

**COURT OF COMMON PLEAS  
CLERMONT COUNTY, OHIO**

**STATE OF OHIO** :  
Plaintiff : **CASE NO. 2007 CR 1006**  
vs. : **Judge McBride**  
**JOSEPH DAVID CAIN** : **DECISION/ENTRY**  
Defendant :

Catherine Adams, assistant prosecuting attorney for the State of Ohio, 76 S. Riverside Drive, 2<sup>nd</sup> Floor, Batavia, Ohio 45103.

James A. Hunt, assistant public defender for Joseph David Cain, 10 South Third Street, Batavia, Ohio 45103.

This cause is before the court for consideration of a recommendation and request from LifePoint Solutions that the defendant Joseph Cain be permitted to transition from his group home to independent living. The court scheduled and held hearings on this matter on May 8<sup>th</sup> and May 16<sup>th</sup>, 2013.

Upon consideration of the record of the proceeding, the evidence presented for the court's consideration, the oral arguments of counsel, and the applicable law, the court now renders this written decision and order.

## FACTS OF THE CASE

In an entry filed on December 17, 2007, subsequent to a court trial, this court found the defendant Joseph Cain not guilty by reason of insanity and found probable cause that he was a mentally ill person subject to hospitalization by court order. The offense for which Cain was acquitted by the finding that he was not guilty by reason of insanity was felonious assault; he was alleged to have assaulted a correctional officer while housed in the Clermont County Jail.

In a decision and entry filed on March 14, 2008, this court found that Cain was a mentally ill person subject to hospitalization by court order and found that the least restrictive commitment alternative available was inpatient treatment at Summit Behavioral Healthcare. Since that time, this court has granted Cain Level III unsupervised on-ground movement, Level IV access-supervised community passes with staff/case management, level V unsupervised community passes at the request and recommendation of Summit Behavioral Healthcare, and conditional release to a group home.<sup>1</sup>

The court has now received a recommendation from Kelly Brown, Cain's forensic monitor, that Cain be permitted to transition from the Brown County Care Center to independent living at an apartment complex near LifePoint Solutions.<sup>2</sup> In a letter written on May 7, 2013, Kelly Brown and Dr. Carlos Cheng, the defendant's treating psychiatrist at LifePoint Solutions, state that Cain has had no incidents with staff

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<sup>1</sup> Entry Granting Level III Access, filed June 26, 2008; Entry, filed October 21, 2008; and Decision/Entry filed December 27, 2010; Decision/Entry filed October 20, 2011.

<sup>2</sup> Letter from Kelly Brown, filed April 26, 2013.

or other residents since being placed in the group home and that, while he still experiences some auditory hallucinations while watching television, he is now able to recognize that the voices are part of his mental illness and he notifies the staff of the hallucinations.<sup>3</sup> That letter also indicates that if Cain is granted the opportunity to transition to independent living, his treatment plan will be amended to include the following: “3 times per week Case Management from the Housing and Payee Teams, Individual Therapy Services to aid in the transition to independent living, and Vocational Services to assist in finding and keeping employment. Joseph will also be encouraged to utilize Peer Support Services offered at the HOPE Community Center next to [LifePoint Solutions].”<sup>4</sup>

At the May 16<sup>th</sup> hearing on this matter, Dr. Cheng testified that Cain has been compliant with his medication regimen which consists of an injectable dose of 234 mg of Invega Sustenna every four weeks and an oral dose of Zyprexa, which Cain takes on a daily basis. Both Invega Sustenna and Zyprexa are anti-psychotic medications. Dr. Cheng noted that, while Cain will never be completely symptom-free due to the nature of his mental illness, he has been doing very well since he began working with him in December 2012. Dr. Cheng testified that he does not think Cain would purposely stop taking his medications and that his auditory hallucinations do not interfere with his safety or the safety of others because he is now self-aware enough to be able to recognize the voices as symptoms of his mental illness. Dr. Cheng further stated that, while he cannot say with any certainty what would happen if Cain stopped taking the

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<sup>3</sup> Letter from Kelly Brown, LSW, and Carlos Cheng, M.D., dated May 7, 2013.

<sup>4</sup> Id.

Zyprexa, in the past it took weeks or months for Cain to decompensate and that Cain will be closely monitored while in independent living.

## LEGAL ANALYSIS

Pursuant to R.C. 2945.401:

“(D)(1) Except as otherwise provided in division (D)(2) of this section, when a defendant or person has been committed under section 2945.39 or 2945.40 of the Revised Code, at any time after evaluating the risks to public safety and the welfare of the defendant or person, the designee of the department of mental health or the managing officer of the institution or director of the facility or program to which the defendant or person is committed may recommend a termination of the defendant's or person's commitment or a change in the conditions of the defendant's or person's commitment.

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(E) In making a determination under this section regarding nonsecured status or termination of commitment, the trial court shall consider all relevant factors, including, but not limited to, all of the following:

- (1) Whether, in the trial court's view, the defendant or person currently represents a substantial risk of physical harm to the defendant or person or others;
- (2) Psychiatric and medical testimony as to the current mental and physical condition of the defendant or person;
- (3) Whether the defendant or person has insight into the defendant's or person's condition so that the defendant or person will continue treatment as prescribed or seek professional assistance as needed;
- (4) The grounds upon which the state relies for the proposed commitment;

(5) Any past history that is relevant to establish the defendant's or person's degree of conformity to the laws, rules, regulations, and values of society;

(6) If there is evidence that the defendant's or person's mental illness is in a state of remission, the medically suggested cause and degree of the remission and the probability that the defendant or person will continue treatment to maintain the remissive state of the defendant's or person's illness should the defendant's or person's commitment conditions be altered.

(G) In a hearing held pursuant to division (C) or (D)(1) or (2) of this section, the prosecutor has the burden of proof as follows:

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(2) For a recommendation for a change in the conditions of the commitment to a less restrictive status, to show by clear and convincing evidence that the proposed change represents a threat to public safety or a threat to the safety of any person.”

The request to transition to independent living represents a recommendation for a change in the conditions of the defendant’s commitment to a less restrictive status and, as a result, pursuant to R.C. 2945.401(G)(2), the state bears the burden to show by clear and convincing evidence in the case at bar that the proposed conditional release represents a threat to public safety or the safety of any person.<sup>5</sup> “ ‘Clear and convincing evidence’ is more than a mere preponderance of the evidence. Rather, it is evidence sufficient to produce in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established.”<sup>6</sup>

In the present case, the state failed to produce the requisite proof that allowing Joseph Cain to transition from the group home to independent living represents a threat

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<sup>5</sup> *State v. Roden* (July 20, 2006), 8<sup>th</sup> Dist. No. 86841, 2006-Ohio-3679, ¶¶ 6-8.

<sup>6</sup> *State v. Mahaffey*, 140 Ohio App.3d 396, 401, 747 N.E.2d 872 (Ohio App. 4<sup>th</sup> Dist., 2000), citing *In re Adoption of Holcomb* (1985), 18 Ohio St.3d 361, 368, 481 N.E.2d 613.

to public safety or the safety of any person. While there is always some chance that Cain could stop taking his daily oral dose of Zyprexa, his psychiatrist Dr. Cheng does not believe, based on his knowledge of Cain's mental state and processes, that Cain would purposely stop taking his medications. Furthermore, while Dr. Cheng could not say for certain what would happen if Cain stopped taking his Zyprexa, he will be intensely monitored while on independent living and, in the past, it has taken weeks or months for Cain to fully decompensate. Therefore, it is most likely that any decompensation would be detected by Cain's case manager, forensic monitor, and/or psychiatrist, before he has the opportunity to fully decompensate to a level where he might pose a danger to his safety or the safety of other persons.

Based on the request submitted by Cain's forensic monitor, the testimony of Dr. Cheng, and Dr. Cheng's concurrence with the request that Cain be allowed to transition to independent living, the court hereby finds that the least restrictive commitment alternative available to Joseph Cain is that he be permitted to transition to independent living. The conditions associated with the independent living shall be as follows:

(1) Cain shall be permitted to move from the group home at the Brown County Care Center to an apartment in one of the apartment buildings near LifePoint Solutions;

(2) LifePoint Solutions shall provide three times per week Case Management from the Housing and Payee Teams, Individual Therapy Services to aid in the transition to independent living, and Vocational Services to assist Cain in finding and keeping employment;

(3) Cain shall continue his outpatient psychiatric treatment programming at LifePoint Solutions, including medication management and case management. He shall

meet with his Case Manager on a weekly basis. This meeting shall be extensive enough that the Case Manager can detect whether there has been any decompensation or any change in the defendant's mental status. Cain shall also continue to attend sessions with a psychiatrist on a monthly basis. He shall continue to be monitored for medication compliance and any symptoms of decompensation by his psychiatrist, his case manager at LifePoint Solutions, and the forensic monitor. Random drug screens shall be taken no less than biweekly in order to ascertain whether the defendant is taking his medications at the appropriate dosages or is taking any illegal drugs.

(4) Cain shall continue to attend treatment programs in the community as recommended by the staff of LifePoint Solutions such as the Peer Support Services at the HOPE Community Center;

(5) Cain shall continue taking any oral medications deemed appropriate by his treating physician(s), including the daily oral dose of Zyprexa. He also shall be administered the injectable antipsychotic Invega Sustenna, or any other antipsychotic medication deemed appropriate by his treating physician(s). Due to that fact that this is a condition of release, if Cain's physicians wish to discontinue use of an injectable antipsychotic medication and prescribe only oral medications, this court must be petitioned to allow such a change in Cain's status; and

(6) If Cain becomes noncompliant with his medications and/or if he begins to exhibit signs of decompensation, that information must be communicated directly to this court as soon as is practicable and must also be communicated to the forensic monitor.

## CONCLUSION

Based on the above analysis, the court hereby grants the change in the conditional release plan to allow Cain to move into independent community living with the following conditions:

(1) Cain shall be permitted to move from the group home at the Brown County Care Center to an apartment in one of the apartment buildings near LifePoint Solutions;

(2) LifePoint Solutions shall provide three times per week Case Management from the Housing and Payee Teams, Individual Therapy Services to aid in the transition to independent living, and Vocational Services to assist Cain in finding and keeping employment;

(3) Cain shall continue his outpatient psychiatric treatment programming at LifePoint Solutions, including medication management and case management. He shall meet with his Case Manager on a weekly basis. This meeting shall be extensive enough that the Case Manager can detect whether there has been any decompensation or any change in the defendant's mental status. Cain shall also continue to attend sessions with a psychiatrist on a monthly basis. He shall continue to be monitored for medication compliance and any symptoms of decompensation by his psychiatrist, his case manager at LifePoint Solutions, and the forensic monitor. Random drug screens shall be taken no less often than biweekly in order to ascertain whether the defendant is taking his medications at the appropriate dosages or is taking any illegal drugs.

(4) Cain shall continue to attend treatment programs in the community as recommended by the staff of LifePoint Solutions such as the Peer Support Services at the HOPE Community Center;

(5) Cain shall continue taking any oral medications deemed appropriate by his treating physician(s), including the daily oral dose of Zyprexa. He also shall be administered the injectable antipsychotic Invega Sustenna, or any other antipsychotic medication deemed appropriate by his treating physician(s). Due to that fact that this is a condition of release, if Cain's physicians wish to discontinue use of an injectable antipsychotic medication and prescribe only oral medications, this court must be petitioned to allow such a change in Cain's status; and,

(6) If Cain becomes noncompliant with his medications and/or if he begins to exhibit signs of decompensation, that information must be communicated directly to this court as soon as is practicable and must also be communicated to the forensic monitor.

**IT IS SO ORDERED.**

DATED: \_\_\_\_\_

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Judge Jerry R. McBride

## CERTIFICATE OF SERVICE

The undersigned certifies that copies of the within Decision/Entry were sent via Facsimile/E-Mail/Regular U.S. Mail this 24th day of May 2013 to all counsel of record; to Joseph David Cain, 312 W. State Street, Georgetown, Ohio 45121; to Ryan Peirson, M.D., Director of Forensic Services, Summit Behavioral Healthcare, 1101 Summit Road, Cincinnati, Ohio 45237; to Kelly Brown, Forensic Monitor, LifePoint Solutions, 43 East Main Street, Amelia, Ohio 45102; to Karen Scherra, Executive Director, Clermont County Mental Health and Recovery Board, 2337 Clermont Center Drive, Batavia, Ohio 45103.

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Administrative Assistant to Judge McBride