

DISTRICT COURT, BOULDER COUNTY, COLORADO Court Address: 1777 SIXTH STREET P.O. BOX 4249, BOULDER, CO, 80306-4249	DATE FILED: March 28, 2023 11:47 AM
THE PEOPLE OF THE STATE OF COLORADO v. Defendant(s) AHMAD AL ALIWI ALISSA	<div style="text-align: center;"> <p>△ COURT USE ONLY △</p> <p>Case Number: 2021CR497 Division: 13 Courtroom:</p> </div>
Order: Defense Response to Prosecution Motion for Restoration Hearing [P-014]	

The motion/proposed order attached hereto: ACTION TAKEN.

The Court orders the People to file a Reply no later than March 31, 2023 addressing the points raised by the Defendant.

Issue Date: 3/28/2023



INGRID SEFTAR BAKKE
 District Court Judge

District Court, Boulder County, Colorado Court Address: 1776 6 th Avenue Boulder, CO 80306	
THE PEOPLE OF THE STATE OF COLORADO v. AHMAD AL ALIWI ALISSA Defendant.	σ COURT USE ONLY σ
Megan Ring, Colorado State Public Defender Daniel King #26129 Chief Trial Deputy State Public Defender Kathryn Herold #40075 Supervising Deputy State Public Defender Samuel Dunn #46901 Deputy State Public Defender Boulder Regional Public Defenders 2555 55 TH Street D-200, Boulder, CO 80301 Phone: (303) 444-2322 Fax: (303) 449-6432 E-mail: boulder.defenders@state.co.us	Case No. 21CR497 Division 13
DEFENSE RESPONSE TO THE PROSECUTION’S MOTION FOR RESTORATION HEARING (P-014)	

Through counsel, Mr. Alissa responds to *People’s Motion for Restoration Hearing (P-014)*. This Court should reject the State’s request for a restoration hearing because the State does not make a specific allegation Mr. Alissa has been restored to competency (or that he is competent), and it provides no offer of proof for what evidence it would present at a hearing to show that Mr. Alissa is competent. Instead, the State appears to request a hearing to relitigate its dissatisfaction with CMHIP’s restoration efforts.

Mr. Alissa states:

1. In its P-13 *Order*, this Court concluded that a party seeking a restoration hearing under section 16-8.5-113, C.R.S., must have a good faith basis for making the request. *See Order [P-13]*, p. 5. Accordingly, it ordered the State to provide an offer of proof for a request for a restoration hearing. *Order [P-13]*, p. 6.
2. The purpose of an offer of proof is to provide the court with “the nature and substance of proposed evidence.” *E.g., People in re A.R.*, 459 P.3d 645, 662 (Colo. App. 2018).

3. And the purpose of a competency restoration hearing under section 16-8.5-113, C.R.S., is to determine whether a previously incompetent defendant has been *restored to competency*. § 16-8.5-113(6), C.R.S. 2022 (“At the hearing, the court shall determine whether the defendant is restored to competency.”).
4. The prosecution would bear the burden of proof by a preponderance of the evidence that Mr. Alissa “does not have a mental disability or developmental disability that prevents [him] from having sufficient present ability to consult with [his] lawyer with a reasonable degree of rational understanding in order to assist in the defense or prevents [him] from having a rational and factual understanding of the criminal proceedings.” § 16-8.5-101(5), C.R.S.; *see also Dusky v. United States*, 362 U.S. 402 (1960).
5. **Mr. Alissa’s treatment team at CMHIP and its competency evaluators continue to opine that he is incompetent to proceed to trial.** No treatment professional has opined otherwise. The State identified no evidence suggesting Mr. Alissa is competent.
6. **More important, the State does not specifically allege Mr. Alissa is competent.** Rather, the State again presents argument that CMHIP restoration is ineffectual and that Mr. Alissa “*could be feigning symptoms*,” his “*symptomology could be unrelated*” to schizophrenia, and he *might* therefore be competent. *P-014*, pp. 7-8 (emphases added). As before, the State notes it believes Mr. Alissa’s *failure to participate in some aspects of his treatment* is “primarily volitional” and not due to schizophrenia. *P-014*, p. 8. These beliefs are based on conjecture and, in any event, are not evidence Mr. Alissa is competent.
7. **In no part of the State’s motion does it identify evidence it will present at a hearing showing that Mr. Alissa does not suffer from a mental or developmental disability.** Contrary to this Court explicit ruling, the State presents no offer of proof. The most undersigned gleans from the State’s motion is that the State does not intend to carry its burden to show Mr. Alissa is competent but to fault his treatment team and evaluators for not providing neuropsychological testing. *P-014*, p. 7 (“It is unclear to what extent the recent, well-publicized issues at CMHIP are playing a role in CMHIP’s treatment of Defendant and their decision here.”).
8. While the State believes that Doctors Reis and Torres’s admission there is a *possibility* Mr. Alissa’s refusal to participate in group treatment is volitional warrants further testing, those doctors continue to conclude he is incompetent. As this Court found, CMHIP has not stated or suggested neuropsychological testing is necessary—only that it had no “concerns” with it being conducted. *Order [P-13]*, p. 4.
9. This Court concluded that the restoration process is CMHIP’s domain. *Order [P-13]*, p. 4. Therefore, the State’s dissatisfaction with the restoration process and its speed

are not the subject of a restoration hearing. *Supra*, ¶¶ 3-4. Regardless, the State's criticisms of CMHIP here are misplaced.

10. **P-014's attached email from CMHIP undercuts the State's unsourced argument that neuropsychological testing is necessary.** In the email, CMHIP stated neither Mr. Alissa's treatment team nor its competency evaluators believe subjecting Mr. Alissa to neuropsychological testing would be useful for assessment of competency. Mr. Alissa made this same point in his response to P-012, which the State chooses not to rebut with evidence or relevant medical literature. *See Response to P-012*, ¶¶ 20-30. Further, CMHIP informed the prosecution it has contracted with a neuropsychiatric specialist and that this specialist will likely provide consultation with respect to Mr. Alissa. *P-014*, Ex. 1.
11. This Court should therefore reject the State's request for a restoration hearing. Mr. Alissa suffers from significant mental conditions and is incompetent. Despite this Court's order requiring an offer of proof to support a request for a restoration hearing, the State provides no evidence that would show Mr. Alissa is competent.

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Certificate of Service

I hereby certify that on 3/27/23, I served the foregoing document by E filing same to all opposing counsel of record.
/s/ skoslosky

Dated: March 27, 2023