



IN THE DISTRICT COURT IN AND FOR OKLAHOMA COUNTY  
STATE OF OKLAHOMA

THE STATE OF OKLAHOMA,  
Plaintiff,

vs.

BENJAMIN HARRISON PLANK,  
Defendant.

FILED IN DISTRICT COURT  
OKLAHOMA COUNTY

CF-2022-3856

SEP 02 2025

RICK WARREN  
COURT CLERK

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**ORDER DENYING THE STATE'S MOTION TO CONTINUE COMPETENCY  
RESTORATION AT THE OKLAHOMA FORENSIC CENTER**

On the 15<sup>TH</sup> day of August 2025, this matter came before the Court, the undersigned Judge, pursuant to the *State's Motion for Hearing to Determine if Oklahoma Department of Mental Health and Substance Abuse Services Provided the Necessary Court-Ordered Mental Health Treatment* filed May 13, 2025, and *Defendant's Response in Opposition to State's Motion for Hearing* filed May 28, 2025. The Court after hearing the testimony of two (2) witnesses, Dr. Mitchell and Dr. Orth, review of the briefs filed by the State and Defendant, case law and oral arguments, finds, pursuant to *Okla. Stat. tit. 22 §1175.6a (D)* and *§1175.1 (6)*, the Court finds the previous *Order Allowing the Involuntary Administration of Psychotropic Medication* was not complied with resulting in the expiration of the statutory two (2) year reasonable time period for competency restoration. There is no legal justification within these criminal proceedings to continue holding the Defendant at the Oklahoma Forensic Center for competency restoration based on Dr. Mitchell's failure to comply with the *Sell Order*, therefore the State's Motion is **DENIED**. The Court relies on the following facts and conclusions of law in its decision.

**FINDING OF FACTS**

1. On March 23, 2023, Dr. Orth, Psy.D., with the Oklahoma Forensic Center diagnosed the defendant with psychosis specifically delusional disorder and found the defendant incompetent to stand trial. Dr. Orth found that the defendant met statutory criteria for dangerousness and requiring treatment, given that due to his current mental state it is arguable that

without treatment there exists a substantial risk that severe impairment or injury will result to the person. In addition, Dr. Orth stated, "given Mr. Plank's current mental state, in order for any attempt at appropriate and successful competency restoration treatment to be completed for him while at OFC, it will be highly imperative, and frankly necessary, that any court order for commitment for treatment and competency restoration include a statement that allows for treating physicians to treat him as they medically deem necessary, with or without his consent, including, but not limited to, the use of psychotropic medications. Absent such an order from the Court, I would not predict competency restoration to likely be even remotely successful for Mr. Plank within the statutorily allotted time.

2. May 16, 2024, the Court after hearing the testimony of seven (7) witnesses relied on *Sell v. United States*, 539 U.S. 166 (2003) and granted the States *Motion for Court Order Allowing the Involuntary Administration of Psychotropic Medication*.

3. On February 24, 2025, Dr. Orth, Psy.D., with the Oklahoma Forensic Center provides in summary; Mr. Plank was evaluated for adjudicative competence. He appears to appreciate the nature of his current legal situation, consistent with his documented history but continues to evidence a substantial mental illness, "a disorder of thought, that currently significantly interferes with his ability to consult with and rationally assist his attorney in his defense."

4. The following is according to the Oklahoma Forensic Center Progress Note(s) Report for Patient Benjamin Plank regarding the administration of antipsychotic medications:

#### **COURSE OF TREATMENT**

- 04/06/2023 Admitted to OFC, refusing antipsychotic medications
- 05/29/2024 Mr. Plank was given Haldol 5 mg IM (intramuscular injection) due to refusing Risperdal PO (by mouth)
- 05/30/2024 Mr. Plank prescribed Risperdal 1 mg PO BID (by mouth two times per day)
- 06/13/2024 Risperdal was discontinued . . . He was prescribed Zyprexa 10 mg PO QHS (by mouth every night at bedtime)
- 06/26/2024 His insight into his legal situation appeared to be improving as he acknowledged that his beliefs were not able to be proved and would likely not be believed by those involved in his case
- 07/02/2024 Zyprexa was increased to 15 mg PO QHS (by mouth every night at bedtime)
- 07/11/2024 Zyprexa was increased to 20 mg PO QHS (by mouth every night at bedtime)
- 07/20/2024 Mr. Plank was transferred from A1 under the care of Dr. Gill to A2 under the care of Dr. Mitchell due to receiving contraband marijuana while on A1
- 02/11/2025 Dr. Orth opined that Mr. Plank was not likely to be restored to competency within a reasonable period of time remaining in his commitment. After Dr. Orth made his opinion, Mr. Plank began refusing Zyprexa. This medication was not given to him involuntarily, therefore,

- 06/10/2025 he was not receiving antipsychotic medication  
After verifying with ODMHSAS legal that we were permitted to continue providing involuntary medication, Dr. Gill prescribed Abilify 5 mg PO QAM (by mouth every morning)
- 06/11/2025 Abilify was discontinued . . . He was prescribed Navan 5 mg PO BID (by mouth two times per day)
- 06/24/2025 Navane was discontinued . . . Geodon 20 mg PO BID (by mouth two times per day)
- 07/29/2025 Geodon was increased to 40 mg PO BID (by mouth two times per Day)

#### PLAN

- Continue Geodon 40 mg PO BID to be given immediately after breakfast and immediately after dinner. Plan to increase after patient has been at this dose for 14 days if tolerated

5. On the dates of the Defendant's commitment to the Oklahoma Forensic Center between April 6, 2023, through February 29, 2025, the testimony of Dr. Mitchell concerning his treatment of the Defendant was as follows:

- Q: [I]n regard to Mr. Plank, the treatment plan included . . . administration of . . . anti-psychotropic medication, and competency groups; is that fair?  
A: Yes  
Q: And at some point, early in his admission, Mr. Plank was denying taking any medication?  
A: That's correct.  
Q: But he was still attending competency group class?  
A: That was off and on.

See Transcript of Motion Hearing held on July 24, 2025, "(Tr. 22:19-23:3)".

- A: he was given Haldol.  
Q: Did he stay on Haldol?  
A: No, he did not. He went on to take Zyprexa. And was on Zyprexa for a lengthy period of time.  
Q: And what was the reason for the medication change?  
A: Primarily, side effect and his request.  
Q: Do you remember what his request was?  
A: He felt like his thinking had been dulled so he wanted to see if there was something else that he could take.  
Q: What is Haldol? What does the administration of Haldol do to somebody in Mr. Plank's condition?  
A: So Haldol is an anti-psychotic medication. It works within the Limbic system of the brain. There are effects that reduce psychotic symptoms such as hallucinations and delusions as a result of regular administration of the medication. "(Tr. 25:25-26:18)"

6. Between the dates of June 2024 and August 2024 according to the testimony of

Dr. Mitchell there were multiple disruptions of the Defendant's treatment based on the Defendant's actions and the actions of the physicians resulting in the reasonable period of time, specifically two (2) years allowed for confinement to expire. Those actions are as follows:

- Q: You said, at one point, Dr. Gill was his attending, correct?  
A: That's correct.  
Q: Why was she taken off of being his attending?  
A: She transferred him to my care due to an incident on the unit that occurred when he used a substance, and so she felt because of the dynamics of the unit, it would be better if he was placed in another area.  
Q: What was the substance  
A: Marijuana. "(Tr. 39:13-24)"
- Q: Dr. Gill transferred Mr. Plank to your unit because of the possession of marijuana, correct?  
A: Because it showed up in his urine drug screen. "(Tr. 43:4-6)"
- Q: At any point in time, did you ever ask that he refrain from the use of marijuana?  
Y: Yes.  
Q: Why did you do that?  
A: I explained that that could potentially interfere with any medication that he was using and it would have direct effect on his mental state. "(Tr. 45:16-22)"
- Q: In response to the question about the behavioral and safety concerns, did you write that? Does that refresh your memory?  
A: Yes. "Had no conflicts or fights with the other men. He's cooperative with his care."  
Q: Okay. And that date was 8-22 of '24, correct?  
A: Correct.

\* \* \* \*

- Q: Okay. And the activities that you're looking at right now, with what was offered by the State, and happened in August of '24, on another consumer, did that have any effect on the way that you treated Mr. Plank?  
A: Yes.  
Q: How?  
A: We ended up transferring Mr. Plank to another unit.

\* \* \* \*

- Q: What were the facts, as you know them, about the conduct of Mr. Plank on 8-23 of '24?  
A: After having discussed it with Mr. Plank himself and hearing the report from those who intervened, there was a group of four men

who isolated another patient and beat him up. Mr. Plank's role was as a lookout outside of the room where this occurred. "(Tr. 56:7-60:17)"

- Q: When he was transferred from A unit to C unit then under your – did you have any more contact with Mr. Plank?  
A: No. "(Tr. 63:22-24)"

7. Dr. Mitchell's testified before he assumed responsibly of Defendant's treatment the plan was to obtain an order for involuntary administration of medication. He further provided once the Defendant has been medication compliant, he began to show signs of improvement.

- Q: So you received a verbal report from Dr. Gill?  
A: Yes.  
Q: What was that report?  
A: Pretty well summed up in her last note, actually.  
Q: Which note?  
A: History of how he got here, mental status examination, a formulation of the plan and what was being done. I think for many sessions prior to when I assumed his care, there was an effort to have the order for involuntary administration of medication. She made the note repeatedly that without medication, she didn't feel that he would ever reach adjudicative competency. "(Tr. 89:3-14)"
- Q: Okay. At any point in time, during - - after July 22<sup>nd</sup> of 2024, did the statements that were made by Mr. Plank to you, that believed - - that made you write down that his thoughts about the murder-pedophile conspiracy are not based on fact, but rather a think thread of speculation, did he ever present that - - those statements to you again?  
A: No.  
Q: Did you ever conduct the same type of evaluation that you did where he expressed those types of thoughts to you?  
A: When I - - yes. When I met with him, I reviewed the case again.  
Q: What was different between the two meetings?  
A: After that fact on July 22<sup>nd</sup>, 2024, when I met him, there was a revert - - he reverted back to a more consistent pattern with his other beliefs, and that he was central in terms of having a key role to demonstrate that there was this pedophile ring. So it was returning to the delusion. "(Tr. 89-22-90:14)"

8. The record is unclear as to the exact dates of Dr. Mitchell's competency restoration treatment. Dr. Mitchell's treated the Defendant on or between June 2024 until January 2025 and stated he was medication compliant for five (5) months until the doctor deemed it medically necessary for competency restoration treatment to increase the dosage of anti-psychotropic

medication and the Defendant refused to accept the increase.

- Q: Okay. At any point in time, while under your care, did Mr. Plank refuse to take medications?
- A: When Mr. Plank was transferred back to my care on A Pod, from C Pod, I wanted to increase his dosage of medication, which he did not agree to.
- Q: I'm sorry, that he did not agree to?
- A: That's correct.
- Q: Must he be in agreement to a treatment plan provided to him by his attending physician?
- A: No, he - - he doesn't necessarily have to agree to the treatment. We could have forced the issue.
- Q: And did you choose to use that *Sell Order* when he refused to take the medication as being prescribed by him?
- A: Not at that moment, no.
- Q: But you don't necessarily have the luxury of making that choice because it was a Court order, correct?
- A: I don't have that luxury. I was looking for an alternative.

\* \* \* \*

A: He was taking it, not at the dosage I recommended.

\* \* \* \*

A: He was having side effect that I felt would interfere with his competence. So I talked to him about my desire to increase his medication back to 20. He had convinced his provider, Karen Taylor, to drop it back down to 15 milligrams.

\* \* \* \*

A: He was not willing to accept the recommendation for 20 milligrams of Zyprexa specifically, that's correct. "(Tr. 64:5-68:14)"

- Q: And you thought he would do better on that 20 milligrams?
- A: Yes.
- Q: Why?
- A: I'd seen some good results from it. I thought he was - - that's a full - - considered a full dose of Zyprexa.
- Q: You had seen him do better on it?
- A: In my opinion, yes.
- Q: Okay. So I just want to make sure that - - so, as his treating physician, you had seen him do better on a more - - on a larger dose and you thought that would be better in restoring competency, fair?
- A: Yes. "(Tr. 104:1-12)"

- Q: Why did you want to increase the dosage?
- A: I felt on the - - over the long run, it would be better that he had a decent trial of the dosage of medication, at that dose, for his delusional disorder. "(Tr. 69:1-4)"

9. The State filed *State's Motion for Hearing to Determine if Oklahoma Department of Mental Health and Substance Abuse Services Provided the Necessary Court-Ordered Mental Health Treatment* citing *Okla. Stat. tit. 22 §1175.6a (D)* and *§1175.1 (7)*, arguing the physicians employed by ODMHSAS to treat the Defendant for competency restoration failed to comply with this Court's order allowing the involuntary administration of psychotropic medications therefore tolling the reasonable period of time allotted by statute for competency restoration.


10. The Defense responds citing *Okla. Stat. tit. 22 §1175.1 (7)*, arguing the reasonable period of time has passed and the Defendant should be civilly committed.

### CONCLUSIONS OF LAW

**IT IS THEREFORE, THE ORDER OF THE COURT THAT** the Oklahoma Department of Mental Health and Substance Abuse Services did not provided the necessary court-ordered mental health treatment pursuant to the *Sell Order* dated May 16, 2024. However, strict construction of the law in effect on the date of this *Order* provides the Court with no exceptions to consider for the tolling or extending of the two (2) years allowed for competency restoration. The current statute reads: "As used in Sections 1175.1 through 1176 of this title: 7. "Reasonable period of time" means a period not to exceed the lesser of:  
a. the maximum sentence specified for the most serious offense with which the defendant is charged, or b. a maximum period of two (2) years.

Furthermore, neither the State nor the Defendant question the Defendant's competency status pursuant to *Grant v. State*, 2009 OK CR 11 or *Okla. Stat. tit. 22 §1175.4* which leaves the Court with no other option other than civil commitment. *Okla. Stat. tit. 22 §1175.6a (D)*, states as follows, "If the person is found to be incompetent because the person is a person requiring treatment as defined by Section 1-103 of Title 43A of the Oklahoma Statutes, but not capable of achieving competence with treatment within a reasonable period of time as defined by Section 1175.1 of this title, the court shall commence civil commitment proceedings (emphasis added) pursuant to Title 43A and shall dismiss without prejudice the criminal proceeding. If the person is subsequently committed to the Department of Mental Health and Substance Abuse Services pursuant to Title 43A, the statute of limitations for the criminal charges which were dismissed by the court shall be tolled until the person is discharged from the Department of Mental Health and Substance Abuse Services pursuant to Section 7-101 of Title 43A of the Oklahoma Statutes."

Dated this 2<sup>nd</sup> day of September 2025.

  
Kathryn R. Savage  
Oklahoma County District Judge

**CERTIFICATE OF MAILING**

This is to certify that a true and correct copy of the above and foregoing *Order Denying the State's Motion to Continue Competency Restoration at the Oklahoma Forensic Center* was delivered on the day it was filed with the Clerk of the District Court, to:

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211 North Robinson, Suite 700  
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Deputy Court Clerk