



IN THE CIRCUIT COURT OF MARSHALL COUNTY, ALABAMA

STATE OF ALABAMA,

PLAINTIFF,

vs.

CASE NO. CC18-465 FTR

JIMMY ONEAL SPENCER,

DEFENDANT.

MOTION FOR MENTAL HEALTH EVALUATION

Defendant, by and through undersigned counsel, moves this Honorable Court to order a mental health examination pursuant to 18 U.S.C. § 4241 to determine whether (a) he is competent to stand trial and assist in his defense and (b) to ascertain any mental illness or defect which may have existed At The Time of the alleged offense. As grounds for this motion, undersigned counsel states on information and belief that Defendant has been diagnosed with a significant mental illness and has been committed for mental health evaluation on at least one occasion for psychiatric issues. In assessing his case, it appears that Defendant has considerable difficulty understanding the nature and consequences of the proceedings and may not be able to fully assist in his defense.

An individual is mentally incompetent to stand trial if he suffers from a mental disease or defect which impairs his 1) “present ability to consult with his lawyer with a reasonable degree of rational understanding” or 2) a “rational as well as factual understanding” of both the charges against him and the nature of the judicial proceedings. *Dusky v. United States*, 362 U.S. 402, 402, 80 S. Ct. 788 (1960) (the standard later codified at 18 U.S.C. § 4241(a), which provides that a person is mentally incompetent for trial if he 1) “is unable to understand the nature and consequences of the legal proceedings against him” or 2) unable to “assist properly in his defense.”) Due process prohibits a defendant who is mentally incompetent to stand before a criminal tribunal. See *Drope v. United States*, 420 U.S. 162, 171-72, 95 S. Ct. 896, 903-04 (1975). The Supreme Court has held that the Dusky standard is a minimum standard and that they “reject[ed] the notion that competence to plead guilty or to waive the right to counsel must be measured by a standard that is higher than (or even different from) the Dusky standard.” *Godinez v. Moran*, 509 U.S. 389, 398, 113 S. Ct. 2680, 2686 (1993). There is an independent duty on the defense to question the defendant’s mental competence if a good faith basis to question competency exists at any point throughout the trial proceedings. See 18 U.S.C. § 4241(a); see also *Pate v. Robinson*, 383 U.S. 375, 385, 86 S. Ct. 836, 842 (1966) (where the Court found the defendant’s “constitutional rights were abridged by his failure to receive an adequate hearing on his competence to stand trial.”)

The undersigned counsel has met with Defendant and maintains a good faith belief that there is a question as to the mental health status of Defendant at the time of the alleged offense, as well as to his present ability to assist in the development of his case. Therefore we request that a mental health evaluation be administered to Defendant to determine any prior or current clinical or personality disorders. We request a mental evaluation on these issues because it is necessary for trial preparation as well as sentencing issues in the event Defendant is found guilty of the charges in the Indictment.

WHEREFORE, undersigned counsel requests that this court order that a mental health evaluation of Defendant and that copies of the report be made available to the State and undersigned counsel.

Respectfully submitted this the 26th day of November, 2018.

/s/ Robert B. Tuten

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CERTIFICATE OF SERVICE

This document has been filed electronically and served upon opposing counsel pursuant to the Administrative Procedure for Filing Signing and Verifying Documents by Electronic Means in the Alabama Judicial System. For any opposing counsel or unrepresented parties who are not registered to file electronically, a copy of this pleading shall be served via the U.S. mail, postage pre-paid, to the litigant's address as maintained in the office of the Circuit Clerk.

Done this 26th day of November, 2018.

/s/Robert B. Tuten

ROBERT B. TUTEN