

DISTRICT COURT, BOULDER COUNTY, COLORADO Court Address: 1777 SIXTH STREET P.O. BOX 4249, BOULDER, CO, 80306-4249	DATE FILED: September 22, 2021 8:52 AM
THE PEOPLE OF THE STATE OF COLORADO v. <b>Defendant(s)</b> AHMAD AL ALIWI ALISSA	<p style="text-align: center;"><b>△ COURT USE ONLY △</b></p> Case Number: 2021CR497 Division: 13                      Courtroom:
<p style="text-align: center;"><b>Order: MOTION TO WAIVE THE 21 DAY DEADLINE FOR THE COMPLETION OF THE COURT-ORDERED          IN-CUSTODY COMPETENCY EVALUATION TO ALLOW ENOUGH TIME FOR AN ADEQUATE,          THOUROUGH AND CONSTITUTIONALLY SOUND EVALUATION (D-018)</b></p>	

The motion/proposed order attached hereto: NO ACTION TAKEN.

DA response due September 23, 2021.

Issue Date: 9/22/2021



INGRID SEFTAR BAKKE  
 District Court Judge

District Court, Boulder County, Colorado Court Address: 1776 6 <sup>th</sup> Avenue Boulder, CO 80306	
THE PEOPLE OF THE STATE OF COLORADO  v.  <b>AHMAD AL ALIWI ALISSA</b> 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 Senior Deputy State Public Defender Boulder Regional Public Defenders 2555 55 <sup>TH</sup> Street D-200, Boulder, CO 80301 Phone: (303) 444-2322 Fax: (303) 449-6432 E-mail: boulder.defenders@state.co.us	Case No. <b>21CR497</b>  Division 13
<b>MOTION TO WAIVE THE 21 DAY DEADLINE FOR THE COMPLETION OF THE          COURT-ORDERED IN-CUSTODY COMPETENCY EVALUATION TO ALLOW          ENOUGH TIME FOR AN ADEQUATE, THOUROUGH AND CONSTITUTIONALLY          SOUND EVALUATION          (D-018)</b>	

Mr. Ahmad Al Aliwi Alissa, by and through counsel, moves this Court to enter an Order waiving the twenty-one day deadline for the completion of the court-ordered competency evaluation imposed by C.R.S. 16-8.5-105(1)(a)(I), and as grounds states the following:

1. The 21 day deadline for the completion of an in-custody court-ordered competency evaluation is contained in the current version of C.R.S. 16-8.5-105(1)(a)(I) and applies to all in-custody competency evaluations ordered after July 1, 2020. Prior to that date there had never been such a deadline for the completion of competency evaluations.
2. The amendment to C.R.S. 16-8.5-105(1)(a)(I) which imposed this deadline was contained in Senate Bill SB19-223 and passed into law during the 2019 session of the Colorado General Assembly.
3. SB19-223, among other things, inserted a series of deadlines into the competency statutory scheme. The amendments to the statutes were specifically created and intended to comport to the requirements imposed by a consent decree arising out of a Federal lawsuit brought by a patients' advocacy group against CMHIP.

4. During the Senate Judiciary Committee hearing and unanimous passage of SB19-223 on April 12, 2019, there is ample discussion of the consent decree and the efforts of all the stakeholders to ensure that the bill pass and comport with the consent decree. The passage of amendment L003, as a result of that discourse, was specifically intended to ensure that the “timeline in the statute was in alignment with the consent decree”. *Senate Judiciary Hearing on SB19-223*, June 12, 1999, 3:16-18 pm.

5. According to the sponsors of the Bill, Sen. Gardner and Lee, the express purpose of the bill was to aid incompetent persons in being transported to CMHIP in a timely fashion for evaluation and restoration, in contrast with that population languishing in county jails on relatively marginal criminal matters, the subject of the Federal lawsuit and resulting consent decree. *Senate Judiciary Hearing on SB19-223*, June 12, 1999, 3:19-21 pm.

6. In the present case, such concerns do not exist. Mr. Alissa is being held without bond at the current time and it is highly unlikely that a bond will ever be set. Mr. Alissa is facing 10 life sentences. There is no need to rush this process in his case and risk an unreliable result

7. Counsel can waive their client’s statutory rights. *Finney v. People*, 325 P.3d 1044, 1050; *See also, In re Lynch*, 783 P.2d 848, 853 (Colo.1989) (recognizing counsel's ability to waive statutory right to a mental health hearing); *see also People v. Baird*, 66 P.3d 183, 189 (Colo.App.2002) (“A statutory right may be waived by counsel's statements.”) (citing *People v. [Gordon] Allen*, 744 P.2d 73, 74 n. 2 (Colo.1987)). Waiver of statutory rights must be voluntary, but need not be knowing and intelligent. *People v. Moody*, 676 P.2d 691, 695 (Colo.1984).

8. Mr. Alissa wishes to waive his statutory right to completion of his competency evaluation within 21 days. He would request that the appointed mental health professionals be given an adequate amount of time to conduct a proper, thorough, and reliable evaluation of Mr. Alissa’s competence to proceed to trial.

9. Twenty-one days is not nearly enough time to complete a competency evaluation in a case of this magnitude. The collateral materials that have been transmitted to the evaluators and requires their review is many thousands of pages. Counsel can personally attest that this material cannot be digested in less than a month. In addition, the evaluators will have to meet with Mr. Alissa, evaluate if one meeting is sufficient, consider whether or not more observations are necessary prior to forming an opinion, formulate their opinions, and produce a complex report in that period of time.

10. Defense counsel asked the evaluators if more time would be helpful and even necessary to review the materials, conduct their evaluation, and write a report and their response was an emphatic yes. It should also be noted that it took the defense expert many weeks to complete his evaluation and he is currently working on the report.

11. No reliable competency assessment can be completed this extremely limited amount of time in a case of this size and magnitude. This Court should not base any decisions regarding Mr. Alissa’s competency on such a truncated evaluation.

12. Colorado Revised Statute 16-8.5-102(1) provides that “while a defendant is incompetent to proceed, the defendant shall not be tried or sentenced, nor shall the court consider or decide pretrial matters that are not susceptible of fair determination with the personal participation of the defendant.” It is unconstitutional to try an incompetent defendant. *Dusky v. United States*, 362 U.S. 402 (1960); see U.S. Const. amend. XIV; Colo. art. II, § 25. Rushing the process will only result in an unreliable assessment that could lead to unconstitutional results.

WHEREFORE, Mr. Alissa hereby moves this Court waive the twenty-one day deadline for the completion of the court-ordered competency evaluation imposed by the amendments to C.R.S. 16-8.5-105(1)(a)(I) contained in SB19-223, and instead allow an adequate time for the court-appointed evaluators to conduct their evaluation in the important and complicated matter. This motion is made pursuant to U.S. Const. amends. V, VI, XIV; Colo. Const. art. II, §§ 16, 25. Mr. Alissa requests a hearing on this motion.

MEGAN A. RING  
COLORADO STATE PUBLIC DEFENDER



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Daniel King #26129  
Chief Trial Deputy State Public Defender



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Kathryn Herold #40075  
Supervising Deputy State Public Defender



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Samuel Dunn #46901  
Senior Deputy State Public Defender

**Certificate of Service**

I hereby certify that on 9/21/2021, I served the foregoing document through Colorado E filing to all opposing counsel of record.

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Dated: September 21, 2021