

FILED

STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE
COUNTY OF DURHAM SUPERIOR COURT DIVISION
07 CVS 4587

2007 NOV 15 AM 10:56
DURHAM COUNTY C.S.C.

BY JAP

IN RE: FLOYD LEE BROWN)
)
)
)

ORDER

THIS MATTER, having been heard before the Honorable Orlando F. Hudson, Jr., Senior Resident Superior Court Judge for the 14th Judicial District pursuant to the Application for Writ of Habeas Corpus filed by Floyd Lee Brown on August 14, 2007; and the Court having held a hearing at the October 8, 2007 session of Civil Superior Court for the County of Durham, pursuant to the Writ of Habeas Corpus issued by this Court on August 17, 2007; and

IT APPEARING TO THE COURT, that at the time of the hearing the Applicant, Floyd Lee Brown, was represented by Maitri "Mike" Klinkosum, Attorney at Law, and Kelley DeAngelus, Attorney at Law; and

IT APPEARING TO THE COURT, that the Office of the Attorney General of North Carolina was represented by Special Deputy Attorneys General Richard Slipsky and Robert C. Montgomery; and

IT APPEARING TO THE COURT, that the Application for Writ of Habeas Corpus was filed and presented to the Court, pursuant to Chapter 17 of the North Carolina General Statutes, and that this Court has proper jurisdiction under that Chapter; and

IT APPEARING TO THE COURT, that the Application for Writ of Habeas Corpus asks the Court to inquire into the reasons for the Applicant's continued confinement at Dorothea Dix Hospital, to release the Applicant from said confinement and dismiss, with prejudice, the criminal charges that have led to Applicant's confinement; and

IT APPEARING TO THE COURT, that the exhibits attached to the Applicant's pleadings and the Attorney General's pleadings were moved into and received into evidence; and

IT APPEARING TO THE COURT, that upon a full and thorough review of the Application for Writ of Habeas Corpus, Applicant's Motion to Amend the Application for Writ of Habeas Corpus, the Attorney General's Reply, and the Amicus Curiae Motion by the District Attorney for Prosecutorial District 20A, and upon a full evidentiary hearing on the Application for Writ of Habeas Corpus and all responsive pleadings, the Court makes the following **FINDINGS OF FACT** to the satisfaction of the Court and the following **CONCLUSIONS OF LAW** pursuant to Chapter 17 of the North Carolina General Statutes:

PROCEDURAL HISTORY

1. Floyd Lee Brown was arrested on July 16, 1993 by the North Carolina State Bureau of Investigation (SBI) and the Anson County Sheriff's Department and charged with first-degree murder and robbery with a dangerous weapon for the July 9, 1993 death of Ms. Catherine Sara Lynch.
2. On July 21, 1993 Mr. Brown was admitted to Dorothea Dix Hospital for a competency evaluation at the request of his court-appointed attorney Charles Collini. On August 11, 1993, Dr. Robert Rollins opined that due to Mr. Brown's mental retardation was unable to understand his position with regard to the law, the nature and object of the proceedings against him, conduct his defense in a rational manner, and cooperate with his attorney. Dr. Rollins opined that due to Mr. Brown's mental retardation he was incapable of proceeding to trial and not competent to waive his rights or make a statement.
3. On August 17, 1993 Donald R. Huffman, Chief District Court Judge for the 20th Judicial District, ordered Mr. Brown committed to Dorothea Dix Hospital to render treatment in order to enable him to become capable to proceed to trial.
4. On November 9, 1995 the Office of the District Attorney for the 20th Judicial District filed a Dismissal with Leave to reinstate, dismissing the charges against Mr. Brown due to his incapacity to proceed to trial, but reserving the right to reinstate the charges if Mr. Brown was restored to competence.
5. From November 9, 1995 until February 10, 2003, Mr. Brown remained committed at Dorothea Dix Hospital and incapable of proceeding to trial.
6. On April 17, 2000 Mr. Henry Drake, attorney at law, filed a civil suit on Mr. Brown's behalf to release him from Dorothea Dix Hospital. That suit was dismissed.
7. In November 2000, Mr. Brown's then court-appointed attorney, Robert S. Pleasant, filed a motion to dismiss the charges against Mr. Brown pursuant to N.C. Gen. Stat. § 15A-1008 arguing that Mr. Brown would never become competent to stand trial.
8. On February 10, 2003 Elizabeth Donegan, Ph.D. a forensic psychologist at Dorothea Dix Hospital, issued a report opining that Mr. Brown was competent to proceed to trial. Mr. Brown's charges were subsequently reinstated and on March 12, 2003, Maitri "Mike" Klinkosum, then an Assistant Capital Defender with the NC Office of the Capital Defender, was appointed to represent Mr. Brown.
9. On April 7, 2003, the prosecution obtained an indictment against Mr. Brown for first-degree murder for the July 9, 1993 death of Ms. Catherine Lynch.
10. On April 11, 2003, the prosecution filed a Notice of Intent to Seek the Death Penalty against Mr. Brown.

11. On April 28, 2003 the prosecution obtained an indictment against Mr. Brown for robbery with a dangerous weapon for allegedly robbing Ms. Lynch on July 9, 1993.
12. On December 17, 2003 Mr. Brown's counsel filed a Motion to Declare Defendant Mentally Retarded and to Bar Prosecution as a Capital Case. A hearing on that motion was held on March 23, 2004. As a result, the Court entered an Order declaring Mr. Brown mentally retarded and thus barring the death penalty under N.C. Stat. §15A-2005.
13. On April 20, 2004, Mr. Brown's counsel filed a Motion to Suppress the alleged confession on the grounds that that Mr. Brown could not understand or waive his constitutional rights. A three-day hearing was held on the Motion beginning on April 19, 2005. The Court denied the Defendant's motion.
14. On September 20, 2006, Mr. Brown's counsel filed a Motion to Dismiss Based on Loss and Destruction of Exculpatory Evidence, based on the fact that at some point between Mr. Brown's 1993 commitment to Dorothea Dix Hospital due to his incapacity to stand trial and Dr. Elizabeth Donegan's report from Dorothea Dix Hospital that he was capable of standing trial, almost all of the evidence collected in connection with Mr. Brown's charges was either lost or destroyed. A hearing on that Motion was held during the week of September 25, 2006. As a result of that hearing, the Court denied the Motion.
15. The trial of this case was scheduled to commence on September 25, 2006.
16. Prior to the trial date, the prosecution offered to allow Mr. Brown to plead to Voluntary Manslaughter and allow the Defendant to have credit for the years he was committed to Dorothea Dix Hospital. During the week of September 25th, 2006, the prosecution informed the defense that the prosecution would allow Mr. Brown to plead to Voluntary Manslaughter pursuant to an Alford plea.
17. Due to Mr. Brown's mental retardation, he was unable to understand the nature of an Alford plea and was unable to differentiate between an Alford plea, a regular plea, and a trial. As a result of Mr. Brown's inability to understand the plea as offered to him, the defense requested a competency hearing. The prosecution joined in that request and during that hearing the prosecution asked that the Court find Floyd Brown incompetent to stand trial.
18. On September 26, 2006, the Anson County Superior Court found Mr. Brown incompetent and incapable of proceeding to trial.
19. Prior to the conclusion of the September 26, 2006 competency hearing, the defense made an oral Motion to Dismiss pursuant to N.C. Gen. Stat. § 15A-1008, which the prosecution opposed. The Court denied the Defendant's Motion to Dismiss.
20. After the hearings of the week of September 25th, 2006, Mr. Brown was returned to Dorothea Dix Hospital on the grounds that he was incompetent to proceed to trial.

21. On November 11, 2006, the Wake County District Court entered an Order involuntarily committing Floyd Brown to Dorothea Dix Hospital for 180 days, concluding that he was mentally ill and a danger to himself.
22. On April 2, 2007, the prosecution filed a Dismissal with Leave on the murder and robbery charges pending against Mr. Brown due to his incapacity to stand trial.
23. On April 10, 2007, Dorothea Dix filed a Request for Hearing on the expiration of Floyd's involuntary commitment order set to expire on May 21, 2007. At the time of the hearing on Mr. Brown's Application for Writ of Habeas Corpus, Floyd Brown remains confined at Dorothea Dix Hospital.

FINDINGS OF FACT

24. The Court finds that Floyd Lee Brown has been confined to Dorothea Dix Hospital for 14 years on valid court orders based upon his incapacity to stand trial due to his mental retardation for the crimes of first-degree murder and robbery with a dangerous weapon in 93 CRS 3374 and 3375, in Anson County, North Carolina.
25. The Court finds that Mr. Brown was placed in Trainable Mentally Retarded classrooms throughout his education. In 1971, when Mr. Brown was 6 years old the Yadkin – Pee Dee Mental Health Center found that Mr. Brown had an IQ of less than 30, was unable to perform at a kindergarten level, and much of his speech was not understandable. By the age of 16, Mr. Brown's school records indicate that he continued to function at a kindergarten level academically and socially.
26. The Court finds that by the time Mr. Brown was 16 years old he was unable to tell time, handle money, write his own name, and read basic words like "boys" and "girls" on restroom doors, or "fire" and "danger."
27. The Court finds that in 1993, four months before Mr. Brown's arrest on his current charges, Mr. Brown had substantial functional limitations in self-direction, learning, language, economic and vocation self-sufficiency, independent living and mobility.
28. The Court finds that Mr. Brown is mentally retarded and his intellectual functioning falls in the low-mild to high-moderate range of mental retardation. Mr. Brown has an intelligence quotient (I.Q.) in the high 50s, and has scored 30, 51, 50, 54, and 57 in past testing. Further, Mr. Brown has limitations in adaptive functioning in all eleven skill areas used to determine whether a person may be diagnosed as mentally retarded.
29. The Court finds that mental retardation is not curable. A person does not recover from mental retardation.

30. The Court finds that at this time Mr. Brown's mental retardation effects his capacity to stand trial in that he does not have the ability to think in an abstract manner and consider his choices.
31. The Court finds that when Mr. Brown was enrolled in competency classes at Dorothea Dix Hospital, he was able to parrot back some of the information he had been given in those classes. Mr. Brown, at the time of the hearing on the Application before this Court, is no longer able to recall information he had been given in his competency classes. He could not recall that a person can plead guilty or not guilty to criminal charges.
32. The Court finds that at this time, Mr. Brown is unable to understand or answer almost any of questions posed to him from a Transcript of the Plea form. Mr. Brown is unable to correctly give the city or state where he is located. Mr. Brown always gives the answer of "a.m." when asked to tell the time. In relation to questions about money, Mr. Brown is unable to identify how much money six quarters equals. Additionally, Mr. Brown is unable to calculate the correct change if he gave someone \$2.00 for something that cost \$1.85.
33. The Court finds that at this time when asked to spell his name, Mr. Brown is unable to correctly spell his last name, omitting the "R" in Brown, and unable to spell "pot" and "hat" when asked to do so. When asked to recite the alphabet, Mr. Brown is able to recite the alphabet up to the letter "J" but is unable to recite any further letters in the alphabet.
34. The Court finds that at this time Mr. Brown is not competent to proceed to trial.
35. The Court finds that in 14 years, Mr. Brown has never been found competent to proceed to trial by any Court that has considered the matter.
36. The Court finds that because of Mr. Brown's mental retardation, it is not likely that he will become competent to proceed to trial in the future. The Court find that Mr. Brown will always be mentally retarded and will never become competent to stand trial.
37. The Court finds that Mr. Brown has been compliant, cooperative and polite at Dorothea Dix Hospital over the last several years. Mr. Brown has accomplished many of the goals set for him at Dorothea Dix Hospital, is fairly stable, and has a job at the Hospital that he enjoys.
38. The Court finds that when Mr. Brown is excited or frustrated, he speaks loudly and repetitively but will settle back down. Mr. Brown has developed coping skills and demonstrated control over his emotions over the last several years. Mr. Brown does well in a structured environment, and it has been years since Mr. Brown has shown any aggression.
39. The Court finds that although Mr. Brown had episodes of outburst and aggressive behavior in the past, several of the episodes involved Mr. Brown's frustration about being confined to Dorothea Dix Hospital.

40. The Court finds that as a result of Mr. Brown's behavior in the past several years, he has achieved a high level of privileges at Dorothea Dix Hospital and is categorized as a "Level 4," the maximum amount of privileges at Dorothea Dix Hospital.
41. The Court finds that Mr. Brown's privileges afford him a two hour unsupervised pass that allows him to go anywhere on the Dorothea Dix campus, including the grounds outside, unsupervised. When Mr. Brown is on his two-hour pass, he must sign back in at the Hospital every hour. That when Mr. Brown in on his pass, he typically walks the grounds of Dorothea Dix Hospital with his sister when she visits, will talk with staff, or will go outside to smoke a cigarette.
42. The Court finds that Mr. Brown's privileges also afford him a transportation pass that allows him 15 unsupervised minutes to go to and from his job at Dorothea Dix Hospital. Mr. Brown's transport pass allows him to sign out to go to work, walk to his job at the warehouse on the grounds of Dorothea Dix, meet with his supervisor, and check out when his time at work is completed and return to his unit to sign in with the nurse. Mr. Brown is allowed to do all of this unsupervised.
43. The Court finds that Mr. Brown currently is not dangerous to himself or others and does not pose a threat to the community.
44. The Court finds that Dorothea Dix Hospital has made efforts in the past to discharge Mr. Brown from the Hospital and place him in a group home.
45. The Court finds that in the year prior to this hearing, Dorothea Dix Hospital took the proactive step of planning for the possibility that Mr. Brown could be discharged from Dorothea Dix Hospital and began the process of attempting to find a group home placement for Mr. Brown.
46. The Court finds that an appropriate group home placement is currently being sought for Mr. Brown by his case manager at CNC Access, Ms. Treniss Capps, should Mr. Brown be released. That a group home placement would provide supervision twenty-four hours a day, seven days a week. That group home staff can sleep at the group home, and are aware of the residents' comings and goings at the group home. That Mr. Brown would not be able to leave the group home without an escort and would never be left alone in the group home without supervision. Mr. Brown would not be able to come and go at will. He would be also be supervised at any day programs he attended outside of the group home.
47. The Court finds that Ms. Capps would be contacted if there were a problem with drugs or alcohol in a group home where she had a client. There have not been any problems with drugs or alcohol in the group homes where Ms. Capps places her clients.
48. The Court finds that Medicaid and CAP, a State fund for mentally retarded and developmentally disabled patients, provides funding for group home placements. Mr.

Brown would only be eligible for these funds for a group home placement if the charges pending against him were dismissed with prejudice. That Mr. Brown could not receive these funds for a group home placement if the charges pending against him were dismissed with leave to reinstate.

49. The Court finds that under North Carolina's commitment proceedings for defendants who are incompetent to proceed to trial, defendants that are released from commitment and are still charged with a violent crime must be returned to the custody of the Sheriff of the County where the charges are pending.
50. The Court finds that no other Court that has heard any issues in this case has considered any Motion or N.C. Gen. Stat. § 17 Application for Writ of Habeas Corpus based on *Jackson v. Indiana*, 406 U.S. 715, 92 S.Ct. 1845 (1972) and the 14th Amendment of the United States Constitution.

Based upon the foregoing **FINDINGS OF FACT**, the Court makes the following **CONCLUSIONS OF LAW**:

1. Mr. Brown has been held for the past 14 years, and is currently being held, at Dorothea Dix Hospital under valid Court orders of the Wake County District Court.
2. In 14 years, Mr. Brown has never been found competent to proceed to trial by any Court that has considered the matter.
3. At this time Mr. Brown is not competent to proceed to trial.
4. Mr. Brown's commitment to Dorothea Dix Hospital has been based upon his incapacity to proceed to trial, a finding which originated as a result of the charges still pending against him. Mr. Brown's incapacity is based solely on his mental retardation.
5. Mr. Brown's mental retardation is incurable and prevents him from becoming capable of proceeding to trial at some point in the future and thus from being able to understand the nature and object of proceedings against him, comprehend his own situation in reference to the proceedings, or assist in his defense in a rational or reasonable manner under N.C. Gen. Stat. § 15A-1001(a).
6. Absent the charges of first-degree murder and robbery with a dangerous weapon, Mr. Brown does not qualify for involuntary commitment. Mr. Brown is not dangerous to himself or others, nor does he pose any type of threat to the community. In reaching this conclusion, the Court has considered the definition of "dangerousness" in N.C. Gen. Stat. § 122C-3(11).
7. The Court also concludes that the alleged confession in this case standing alone, and the forecast of evidence if this case proceeded to a trial, is not clear, cogent, and convincing evidence that Mr. Brown has "committed a homicide in the relevant past" and thus fails to constitute prima facie evidence of dangerousness to others under N.C. Gen. Stat. § 122C-3(11)(b).

8. Further, the Court concludes that even if the alleged confession and the forecast of evidence was prima facie evidence of dangerousness under N.C. Gen. Stat. § 122C-3(11)(b), the testimony of the witnesses and exhibits received into evidence are sufficient to rebut a prima facie showing of dangerousness.
9. Mr. Brown is charged with first-degree murder and robbery with a dangerous weapon, which are violent crimes. Thus, under N.C. Gen. Stat § 15A-1004, Mr. Brown can only be released from his commitment at Dorothea Dix Hospital to the custody of the Anson County Sheriff if the charges against him are not dismissed.
10. Notwithstanding N.C. Gen. Stat. § 17-4(2), this Court has jurisdiction in this matter under N.C. Gen. Stat. § 17-33(2), which states in part as follows:

But if it appears on the return of the writ that the party is in custody by virtue of civil process from any court legally constituted, or issued by any officer in the course of judicial proceedings before him, authorized by law, such party can be discharged only in one of the following cases:

- (2) Where though the original imprisonment was lawful, yet by some act, omission or event, which has taken place afterwards, the party has become entitled to be discharged.
11. Mr. Brown's continued commitment to Dorothea Dix Hospital for 14 years, despite his inability to ever become competent to proceed to trial in the future due to his mental retardation, violates his Due Process rights under *Jackson v. Indiana*, 406 U.S. 715, 92 S.Ct. 1845 (1972) and the 14th Amendment of the United States Constitution. As the Court held,

a person charged by a State with a criminal offense who is committed solely on account of his incapacity to proceed to trial cannot be held more than the reasonable amount of time necessary to determine whether there is a substantial probability that he will attain capacity in the foreseeable future.

Id. at 738. In this case, Mr. Brown's 14 year detention at Dorothea Dix Hospital based solely on his incapacity to stand trial stemming from his incurable mental retardation is "more than the reasonable amount of time necessary to determine whether there is a substantial probability that he will attain capacity in the foreseeable future" and thus a violation of his Due Process rights. *Id.*

12. This violation of Mr. Brown's rights under *Jackson* are an "act, omission or event, which has taken place afterwards" that entitles Mr. Brown to be discharged under N.C. Gen. Stat. § 17-33(2).

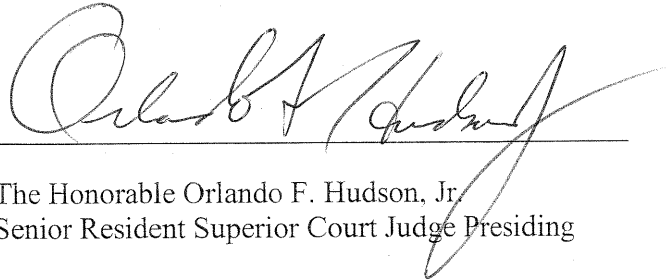
13. By analogy, *In re Harris*, 241 N.C. 179, 84 S.E.2d 808 (1954) is instructive. The *Harris* Court held that habeas corpus is the appropriate remedy for proceedings under Article 2 Chapter 122 of the North Carolina General Statutes and do not fall under the prohibitions of N.C. Gen. Stat. § 17-34(2), which states that the Court must remand the party when “[b]y virtue of the final judgment or decree of any competent court of civil or criminal jurisdiction, or of any execution issued upon such judgment or decree.” Instead, the Court held that the recovery from a mental disease after commitment falls under grants for relief under N.C. Gen. Stat. § 17-32.
14. Further, N.C. Gen. Stat § 17-32 mandates that “the court or judge whom the party is brought on a writ of habeas corpus shall do what justice appertains in delivering, bailing or remanding such party.”
15. In Mr. Brown’s case, unless the charges pending against him are dismissed with prejudice, Mr. Brown will continue to be detained similarly to the circumstances that arose in *State v. Gravette*, 327 N.C. 114, 393 S.E.2d 865 (1990). In *Gravette*, the defendant was charged with two counts of first-degree murder but was found incapable of proceeding to trial. He was alternately detained back and forth between Dorothea Dix Hospital, John Umstead Hospital, and the Orange County Jail because of repeated findings that he was incapable of proceeding to trial, was charged with a violent crime, but was not subject to involuntary commitment because he was not dangerous to himself or others.
16. In Mr. Brown’s case, as in *State v. Gravette*, because Mr. Brown has been charged with violent crimes, his case falls within the parameters of N.C. Gen. Stat. § 15A-1004, which would require him to be returned to the custody of the Anson County Sheriff unless his charges are dismissed with prejudice.
17. Thus, in light of the paragraphs *supra*, in order to “do what justice appertains” as a result of the violation of Mr. Brown’s constitutional rights under *Jackson*, the 14th Amendment, and N.C. Gen. Stat. § 17-33(2), Mr. Brown must be released from further custody. To effectuate Mr. Brown’s release from custody, Mr. Brown’s pending first-degree murder and robbery with a dangerous weapon charges must be dismissed.

Based upon the foregoing **FINDINGS OF FACT** and **CONCLUSIONS OF LAW**, it is **THEREFORE ORDERED, ADJUDGED, AND DECREED** that:

1. The first-degree murder and robbery with a dangerous weapon charges pending against Floyd Lee Brown in cases 93 CRS 3374-3375 in Anson County, North Carolina be and are hereby dismissed with prejudice.

2. Floyd Lee Brown is to be summarily released from further, involuntary residence, confinement or detention at Dorothea Dix Hospital in Raleigh, North Carolina.

This the 16th day of November 2007.



The Honorable Orlando F. Hudson, Jr.
Senior Resident Superior Court Judge Presiding

credit the foregoing to be a true and correct copy of the original on the same paper as it is in the office

16th day of November, 2007
Court Superior Court
Durham County, N.C.



Jerry A. Perry
Assistant Deputy Clerk