

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 11-20331-Cr-SCOLA/BANDSTRA

UNITED STATES OF AMERICA,

vs.

Sealed

SEALED

HAFIZ MUHAMMAD SHER ALI KHAN,

Defendants.

SEALED ORDER FINDING DEFENDANT COMPETENT TO STAND TRIAL

THIS MATTER is before the Court following a competency examination of Defendant Hafiz Khan by medical officials with the Bureau of Prisons. (*See* Forensic Report, ECF No. 527-1.) In his report, Robert G. Sarrazin, M.D. concluded that Khan is competent to stand trial, finding that he does not suffer from a mental illness or a progressive cognitive disorder that would affect his competency in the foreseeable future. (*Id.* 12.)

On October 18, 2012, the Court held a hearing on this issue and heard testimony from Khan's expert witness, Shahab U. Kidwai, MD. Dr. Kidwai examined Khan, as well as some available medical records, and concluded that Khan has dementia of Alzheimer's type of severe degree. Dr. Kidwai's opinion was that Khan was competent enough to understand the proceedings at trial, however, because of his short and long-term memory problems he would not be able to remember details a few days later and would thus not be able to assist his attorney at trial. On cross-examination, the Government established that Dr. Kidwai is not a practicing psychologist, that he has never performed a competency examination before, and that he was not familiar with the legal standards involved in the determination of competency. Further, Dr. Kidwai admitted that he had only spent about an hour with Khan, as compared to the Bureau of Prisons medical officials who spend about a month observing him.

Upon a Defendant's request for a determination of mental competency, the Court shall grant the motion "if there is reasonable cause to believe that the defendant may presently be suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense." 18 U.S.C. § 4241(a) "The standard for competency to stand trial is whether the defendant has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding – and whether he has a rational as well as factual understanding of the

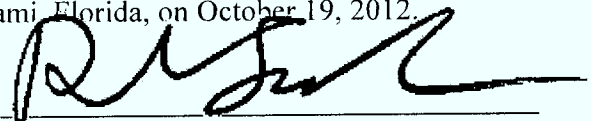
proceedings against him.” See *United States v. Bradley*, 644 F.3d 1213, 1268 (11th Cir. 2011) (citation omitted).

Based on the experts’ reports, both Dr. Sarrazin and Dr. Kidwai agree that Khan is competent to stand trial in the sense that he has a rational as well as factual understanding of the proceedings against him. Dr. Sarrazin’s report provides detailed conclusions on this point. (Forensic Report 10-11, ECF No. 527-1.) Dr. Kidwai’s opinion that Khan is not competent to stand trial is solely based on his conclusion that, because of his memory problems, Khan does not have sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding. Dr. Sarrazin’s report, however, directly and convincingly refutes this conclusion.

Dr. Sarrazin explains that based on objective testing, Khan is exaggerating his memory difficulty. (Forensic Report 10.) Further, Dr. Sarrazin’s report explains that, based on his month-long evaluation, Khan has no difficulty communicating with his attorney, and will be able to properly assist his counsel in his defense. (*Id.* 11-12.) Dr. Sarrazin’s conclusions are bolstered by the fact that a report from thirteen years ago rated Khan 13/28 on a Mini Mental Status Examination, and that he rated, essentially, the same score (13/30) when the same examination was recently administered by Dr. Kidwai. Dr. Kidwai testified that it would be normal to see a three to four point decrease, each year, in this score in a typical individual suffering from dementia. The fact that no decrease was observed in Khan supports the conclusion of Dr. Sarrazin that Khan is exaggerating his memory difficulty. On this point, Dr. Kidwai indicated that he did not test for any signs of exaggeration (*i.e.*, malingering) in Khan, and that in his normal practice he does not even perform these tests himself, but would refer them out to a neuro-psychologist.

Having reviewed the motions and the evidence, including the reports of both Doctors, and the testimony of Dr. Kidwai, and having considered the record and the relevant legal authorities, this Court finds that Defendant Hafiz Khan is competent to stand trial. The Court specifically finds that he has the present ability to consult with his lawyer with a reasonable degree of rational understanding, and has a rational as well as factual understanding of the proceedings against him. Accordingly, it is **ORDERED and ADJUDGED** that the Defendant Hafiz Khan is found competent to stand trial.

DONE and ORDERED in chambers, at Miami, Florida, on October 19, 2012.


ROBERT N. SCOLA, JR.
UNITED STATES DISTRICT JUDGE

Copies to:
Counsel of record