to return to Malaysia, [the defendant] became much more interactive, talkative, and in far better humor." (*Id.*) Dr. Drukteinis views these subject-dependent mood variations as evidence of the defendant's malingering, essentially concluding that he was putting on a show to avoid undesirable topics. According to Dr. Drukteinis, the situational nature of the defendant's depression demonstrates that while he is depressed, his depression is not significant enough to prevent him from working productively with his attorney, should he choose to do so.

Based on the conclusions of both experts, it appears that the defendant may lack a significant understanding of the legal process, but that this inability is based not on a mental deficiency, but instead on a lack of motivation to learn. The test for competency is not whether the defendant actually has an understanding of the proceedings, but whether he has the necessary ability. See Champagne, 127 N.H. at 270; see also State v. Decaflo, 165 N.H. 294, 298 (2013) (stating that the abilities to communicate and think rationally, and to learn and retain new information are "abilities which . . . are relevant to being able to work with your attorneys"); State v. Kincaid, 158 N.H. 90, 94 (2008)

("There are many ways a defendant can consult with and assist his trial counsel with a reasonable degree of rational understanding without necessarily remembering the details or circumstances of an event that led to his arrest"). From the testimony and evaluations presented, it appears to the Court that the defendant is able to, if he chooses to do so, learn about the trial process and actively participant in his defense.

Accordingly, the Court finds the defendant competent to stand trial. Based on this finding, the defendant's motion to dismiss is DENIED.

So ordered.

Date: February 8, 2017



Hon. Jaclyn A. Colburn,
Presiding Justice

D.O.B. 3/3/1977
NPD #: 13-64863-OF
HCSC#: 2016-CR-00040
NDC#: 2013-CR-05128

RSA Ch 629:1, 630:1-a,b
Attempted Murder
Class A Extended Term Felony
Life Imprisonment

STATE OF NEW HAMPSHIRE
HILLSBOROUGH, SS. SUPERIOR COURT

INDICTMENT

VSSJ

At the Superior Court, holden at **Nashua**, within and for the County of Hillsborough aforesaid, in the month of **November** of the year **two thousand and seventeen**, the **GRAND JURORS FOR THE STATE OF NEW HAMPSHIRE**, on their oath, present that

MOHAMMAD SALIMULLAH 226-2016-CR-40

LKA 445 WILLOW STREET
MANCHESTER, NH 03101

1440528C

on or about the 13th day of **August** in the year 2013, at **Nashua** in the County of Hillsborough aforesaid, did commit the crime of **ATTEMPTED MURDER**, in that, with the purpose that the crime of **MURDER** be committed, **MOHAMMAD SALIMULLAH** attempted to cause the death of S.S., he placed one hand on her mouth and then cut her neck with a knife near the carotid artery and jugular vein, which, under the circumstances as **MOHAMMAD SALIMULLAH** believed them to be, constituted a substantial step toward the commission of the crime of **MURDER**, contrary to the form of the Statute, in such case made and provided, and against the peace and dignity of the State.

This is a true bill.

11/21/17
Date

Seth Fumblay
Foreperson

Dennis C. Hogan
Hillsborough County Attorney

by: *Michele A. Battaglia*
Michele A. Battaglia, Assistant County Attorney

HCSC-10102271786112

March 15, 2018
Jury Verdict Guilty
Judge Smucker
E. Lynch - Monitor

D.O.B. 3/3/1977
NPD #: 13-64863-OF
HCSC#: 2016-CR-00040
NDC#: 2013-CR-05128

RSA Ch 631:1
Second Degree
Class B Felony
3 1/2 to 7 years, :

RSA
Should be
631:2

HILLSBOROUGH, SS. **STATE OF NEW HAMPSHIRE** SUPERIOR COURT

INDICTMENT

At the Superior Court, holden at Nashua, within and for the County of Hillsborough aforesaid, in the month of November of the year two thousand and seventeen, the GRAND JURORS FOR THE STATE OF NEW HAMPSHIRE, on their oath, present that

MOHAMMAD SALIMULLAH 226 2016-cr-40

LKA 445 WILLOW STREET
MANCHESTER, NH 03101

14405300

on or about the 13th day of August in the year 2013, at Nashua in the County of Hillsborough aforesaid, did commit the crime of SECOND DEGREE ASSAULT, in that MOHAMMAD SALIMULLAH recklessly caused bodily injury to S.S. by cutting S.S. in the hand with a knife, a deadly weapon as defined in RSA 625:11, thereby causing S.S. to sustain lacerations to her fingers contrary to the form of the Statute, in such case made and provided, and against the peace and dignity of the State.

This is a true bill.

11/21/17
Date

Seth Framblay
Foreperson

Dennis C. Hogan
Hillsborough County Attorney

by: Michele Battaglia
Michele A. Battaglia, Assistant County Attorney

HSJS-1000000170011-22

March 15, 2018
by Verdict: Guilty
by Smukler

D.O.B. 3/3/1977
NPD #: 13-64863-OF
HCSC#: 2016-CR-00040
NDC#: 2013-CR-05128

RSA Ch 631:1
First Degree Assault
Class A Felony
7 1/2 to 15 years, \$4000 fine

STATE OF NEW HAMPSHIRE
HILLSBOROUGH, SS. SUPERIOR COURT

INDICTMENT

At the Superior Court, holden at **Nashua**, within and for the County of Hillsborough aforesaid, in the month of **November** of the year **two thousand and seventeen**, the **GRAND JURORS FOR THE STATE OF NEW HAMPSHIRE**, on their oath, present that

MOHAMMAD SALIMULLAH *226-2016-CR-40*
LKA 445 WILLOW STREET *1440529C*
MANCHESTER, NH 03101

on or about the **13th** day of **August** in the year **2013**, at **Nashua** in the County of Hillsborough aforesaid, **did commit the crime of FIRST DEGREE ASSAULT**, in that **MOHAMMAD SALIMULLAH** knowingly caused bodily injury to **S.S.** by cutting **S.S.** in the hand with a knife, a deadly weapon as defined in RSA 625:11, thereby causing **S.S.** to sustain lacerations to her fingers contrary to the form of the Statute, in such case made and provided, and against the peace and dignity of the State.

This is a true bill.

11/21/17
Date

Seth Fumley
Foreperson

Dennis C. Hogan
Hillsborough County Attorney

by: *Michele A Battaglia*
Michele A. Battaglia, Assistant County Attorney

HCSC #0002217 AM 11-22

*March 15, 2018
Jury Verdict: Guilty
Judge Smukler*

THE STATE OF NEW HAMPSHIRE
HILLSBOROUGH COUNTY SUPERIOR COURT
SOUTH

HILLSBOROUGH, SS.

APRIL 2018 TERM

STATE
v.
MOHAMMAD SALIMULLAH
226-16-CR-40

Request to be filed under seal

THE STATE OF NEW HAMPSHIRE
HILLSBOROUGH COUNTY SUPERIOR COURT
SOUTH

HILLSBOROUGH, SS.

APRIL 2018 TERM

STATE
v.
MOHAMMAD SALIMULLAH
226-16-CR-40

**MOTION FOR COMPETENCY DETERMINATION – WITH REQUEST TO BE FILED
UNDER SEAL**

NOW COMES counsel for Mohammad Salimullah, the defendant in the above-entitled matter, and respectfully requests that this Honorable Court order that an examination and evaluation be performed on Mr. Salimullah pursuant to the provisions of RSA 135:17 in order to determine Mr. Salimullah's competency to proceed with sentencing.

In support of this Motion, counsel states as follows:

FACTS AND LEGAL ARGUMENT

1. Mr. Salimullah was convicted of attempted murder and other charges in March 2018.
2. Sentencing is scheduled for May 4, 2018.
3. Defense counsel has met a number of times with the defendant since the trial concluded and discussed the issue of sentencing. It goes without saying that guilty convictions – and the prospect of significant incarceration – can be significantly depressing events for convicted individuals. However, in this case, defense counsel has concerns that go beyond a convicted defendant's mere depression. Instead, defense counsel is concerned that Mr. Salimullah's mental state is affecting his ability to rationally work with defense counsel on the question of sentence and on the development of additional potential mitigation. In particular, defense

counsel is concerned that Mr. Salimullah's is suffering from significant depression and, as a result, has reached a troubling level of resignation with respect to the sentencing itself. If the Court proceeds with sentencing at this point, without an evaluation to determine competency, defense counsel is concerned that both the fairness and legitimacy of the sentencing hearing could be called into question.

4. Under Part I, Article 15 of the New Hampshire Constitution and the Due Process Clause of the Fourteenth Amendment, "[a] criminal defendant has a constitutional right not to be tried if he is legally incompetent." See State v. Champagne, 127 N.H. 266, 270 (1985) (citing Pate v. Robinson, 383 U.S. 375 (1966)). "The test of competency is whether a criminal defendant has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational as well as factual understanding of the proceedings against him." Champagne, supra at 270 (quoting Dusky v. United States, 362 U.S. 402 (1960)).
5. The issue of competency is not merely one that exists with respect to trial – but it exists with respect to sentencing as well. State v. Kiser, 284 S.W.3d 227 (Tenn. 2009) ("Federal due process requires no difference in the test of competence applicable to the guilt phase of a trial and that applicable to the sentencing phase."); United States v. Sanchez, 38 F. Supp. 2d 355, 366, (D. N.J. 1999) ("The requirement that a defendant be competent during a criminal proceeding is predicated upon a defendant's right to due process. . . . [A] defendant is entitled to due process not only at trial, but at sentencing [, because] sentencing is a critical stage of the criminal proceeding. . . . Even under the Federal Sentencing Guidelines where sentencing can be somewhat mechanical, a defendant should be as capable of defending himself with the aid of an attorney when facing his sentencer as when facing a jury.") (quoting U.S. v. Gigante, 996 F. Supp. 194

(E.D.N.Y. 1997)); see also Hall v. United States, 410 F.2d 653, 658 (4th Cir. 1969)

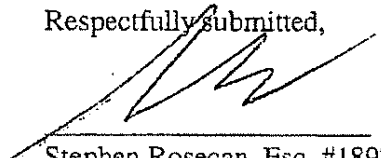
("When the issue of mental competency relates only to the time of sentencing, there is less danger that any substantive rights of a defendant would be prejudiced if he then suffers some degree of incompetence. But the idea of sentencing an insane person to prison remains offensive and is incompatible with the dignity of the judicial process.")

6. Wherever there is a "bona fide or legitimate" doubt whether a criminal defendant is competent to stand trial, the Court should conduct an evidentiary hearing on the issue. State v. Bertrand, 123 N.H. 719, 725 (1983).
7. Defense counsel believes that there is a legitimate doubt exists as to Mr. Salimullah's competency with respect to sentencing.

WHEREFORE, counsel for Mr. Salimullah respectfully requests this Honorable Court issue an order:

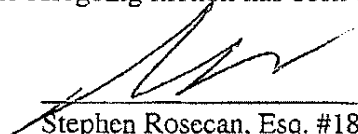
- A. Permitting this pleading to be filed under seal; and
- B. Authorizing a mental health professional with the Division of Medical and Forensic Services, to examine the defendant expeditiously on the issue of his competency to stand trial (i.e., with sentencing), and to prepare a report with respect to this issue; and
- C. Scheduling a hearing on the issue of the defendant's competency; and
- D. Granting such other and further relief as justice requires.

Respectfully submitted,


Stephen Rosecan, Esq. #18979
NH Public Defender
20 Merrimack Street
Manchester, NH 03104
603 669 7888

CERTIFICATE OF SERVICE

I, Stephen Rosecan, do hereby certify that a copy of the foregoing motion has been delivered to ACA Battaglia and ACA Gill on April 27, 2018.



Stephen Rosecan, Esq. #18979

MAS

HILLSBOROUGH, SS.

THE STATE OF NEW HAMPSHIRE

SUPERIOR COURT
SOUTHERN DISTRICT

STATE OF NEW HAMPSHIRE

v.

MOHAMMAD SALIMULLAH

DOCKET NO. 226-2016-CR-00040

STATE'S OBJECTION TO DEFENDANT'S MOTION FILED 4/30/2018

HILLSBOROUGH, SS.

THE STATE OF NEW HAMPSHIRE

SUPERIOR COURT
SOUTHERN DISTRICT

STATE OF NEW HAMPSHIRE

v.

MOHAMMAD SALIMULLAH

DOCKET NO. 226-2016-CR-00040

STATE'S OBJECTION TO DEFENDANT'S MOTION FILED 4/30/2018/STATE'S OBJECTION TO
DEFENDANT'S MOTION TO DETERMINE COMPETENCY

NOW COMES the State of New Hampshire, by and through the Hillsborough County Attorney's Office, and objects to the Defendant's Motion to Determine Competency, stating in support as follows:

1. The Defendant was tried before this court (Smukler, J.) between March 12 and March 15, 2018 on Attempted Murder, First and Second Degree Assault and Reckless Conduct charges. Jury selection occurred on March 5, 2018.
2. Prior to these hearings, the court (Nadeau, J.) conducted a suppression hearing over the course of 3 days (12/6 and 12/7/2017 and 1/3/2018).
3. In addition, the Defendant was supposed to plead to these charges in October of 2017, but changed his mind. At that time, the court (Colburn, J.) conducted a colloquy with the Defendant to ensure that withdrawing his plea was his choice and that he understood the potential consequences of going to trial. He had previously participated in a day long settlement conference (Garfunkel, Judicial Referee) on 9/12/2017.
4. Since September of 2017, the Defendant has been before four different judges.

At no time, did the court ever express any concerns with the Defendant's competency.

5. Now, on the eve of sentencing, defense counsel has filed a Motion to Determine Competency. As the court may know, competency has already been raised twice in this case. The court (Colburn, J.) found the Defendant to be competent to stand trial in February, 2017. The court endorsed Dr. Drukteinis's opinion that the Defendant was malingering. In fact, the Court's order stated in relevant part:

- i. This new claim of memory loss was inconsistent with the defendant's prior demonstrated ability to recall details of the incident leading to his arrest. Specifically, Dr. Drukteinis noted that during the defendant's interview with the Nashua Police immediately after the incident, he had no trouble recounting the events. This is inconsistent with the defendant's later claimed inability to remember anything at all about the incident. It was also inconsistent with the defendant's demonstrated ability to recall the events during previous interviews. *These statements demonstrate that the defendant is capable of recalling the events, and that he is unwilling, rather than unable, to do so now.* (pp. 5-6)(emphasis added)
- ii. Dr Drukteinis explained that the results of these three tests {memory malingering tests} are highly inconsistent with the defendant's otherwise demonstrated cognitive ability. *These results paint a picture of a man with severe dementia, an inability to count dots, and a drawing ability on par with that of a small child. These results are not consistent with, for instance, the defendant's ability to run a successful restaurant in Malaysia, and instead strongly suggest that the defendant is either refusing to put any effort into the tests, or is outright faking his symptoms* (p. 7) (emphasis added)
- iii. The Court does not credit Dr. Saleh's conclusion that the defendant is not malingering. Rather, the Court

credits Dr. Drukteinis' conclusions-*that the results of the administered tests show either a lack of effort by the defendant or an outright attempt to feign impairment.* (p. 8)(emphasis added)

6. Since that time, this case has been before the court for status hearings; a settlement conference; a trial management conference; a three day suppression hearing; a motions in limine hearing; jury selection and a four day trial. At no time, did defense counsel (two very experienced criminal defense attorneys) raise competency with this court.

7. Now, on the eve of sentencing, competency is being raised on behalf of a Defendant who has already had his motivations called in to question by the court.

8. Defense counsel's motion with respect to competency is very vague. In it, he states: "defense counsel has concerns that go beyond a convicted defendant's expected depression. Instead, defense counsel is concerned that Mr. Salimullah's mental state is affecting his ability to rationally work with defense counsel on the question of sentence and on the development of *additional* potential mitigation. This includes defense counsel's concern that Mr. Salimullah's mental state is impacting his capability to defend himself at a sentencing proceeding. If the Court proceeds with sentencing at this point, without an evaluation to determine competency, defense counsel is concerned that both the fairness and legitimacy of the sentencing hearing could be called into question." *Defendant's Motion to Determine Competency*, April 30, 2018, Paragraph 3 (emphasis added).

9. From this vague recitation, the State has no idea with the "competency issue" is. There has certainly been litigation and discussion of the Defendant's depression throughout these proceedings. However, that was considered by the court (Colburn, J.) and rejected as a

reason to find him incompetent. He also has tried to manipulate the competency process by intentionally performing so badly that his test scores reflected how someone with dementia would perform. The State is very skeptical of this Defendant's most recent claim of incompetence. The trial in this matter occurred six weeks ago. The State does not believe that the Defendant has deteriorated to such a point that he is incompetent. In addition, defense counsel has worked with this defendant for almost 5 years. A PSI was not requested. It is hard to fathom what other information he could be seeking from the defendant that he does not already have. The court should also note that defense counsel has filed several other motions regarding sentencing including a sentencing memo and several objections to the State's sentencing arguments/materials.

10. Rather, the State submits, that this is just how this Defendant acts. He is apathetic. He was apathetic during jury selection and trial. He just does not care what happens to him, yet at the same time, is still seeking to avoid responsibility for these crimes. An unwillingness to participate in the process or assist his defense attorneys does not equal an inability to participate that would call his competency in to question.

11. The State submits that the Court cannot consider the Defendant's motion to determine competency without first reviewing every competency evaluation on file in this matter and in docket no. 2013-CR- 00626, the docket number pertaining to the previous indictments. In addition, the State submits that the Court should also review the court's order with respect to competency. The State urges the court to review all of these materials before making any determination on the Defendant's motion.

12. The State well understands that a defendant's competency can be fluid.

However, in this particular case, this defendant has engaged in a campaign to evade responsibility for these crimes. That is evidenced in the record. For example, the Defendant's "condition" got worse after he was re-indicted for these crimes. The Defendant's actions, in the State's opinion, are volitional.

13. There must exist a "bona fide" question regarding the Defendant's competency. "We hereby adopt the following standard under part one, article fifteen of the New Hampshire Constitution: Due process requires that a trial judge, on his own initiative, order an evidentiary hearing whenever a bona fide or legitimate doubt arises whether a criminal defendant is competency to stand trial." State v. Bertrand, 123 N.H. 719, 725 (1983)(internal citations omitted).

14. A court is not required to order a competency evaluation just because someone asks for one. The State has excerpted the 3JX opinion/non-precedential opinion in State v. Wheat below due to its striking similarity to this case:

Finally, the defendant argues that the trial court erred in failing to order a competency evaluation prior to sentencing. 'The test for competency, as formulated by the United States Supreme Court in *Dusky v. United States*, and adopted by this Court, is two-pronged.' 'First, the defendant must have a sufficient present ability to consult with and assist his lawyer with a reasonable degree of rational understanding.' 'Second, the defendant must have a factual as well as rational understanding of the proceedings against him.' 'As the trial court is in the best position to evaluate [a] criminal defendant's behavior, we grant deference to its decision regarding the need for a competency hearing.' '[A] trial record void of any indication that the defendant could not assist in his defense, or rationally comprehend the nature of the proceedings, provides substantial evidence of the defendant's competence.'

Assuming, without deciding, that due process requires a defendant to be competent for sentencing and that the *Dusky* standard applies, we conclude that the record supports the trial court's decision to deny

the request for a competency evaluation. The record shows that six days before the September 26, 2012 sentencing hearing, the defendant's sentencing counsel filed a motion to determine his competency. In the motion, counsel stated that the defendant 'has refused to provide information that could assist in mitigation preparation for his sentencing hearing' and that he 'has expressed some paranoid thoughts' as to counsel's role 'in relation to the justice system.' In denying the motion, the trial judge noted that he had presided over the six-day trial in July 2011, during which the defendant was 'represented by competent counsel' and over the three subsequent hearings on October 4, 2011, January 4, 2012 and May 4, 2012, during which the defendant, 'for the most part, for purposes of those hearings represented himself,' and that 'at no time did [the court] make any observations that indeed [the defendant] was not competent.' The court added that 'it seemed absolutely clear to me the Defendant was competent under the applicable standards of New Hampshire and federal law.' Based upon these observations and the discussion at his sentencing hearing, the trial court denied the defendant's motion. Upon this record, we cannot conclude that the trial court erred in its decision.

State v. Wheat, 31X Opinion, 2016-0765, 11/21/2014
(2014 11621674)

15. The above case is very similar to the facts of this case, but for the hearings in which the Defendant represented himself. Nonetheless, the State hereby submits and requests that the Court review the Wheat opinion, as well as all the competency evaluations and competency orders in this case. The State submits and hereby requests that the Court conduct a colloquy with both defense counsel and with the defendant in the presence of the State to ferret out whether there exists a bona fide or legitimate doubt with respect to the Defendant's competency. The State submits and hereby requests that the Court review the Defendant's portion of the settlement conference to gain an understanding of what occurred at that conference (which resulted in the Defendant agreeing to a plea and filing a Notice of Intent to Plead Guilty).

16. Should the Court determine that there is a bona fide question regarding the


defendant's competency, the State hereby requests that the Court appoint Dr. Albert Drukteinis to evaluate this Defendant for competency. Dr. Drukteinis has already evaluated this Defendant three times. The court credited his opinion in its February, 2017 order. The OFE is not in the best position to evaluate this defendant. Dr. Drukteinis is in the best position to evaluate this Defendant due to his extensive meetings, prior evaluations and testimony in this case.

WHEREFORE, the State respectfully requests that this Honorable Court:

- A. Conduct a colloquy as requested in Paragraph 16; and
- B. Review all the prior competency evaluations in this matter;
- C. Deny the DEFENDANT'S MOTION filed 4/30/2018/STATE'S OBJECTION TO DEFENDANT'S MOTION TO DETERMINE COMPETENCY ;
- D. In the alternative, appoint and order Dr. Albert Drukteinis to evaluate the Defendant for competency;
- E. Schedule a hearing thereon, if necessary; and
- F. Grant the State any such other relief as may be proper and just.


DATED: May 1, 2018

Respectfully Submitted,


Michele A. Battaglia #13828
Assistant County Attorney

CERTIFICATION

I hereby certify that a copy of the foregoing pleading has this day been sent to Stephen M. Rosecan, Esq., counsel for the defendant.


Michele A. Battaglia

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH**

http://www.courts.state.nh.us

Court Name: Hillsborough County Superior Court - Southern District

Case Name: State v. Mohammad Salimullah

Case Number: 226-2016-CR-00040

Charge ID Number: 1440528C

(if known)

STATE PRISON SENTENCE

Verdict: GUILTY	Clerk:
Crime: ATTEMPTED MURDER	Date of Crime: 08/13/13
Monitor:	Judge: SMUKLER

A finding of **GUILTY/TRUE** is entered.

- The defendant has been convicted of Domestic Violence contrary to RSA 631:2-b or of an offense recorded as Domestic Violence. See attached RSA 631:2-b Sentencing Addendum.
- 1 The defendant is sentenced to the New Hampshire State Prison for not more than LIFE, nor less than 30 year(s). There is added to the minimum sentence a disciplinary period equal to 150 days for each year of the minimum term of the defendant's sentence, to be prorated for any part of the year.
- 2 This sentence is to be served as follows: Stand committed Commencing FORTHWITH.
- 3 _____ of the minimum sentence is suspended and _____ of the maximum sentence is suspended. Suspensions are conditioned upon good behavior and compliance with all of the terms of this order. Any suspended sentence may be imposed after a hearing at the request of the State. The suspended sentence begins today and ends _____ years from today or release on charge ID: _____.
- 4 _____ of the sentence is deferred for a period of _____ year(s). The Court retains jurisdiction up to and after the deferred period to impose or terminate the sentence or to suspend or further defer the sentence for an additional period of _____ year(s). Thirty (30) days prior to the expiration of the deferred period, the defendant may petition the Court to show cause why the deferred commitment should not be imposed, suspended and/or further deferred. Failure to petition within the prescribed time will result in the immediate issuance of a warrant for your arrest.
- 5. See Addendum to State Prison Sentence Sexual Offender Assessment and Treatment
- 6. The sentence is: consecutive to charge ID(s) _____.
 concurrent with charge ID(s) _____.
- 7. Pretrial confinement credit: 1453 days.
- 8. The Court recommends to the Department of Corrections:
 - Screen and/or assess for drug and alcohol treatment needs.
 - Sentence to be served at the House of Corrections
 - _____

If required by statute or Department of Corrections policies and procedures, the defendant shall provide a sample for DNA analysis.

Case Name: State v. Mohammad Salimullah
Case Number: 226-2016-CR-00040 (1440528C)
STATE PRISON SENTENCE

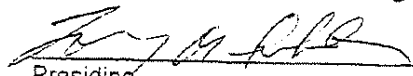
PROBATION

- 9. The defendant is placed on probation for a period of _____ year(s), upon the usual terms of probation and any special terms of probation determined by the Probation/Parole Officer.
Effective: Forthwith Upon Release
The defendant is ordered to report immediately to the nearest Probation/Parole Field Office.
- 10. Subject to the provisions of RSA 504-A:4, III, the probation/parole officer is granted the authority to impose a jail sentence of 1 to 7 days in response to a violation of a condition of probation, not to exceed a total of 30 days during the probationary period.
- 11. Violation of probation or any of the terms of this sentence may result in revocation of probation and imposition of any sentence within the legal limits for the underlying offense.

OTHER CONDITIONS

- 12. Other conditions of this sentence are:
 - A. The defendant is fined \$ _____ plus statutory penalty assessment of \$ _____.
 - The fine, penalty assessment and any fees shall be paid: Now By _____ OR
 - Through the Department of Corrections as directed by the Probation/Parole Officer. A 10% service charge is assessed for the collection of fines and fees, other than supervision fees.
 - \$ _____ of the fine and \$ _____ of the penalty assessment is suspended for _____ years(s).
A \$25.00 fee is assessed in each case file when a fine is paid on a date later than sentencing.
 - B. The defendant is ordered to make restitution of \$ _____ to: _____.
 - Through the Department of Corrections as directed by the Probation/Parole Officer. A 17% administrative fee is assessed for the collection of restitution.
 - At the request of the defendant or the Department of Corrections, a hearing may be scheduled on the amount or method of payment of restitution.
 - Restitution is not ordered because: _____.
 - C. The defendant is to meaningfully participate in and complete any counseling, treatment and educational programs as directed by the correctional authority or Probation/Parole Officer.
 - D. Subject to the provisions of RSA 651-A:22-a, the Department of Corrections shall have the authority to award the defendant earned time reductions against the minimum and maximum sentences for successful completion of programming while incarcerated.
 - E. Under the direction of the Probation/Parole Officer, the defendant shall tour the:
 - New Hampshire State Prison House of Corrections
 - F. The defendant shall perform _____ hours of community service with a registered charity and provide proof to the State or probation within _____ days/within _____ months of today's date.
 - G. The defendant is ordered to have no contact with _____ either directly or indirectly, including but not limited to contact in-person, by mail, phone, email, text message, social networking sites or through third parties.
 - H. Law enforcement agencies may destroy the evidence return evidence to its rightful owner.
 - I. The defendant and the State have waived sentence review in writing or on the record.
 - J. The defendant is ordered to be of good behavior and comply with all the terms of this sentence.
 - K. Other: *Same no contact provisions as First Degree Assault sentence (1440529C)*

Date 5/8/18



Presiding Justice

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH**

http://www.courts.state.nh.us

Court Name: Hillsborough County Superior Court - Southern District

Case Name: State v. Mohammad Salimullah

Case Number: 226-2016-CR-00040

Charge ID Number: 1440529C

(if known)

STATE PRISON SENTENCE

Verdict: GUILTY	Clerk:
Crime: FIRST DEGREE ASSAULT	Date of Crime: 08/13/13
Monitor:	Judge: SMUKLER

A finding of **GUILTY/TRUE** is entered.

- The defendant has been convicted of Domestic Violence contrary to RSA 631:2-b or of an offense recorded as Domestic Violence. See attached RSA 631:2-b Sentencing Addendum.
- 1. The defendant is sentenced to the New Hampshire State Prison for not more than **15** year(s), nor less than **7 1/2** year(s). There is added to the minimum sentence a disciplinary period equal to 150 days for each year of the minimum term of the defendant's sentence, to be prorated for any part of the year.
- 2. This sentence is to be served as follows: Stand committed Commencing _____.
- 3. **ALL** of the minimum sentence is suspended and **ALL** of the maximum sentence is suspended. Suspensions are conditioned upon good behavior and compliance with all of the terms of this order. Any suspended sentence may be imposed after a hearing at the request of the State. The suspended sentence begins today and ends **20** years from today or release on charge ID: **1440528C**.
- 4. _____ of the sentence is deferred for a period of _____ year(s). The Court retains jurisdiction up to and after the deferred period to impose or terminate the sentence or to suspend or further defer the sentence for an additional period of _____ year(s). Thirty (30) days prior to the expiration of the deferred period, the defendant may petition the Court to show cause why the deferred commitment should not be imposed, suspended and/or further deferred. Failure to petition within the prescribed time will result in the immediate issuance of a warrant for your arrest.
- 5. See Addendum to State Prison Sentence Sexual Offender Assessment and Treatment
- 6. The sentence is: consecutive to charge ID(s) **1440528C**.
 concurrent with charge ID(s) _____.
- 7. Pretrial confinement credit: **0** days.
- 8. The Court recommends to the Department of Corrections:
 - Screen and/or assess for drug and alcohol treatment needs.
 - Sentence to be served at the House of Corrections
 - _____

If required by statute or Department of Corrections policies and procedures the defendant shall provide a sample for DNA analysis.

PROBATION

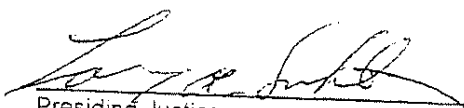
- 9. The defendant is placed on probation for a period of _____ year(s), upon the usual terms of probation and any special terms of probation determined by the Probation/Parole Officer.
Effective: Forthwith Upon Release
The defendant is ordered to report immediately to the nearest Probation/Parole Field Office.
- 10. Subject to the provisions of RSA 504-A:4, III, the probation/parole officer is granted the authority to impose a jail sentence of 1 to 7 days in response to a violation of a condition of probation, not to exceed a total of 30 days during the probationary period.
- 11. Violation of probation or any of the terms of this sentence may result in revocation of probation and imposition of any sentence within the legal limits for the underlying offense.

OTHER CONDITIONS

- 12. Other conditions of this sentence are:
 - A. The defendant is fined \$ _____ plus statutory penalty assessment of \$ _____.
 - The fine, penalty assessment and any fees shall be paid: Now By _____ OR
 - Through the Department of Corrections as directed by the Probation/Parole Officer. A 10% service charge is assessed for the collection of fines and fees, other than supervision fees.
 - \$ _____ of the fine and \$ _____ of the penalty assessment is suspended for _____ years(s).
A \$25.00 fee is assessed in each case file when a fine is paid on a date later than sentencing.
 - B. The defendant is ordered to make restitution of \$ 4798.67 to: VICTIMS ASSISTANCE COMMISSION.
 - Through the Department of Corrections as directed by the Probation/Parole Officer. A 17% administrative fee is assessed for the collection of restitution.
 - At the request of the defendant or the Department of Corrections, a hearing may be scheduled on the amount or method of payment of restitution.
 - Restitution is not ordered because: _____.
 - C. The defendant is to meaningfully participate in and complete any counseling, treatment and educational programs as directed by the correctional authority or Probation/Parole Officer.
 - D. Subject to the provisions of RSA 651-A:22-a, the Department of Corrections shall have the authority to award the defendant earned time reductions against the minimum and maximum sentences for successful completion of programming while incarcerated.
 - E. Under the direction of the Probation/Parole Officer, the defendant shall tour the:
 - New Hampshire State Prison House of Corrections
 - F. The defendant shall perform _____ hours of community service with a registered charity and provide proof to the State or probation within _____ days/within _____ months of today's date.
 - G. The defendant is ordered to have no contact with S.S., M.A., A.S. or their children, parents or siblings either directly or indirectly, including but not limited to contact in-person, by mail, phone, email, text message, social networking sites or through third parties.
 - H. Law enforcement agencies may destroy the evidence return evidence to its rightful owner.
 - I. The defendant and the State have waived sentence review in writing or on the record.
 - J. The defendant is ordered to be of good behavior and comply with all the terms of this sentence.
 - K. Other:

Date

5/4/18


Presiding Justice