

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

ADRIAN J. BELL,

Defendant.

ORDER

04-CR-165-S

On August 13, 2007, pursuant to 18 U.S.C. § 4241(c) and (d), this court held a hearing to determine defendant Adrian J. Bell's current competency to be sentenced, and to determine retrospectively Bell's competency during the period from his arrest on October 7, 2004 through the May 29, 2005 decision on his post-trial motions. Bell was present with his attorney T. Christopher Kelly. The government was represented by Assistant U.S. Attorney Rita Rumbelow.

Having considered all the submissions from both sides and having heard testimony and arguments, I found that Bell currently is competent and that he was competent earlier in this case. As explained in more detail at the hearing, there is no doubt that Bell suffers from a severe mental illness that requires strong medicine, but as evidenced by Bell's statements and behavior during unguarded moments at the FMC, he is able to understand the proceedings against him and to assist properly in his defense. This also appears to have been true during earlier proceedings in this case.

"Able to" and "willing to" are not the same: Bell has gone to great lengths to sabotage the written tests and interviews by the examiners in order to obtain a determination that he is not competent. As discussed at the hearing, legally incompetent defendants are capable of

malingering, so Bell's campaign of relentless non-cooperation does not, by itself, prove that he is competent. In Bell's case, however, the additional information gleaned from BOP staff listening to and observing Bell demonstrate that Bell sufficiently understands what is happening in this prosecution and is capable of sufficiently assisting his attorney if he were to choose to do so. I predict he will not so choose; Bell likely will continue to exhibit virtual catatonia in the courtroom. Even so, under the totality of circumstances known to and considered by the court, this would not, without some new, different information, be a reason to reconsider the competency question.

In light of the court's ruling, the parties have scheduled Bell's re-sentencing for September 12, 2007 at 1:30 p.m.

Entered this 13th day of August, 2007.

BY THE COURT:
/s/
STEPHEN L. CROCKER
Magistrate Judge