IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

STATE OF DELAWARE,	:	
	:	I.D. No. 0612001862
v.	:	
	:	
THOMAS F. KANE, JR.,	:	
	:	
Defendant.	:	

Heard: February 9, 2009
Decided: February 11, 2009

ORDER

Upon Defendant's Request for a Hearing
After Transfer from DPC to DOC.

Dennis Kelleher, Esquire and Kathleen Dickerson, Esquire, Department of Justice, Dover, Delaware; attorneys for the State of Delaware.

William T. Deely, Esquire, Sean Motoyoshi, Esquire and Paul S. Swierzbinski, Esquire, Office of the Public Defender, Dover, Delaware; attorneys for the Defendant.

WITHAM, R.J.

BACKGROUND

Thomas F. Kane ("Kane") was initially admitted to the Delaware Psychiatric Center ("DPC") from the Department of Corrections ("DOC") pursuant to a court order on January 19, 2007. Kane was admitted for the purpose of evaluation regarding competence to stand trial for murder. Kane pled Guilty But Mentally Ill, and was subsequently sentenced to the DPC on February 29, 2008.

Kane was diagnosed with major depression, as well as borderline and antisocial personality traits.[1] Kane was prescribed several medications for depression, anxiety, and insomnia. During the course of his hospitalization at the DPC, Kane was observed by the DPC staff as being violent and aggressive, with a blatant disregard for rules.[2]

On August 22, 2008, Clarence Watson, J.D., M.D. ("Dr. Watson") and Charlotte Selig, PsyD. ("Dr. Selig") completed a forensic mental examination of Kane, indicating that Kane was psychiatrically stable on his medications and did not require continued psychiatric hospitalization, and that Kane's behavior endangered the safety of the DPC staff and other patients. The report requested an immediate discharge to the DOC, and pursuant to an August 22, 2008 order from this Court,

---

[1] Dr. Watson testified at the hearing that medication and counseling were effective in the treatment of Kane's depression symptoms, but that no medications or counseling would be effective in treating Kane's personality disorders.

[2] Dr. Watson testified that Kane picked up and "body slammed" a mentally retarded patient at the DPC when he blocked Kane's shot during a basketball game. Dr. Watson also testified that Kane assaulted several staff members after being told he would have to comply with a new patient uniform requirement.

Kane was transferred to the DOC.

On August 25, 2008, the Court received a letter from Kane's attorney that the defense did not request a hearing concerning Kane's transfer to the DOC. Kane, however, sent a letter of his own on October 15, 2008, requesting a hearing, and informed the Court that he has received no medication or counseling for depression since his transfer to the DOC. His letter further indicated that his feelings of depression and racing thoughts, bordering on suicidal ideation, have returned since his transfer to the DOC.

The Court held a hearing on February 9, 2009 to address the issues concerning Kane's transfer from the DPC to the DOC. Kane provided a brief statement, and stated that he has not received medication or counseling for his depression in the five months since he arrived at the DOC. Dr. Watson testified that once a patient is transferred from the DPC to the DOC, DPC doctors do not follow-up with DOC doctors to ensure that patients continue to receive the medications prescribed while in the DPC.[3]

DISCUSSION

1. 11 *Del. C.* § 408(b)

_____11 *Del. C.* § 408(b) provides, in pertinent part:

> The Delaware Psychiatric Center . . . shall have the authority to discharge the defendant from the facility and return the defendant to the

[3] Dr. Watson testified that the DPC and the DOC meet monthly to discuss the incarcerated patients currently hospitalized at the DPC, but once a patient is returned to the DOC, he is no longer on the "list" to be discussed at the meetings.

> physical custody of the [DOC] whenever the facility believes that such a discharge is in the best interests of the defendant.

In the case *sub judice*, Kane's major depression was being well-controlled with medication and counseling at the DPC. Kane's personality disorders, however, could not be treated with medication or counseling, and his violent, aggressive behavior and blatant disregard for the DPC rules endangered his own safety, as well as the safety of staff and other patients.[4] The DOC has psychiatrists on staff to provide Kane with the medications and counseling to address his depression, as well as trained staff and procedures to address any disruptions caused by Kane's personality disorders. Therefore, the Court finds that the DPC properly exercised its authority to discharge Kane and return him to the physical custody of the DOC.

2. DPC to Follow-Up with DOC Doctors

The DPC discharged Kane and returned him to the physical custody of the DOC because his depression was well-controlled with counseling and medications. In fact, Kane was on at least six different medications for depression, anxiety, and insomnia at the DPC. However, according to Kane's undisputed testimony, he has not received any counseling or medication since his return to the DOC.[5]

"Deliberate indifference to a prisoner's serious medical needs violates the

---

[4] According to Dr. Watson, Kane's disruptive behavior was caused by his personality disorders, and not his depression.

[5] Dr. Watson testified that a psychiatrist could take a patient off anti-depressant medications, as long as the patient was monitored for a return of symptoms.

Eighth Amendment's prohibition against cruel and unusual punishment."[6] Deliberate indifference may include the denial or delay in medical treatment, as well as the manner in which medical treatment is administered.[7]

The Court finds Kane's allegation that he is not receiving counseling and medication, if substantiated, to be quite troublesome. Kane's major depression is a serious medical condition that must be adequately treated. Therefore, the State shall provide the Court with documentation of medications and counseling currently being provided to Kane by the DOC. Furthermore, the Court orders the DPC, in consultation with the DOC, to engage in a semi-annual review of the psychiatric treatment provided to Kane by the DOC to ensure that Kane continues to receive proper psychiatric care. The first review will be conducted no later than August 9, 2009. The DOC and the DPC will inform the Court if any aspect of this order cannot be carried out.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.
R.J.

WLW/dmh
oc: Prothonotary
xc: Order Distribution

---

[6] *Deputy v. Dr. Conlan*, 947 A.2d 1121, 1122 (Del. 2007), citing *Estelle v. Gamble*, 429 U.S. 97, 104 (1976).

[7] *Id.*, citing *McGuckin v. Smith*, 974 F.2d 1050, 1060 (9th Cir. 1992).