

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROBERT L. GIPSON,

Defendant.

ORDER

08-mj-08-slc

On February 22, 2008, defendant Robert L. Gipson appeared before this court on a charge of possessing crack cocaine with intent to distribute it. His attorney reported that Gipson presented himself as 100% unable to comprehend the nature of these proceedings and 100% unable to communicate with counsel. Perhaps this was to be expected: five years ago Gipson was charged in this court with drug crimes and ultimately was found incompetent and unlikely to regain competency, causing the government to drop the charges against him. *See* Sept. 2, 2004 Order in *United States v. Gipson*, 03-CR-46-C. In the instant case the government already has proffered information leading it to suspect that Gipson successfully feigned incompetency during the first go-round, causing it to question Gipson's current presentation. This is a matter for the experts to sort out.

Pursuant to 18 U.S.C. §§ 4241(b), 4247(b) and 4247(c), it is ORDERED that:

1. Defendant Robert L. Gipson is committed to the custody of the Attorney General or his representative for a period of 30 days (not counting transportation time if transportation is necessary) for a psychiatric or psychological examination conducted by a licensed or certified psychiatrist or psychologist, such examination to be conducted at the suitable facility that is

closest to the court, unless this is impractical. Because Gipson previously was examined at FCI-Waseca, I am recommending that BOP return Gipson to that institution for evaluation in the instant case.

2. The examiner shall prepare a psychiatric or psychological report which shall be filed under seal with this court, with copies provided to defense counsel and the Assistant U.S. Attorney in this case. The report shall include:

- (1) Defendant's history and present symptoms;
- (2) A description of the psychiatric, psychological, and medical tests that were employed and their results;
- (3) The examiner's findings;
- (4) The examiner's opinions as to diagnosis, prognosis, and
A) the examiner's opinion whether defendant is 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.

3. To assist in the examination and report, pretrial services shall obtain from the following persons the following documents, which pretrial services shall send forthwith to the designated institution, along with a copy of the pretrial services report:

- (1) Clerk of Court: all documents, including any sealed documents, filed in this case;
- (2) U.S. Attorney: all Rule 16 discovery and all other documents and information that might assist the examiner in his/her evaluation; and
- (3) Defense counsel: any additional documents that might assist the examiner in his/her evaluation.

4. The thirty day period of commitment may be extended by up to fifteen days if such an extension is requested by the director of the facility and if the director shows good cause that additional time is necessary to observe and evaluate defendant.

5. All currently scheduled dates in this case are stricken. After receiving the examiner's report this court shall hold a hearing pursuant to §4247(d) to determine whether defendant is competent to stand trial in this case. Further scheduling will take place thereafter as necessary.

6. Time from February 22, 2008 until the court's final determination of defendant's competency is excluded from computation under the Speedy Trial Act pursuant to 18 U.S.C. §§ 3161(h)(1)(A) and (H).

Entered this 22nd day of February, 2008.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge