



LeGrande to challenge his competency to be executed. Attorney Jay H. Ferguson was appointed by IDS for this purpose.

4. On October 23, 2006, attorneys Jay H. Ferguson and James H. Monroe were appointed by the Fourth Circuit United States Court of Appeals to substitute as counsel for Mr. LeGrande for all subsequent stages of the proceedings replacing then-counsel Walter L. Jones and William L. Osteen, Jr..

5. On November 9, 2006, the State, in anticipation of defendant's motion to stay, sought and received an order allowing funds to retain a psychiatrist employed by the Durham VA Hospital, Jonathan J. Weiner, to perform a forensic evaluation of Mr. LeGrande.

6. On November 16, 2006, Mr. LeGrande, through counsel, served upon the State a Motion to Stay Proceedings due to Mr. LeGrande's alleged incapacity to proceed. The motion was supported by an affidavit of psychiatrist George P. Corvin, MD.

7. On or about November 15, 2006, at the request of counsel for defendant, Dr. Nicole F. Wolfe was ordered by the Court to evaluate Mr. LeGrande. Dr. Wolfe had previously met and attempted to evaluate Mr. LeGrande in 1998 and 1999 during post-conviction proceedings.

8. Dr. Wolfe is a forensic psychiatrist employed by the State of North Carolina in the forensic unit at Dorothea Dix Hospital. She performs approximately 175 to 200 forensic examinations per year and approximately 90% of these forensic examinations are to determine a criminal defendant's competency.

9. In open court on November 27, 2006 and by order entered on December 13, 2006, the undersigned stayed Mr. LeGrande's execution to allow for further evaluation. The Court also ordered Drs. Corvin, Wolfe and Weiner to each prepare a written report to the Court after said evaluation.

10. Mr. LeGrande has steadfastly refused to cooperate with any mental health expert during this evaluation process.

11. After submission of reports by Drs. Corvin, Wolfe and Weiner, this matter came on for hearing on May 4, 2007 before the undersigned. Prior to said hearing, the undersigned stated that he may, *sua sponte*, ask questions of the defendant and requested the parties to submit written questions that either party wished for the court to ask of Mr. LeGrande. At said hearing, after presentation of a portion of the evidence presented by counsel for Mr. LeGrande, the Court engaged Mr. LeGrande in dialogue for a period of time in an effort to glean his awareness and appreciation of the State's efforts and ability to execute him. This dialogue occurred in open court in the presence of all counsel and Drs. Corvin, Wolfe and Weiner.

12. Mr. LeGrande has steadfastly refused to cooperate with any attorneys since 1995. He has a very high level of mistrust for attorneys which has been persistent since the withdrawal of Walter Johnson as counsel of record prior to trial through today. During the dialogue with the Court on May 4, 2007, Mr. LeGrande related his belief that, during a pretrial review of discovery, his standby trial counsel, Harry Crow, attempted to set him up to be assaulted by a jailer with an apple smasher.

13. Walter L. Jones and William L. Osteen, Jr. were appointed to represent Mr. LeGrande in Federal District Court in 2000. Messrs. Jones and Osteen attempted to speak with Mr. LeGrande about issues pertaining to the case; however, Mr. LeGrande refused to cooperate with counsel, was angry the Court appointed counsel on his behalf, and provided no rational or reasonable assistance to counsel in his defense.

14. Steve Hale, a licensed private investigator, was employed to perform a factual investigation in this case. As part of his investigation, he attempted to visit and speak with Mr. LeGrande at Central Prison in November, 2006. Mr. LeGrande refused to meet with Mr. Hale.

15. James E. Coleman, Jr., a professor at Duke University School of Law and attorney licensed in New York and District of Columbia, was and is assisting Jay H. Ferguson and James H. Monroe with clemency efforts on behalf of Mr. LeGrande. On or about October 20, 2006, Professor Coleman visited Mr. LeGrande at Central Prison where he met Mr. LeGrande for the first time. After speaking with Mr. LeGrande for a few minutes, Mr. LeGrande lost all control, began yelling and banging on the cell door, and angrily accused Professor Coleman of working for and assisting the State of North Carolina. Since that time, Mr. LeGrande has refused to assist Professor Coleman in any way.

16. During the conversation between Professor Coleman and Mr. LeGrande, Mr. LeGrande maintained that he would not be executed because the Governor was going to pardon him, he was going to receive three billion dollars from the State and he would be released from prison. Therefore, Mr. LeGrande saw no need for any clemency efforts.

17. Mr. LeGrande has never cooperated with current counsel, Jay H. Ferguson or James H. Monroe, does not acknowledge them as his counsel and distances himself from counsel at the defense table during court hearings.

18. During the Court's dialogue with Mr. LeGrande, it appeared that he was factually aware that his execution was set for December 1, 2006 and that he was sentenced to death for the murder of Ellen Munford. However, he was evasive with the court when asked specific questions about whether he believed he was going to be pardoned or whether the State was truly going to execute him. As expressed by Dr. Wolfe and so found as a fact by this Court, Mr.

LeGrande's verbalization of responses was not really a reflection of what he was truly thinking because individuals with psychosis frequently attempt to minimize their symptoms. Dr. Wolfe further stated, and the Court so finds, that Mr. LeGrande attempted to minimize his symptoms because he sees being found mentally ill as a barrier to being pardoned.

19. It is undisputed among the three testifying psychiatrists that Mr. LeGrande is seriously mentally ill and that he suffers from an Axis I mental illness as categorized by the DSM-IV-TR and the Court finds that Mr. LeGrande is mentally ill and has an Axis I mental illness.

20. It is common for individuals with psychotic thinking, especially those suffering from delusions, to refuse psychiatric evaluation and intervention.

21. It is undisputed among the three testifying psychiatrists that during the May 4, 2007 dialogue between Mr. LeGrande and the undersigned, Mr. LeGrande exhibited thought disorder, psychosis and clinical paranoia and the Court finds that Mr. LeGrande suffers from thought disorder, psychosis and clinical paranoia.

22. It is undisputed among the three testifying psychiatrists that psychosis is a serious mental illness whereby a person shows symptoms of being out of touch with reality either by virtue of having delusional thoughts, illogical thought processes and/or auditory or visual hallucinations. Delusions are fixed-false beliefs that persist despite evidence presented to the person that contradicts those beliefs.

23. As expressed by Dr. Wolfe and so found as a fact by this Court, during the dialogue between the undersigned and Mr. LeGrande on May 4, 2007, Mr. LeGrande's answers at times were completely disconnected and illogical. Specifically, Mr. LeGrande engaged in the following exchanges with the undersigned that evidenced psychotic thought processes:

- a. When asked if he had ever foamed at the mouth, Mr. LeGrande did not answer the question directly and engaged the undersigned in a conversation about his past history, including his military career and his attempt to try out for the Philadelphia Eagles.
- b. When asked if his sister, Dara Thomas, was working against him, Mr. LeGrande responded that he did not have his family members on his jail visitation list because he could call them from Hawaii or some other U.S. Territory if he was pardoned.
- c. Mr. LeGrande was asked about a letter he had written pertaining to a cup that was passed between Governor Mike Easley and former Governor Jim Hunt at Governor Easley's inauguration. Mr. LeGrande responded that he had not seen this event on television but that it was symbolic of an incident involving his former trial standby counsel, Harry Crow. Mr. LeGrande proceeded to tell a rambling story regarding a jail visit with Mr. Crow prior to trial where a jailer interrupted their visit to ask Mr. Crow if he wanted a cup of tea because it was tea-time at the jail. Mr. LeGrande seemed to indicate that because of this incident in which Mr. Crow and the jailer were communicating by ESP, that they were somehow working against him to steal evidence in his case.
- d. Mr. LeGrande was asked about a letter he had written referencing anvils falling from the sky in Bertie County. Mr. LeGrande responded by telling a story about a prior court hearing in which Assistant Attorney General Gail Weiss spoke with a man during a court recess about how the court lacked jurisdiction. Mr. LeGrande stated that it was an act of God that he heard this statement and that after looking through his court filings at Central Prison he realized he had raised the issue of jurisdiction at trial.

24. Mr. LeGrande has delusional beliefs that he will not be executed, will be pardoned and will receive a large financial settlement from the State as shown by evidence including, but not limited to, the following:

- a. In a letter to his cousin on or about August 20, 2006, Mr. LeGrande stated his pardon application had been accepted and that his cousin needed to get the family together to receive their portion of his monetary settlement with the State.
- b. On or about August 22, 2006, Mr. LeGrande wrote to his sister he was awaiting the signing of an unconditional executive pardon of innocence from the Governor but that the Governor was stalling the actual signing of the pardon out of hatred and spite.

- c. On or about September 25, 2006, Mr. LeGrande sent a letter to his brother and sister-in-law that he was waiting on the Governor's office to sign his pardon and notified them that they should know the exact whereabouts of all of their children for the purpose of trust fund distributions that would be disbursed upon his release from prison.
- d. In a letter to his sister on or about September 28, 2006, he noted his victory in receiving a pardon and financial settlement and attributed this to a supernatural event that was God's triumphant victory.
- e. On November 15, 2006, Mr. LeGrande wrote to his sister, Dara Thomas, that he anticipated being released prior to Thanksgiving on or about November 21, 2006, regardless of a December 1 scheduled execution scare tactic.
- f. Ms. Thomas met with Mr. LeGrande at Central Prison on January 4, 2007 and Ms. Thomas confronted Mr. LeGrande about why he did not get out in November as he had previously stated. Mr. LeGrande was insistent that he was going to be pardoned on February 1, 2007.
- g. He has written numerous family members, courts, the Governor's office and others that he is going to receive billions of dollars from the State upon his release from prison.
- h. On or about March 23, 2007, Mr. LeGrande told his caseworker at Central Prison that he was waiting on his pardon from the Governor.
- i. On or about May 1, 2007, Mr. LeGrande told his nurse at Central Prison that he would take his TB test when he received his pardon from the Governor.
- j. Mr. LeGrande stated in a very factual manner to Professor Coleman that there was no need for a clemency campaign because he was going to be pardoned, released from prison and paid a large sum of money.

25. Mr. LeGrande also exhibits other delusional beliefs consistent with a psychotic disorder as evidenced by his belief that he has been or is engaged in a romantic relationship with hip-hop artist Eve Jeffers.

26. Due to the unyielding delusional belief that he is going to be pardoned, Mr. LeGrande does not believe that he will actually be executed. While he has a factual knowledge that the State can set an execution date for the murder of Ellen Munford, Mr. LeGrande lacks a

rational understanding and awareness of this because he believes the execution will not occur due to his impending pardon, release and financial settlement.

27. Mr. LeGrande has a delusional belief that his past and present attorneys are not working on his behalf but rather are working for the State. This delusional belief has caused and currently causes Mr. LeGrande to believe he has no choice but to represent himself and to refuse to cooperate with counsel, as shown by evidence including, but not limited to, the following:

- a. Mr. LeGrande's statement at the May 4, 2007 hearing that his present attorneys were not trying to save his life.
- b. Mr. LeGrande's statement at the May 4, 2007 hearing that Professor (and attorney) James Coleman was not trying to help him, despite Mr. Coleman's testimony that he tried to help Mr. LeGrande pursue his claim of innocence.
- c. Mr. LeGrande's statement at the May 4, 2007 hearing that his former standby counsel Harry Crow conspired with jail personnel to steal favorable evidence in his case as well as to have him assaulted by a jailer with an apple smasher.
- d. Mr. LeGrande's statement at the May 4, 2007 hearing that his former appellate attorney J. Clarke Fischer intentionally wore a red tie when he visited Mr. LeGrande in prison to mock him, because red was the color of death-row inmates' prison uniforms.
- e. Professor Coleman's testimony at the May 4, 2007 hearing that Mr. LeGrande accused him of working for the State of North Carolina during an October 6, 2006 meeting with Mr. LeGrande during which Professor Coleman was attempting to assist Mr. LeGrande in preparing a clemency petition as well as discuss Mr. LeGrande's claim of innocence.
- f. Mr. LeGrande's (undated) letter to his sister, Florence LeGrande, stating that his court appointed attorneys were trying to kill him.

28. Mr. LeGrande's psychotic thought process has impaired and continues to impair his ability to effectively communicate with counsel regarding his case.

29. Mr. LeGrande's delusional and psychotic thought process is due to a major mental illness.

30. Due to his delusional and psychotic thought process, Mr. LeGrande does not rationally understand that he can actually be executed and does not comprehend his own situation in reference to the proceedings and he does not understand the nature and object of the proceedings against him.

31. The gross delusions stemming from Mr. LeGrande's severe mental disorder puts an awareness of a link between his crime and its punishment in a context so far removed from reality that the punishment can serve no proper purpose.

32. Due to his delusional and psychotic thought process, Mr. LeGrande cannot assist counsel in a rational or reasonable manner.

33. In his Motion to Stay, Mr. LeGrande requested this Court to require the State to affirmatively show that Mr. LeGrande is competent before proceeding any further.

34. Counsel for the State and the defendant stipulated in open court that this order could be entered out of county and out of session.

BASED on the foregoing FINDINGS OF FACT, the Court makes the following

CONCLUSIONS OF LAW:

1. The court has jurisdiction over the defendant and the issues presented in this Order.
2. Mr. LeGrande's request to require the State to affirmatively prove that he is competent before proceeding in this cause is contrary to the provisions of Article 56 of Chapter 15 of the North Carolina General Statutes and *Ford v. Wainwright, supra*.
3. The appropriate legal standard for evaluating Mr. LeGrande's claim that he is not competent is set forth in N.C. Gen. Stat. § 15A-1001 in accordance with the Supreme Court's order in *State v. Wendell Flowers*, No. 553A94 (April 23, 1998).

4. The burden of persuasion with respect to the defendant's Motion to Stay Proceedings is upon the defendant, the Court has required the defendant to bear this burden and the defendant has proven his incompetence by a preponderance of the evidence.

5. Due to a severe mental illness, Mr. LeGrande is not competent to be executed pursuant to N.C. Gen. Stat. § 15A-1001.

6. Independent of the legal standard enunciated in N.C. Gen. Stat. § 15A-1001, Mr. LeGrande is not competent to be executed pursuant to the Eighth Amendment to the United States Constitution, *Ford v. Wainwright*, 477 U.S. 399 (1986) and *Panetti, supra* due to a severe mental illness.

BASED on the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, it is hereby ORDERED, ADJUDGED and DECREED as follows:

1. The defendant's motion to stay the execution is ALLOWED.
2. The defendant's request to require the State to affirmatively prove his competency before proceeding is DENIED.
3. Jay H. Ferguson is permitted to continue representing Mr. LeGrande for purposes related to his competency to be executed as well as the other post-conviction claims filed by Mr. Ferguson on behalf of Mr. LeGrande.

This the 27th day of June, 2008.



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Honorable W. Robert Bell, Superior Court Judge Presiding