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SN: 177
PC: 12

FILED
AUG 06 2021
Timothy W. Fitzgerald
SPOKANE COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

STATE OF WASHINGTON,

Plaintiff,

vs.

CALEB J. SHARPE,

Defendant.

No. 19-1-10653-32

MOTION TO ENTER
CHANGE OF PLEA
(MT)

I. MOTION TO ENTER PLEA OF NOT GUILTY BY REASON OF INSANITY

COMES NOW defendant and moves this court to enter a Change of Plea as indicated in the Notice of Plea of Not Guilty By Reason of Insanity (NGRI) filed on August 3, 2021. (See att. A, NGRI Plea). This motion is supported by the record, the certificates of Ms. Foley and Dr. Beaver, and the following memorandum of authorities.

MOTION TO ENTER A CHANGE OF PLEA
(MT)

PAGE 1 of 4

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(3/21)

THOMAS J. KRZYMINSKI
SPOKANE COUNTY PUBLIC DEFENDER
1033 W. GARDNER
SPOKANE, WASHINGTON 99201-0280
(509) 477-4246 FAX (509) 477-2567

II. THE DEFENSE PROPERLY ASSERTS NGRI

"Written notice of an intent to rely on the insanity defense...must be filed at the time of arraignment or within 10 days thereafter, or at such later time as the court may for good cause permit." CrR 4.2(c); *see also* RCW 10.77.030(1).

When it is desired to interpose the defense of insanity or mental irresponsibility on behalf of one charged with a crime, the defendant, his counsel or other person authorized by law to appear and act for him, shall at the time of pleading to the information or indictment file a plea in writing in addition to the plea or pleas required or permitted by other laws than this, setting up (1) his insanity or mental irresponsibility at the time of the commission of the crime charged, and (2) whether the insanity or mental irresponsibility still exists, or (3) whether the defendant has become sane or mentally responsible between the time of the commission of the crime and the time of the trial. *The plea may be interposed at any time thereafter, before the submission of the cause to the jury, if it be proven that the insanity or mental irresponsibility of the defendant at the time of the crime was not before known to any person authorized to interpose a plea.*

State v. Fitzgibbon, 32 Wash.2d 881, 884-85, 203 P.2d 1016, 1017 (1949) (emphasis added).

The statute RCW 10.77.030(1) and court rule CrR 4.2(c) both codify this same principle. As was the case in *Fitzgibbon*, here, the Defense did not know of the insanity or mental irresponsibility of the defendant at the time of the crime and therefore was unable to enter a plea of not guilty by reason of insanity within the ordinarily proscribed time frames.

It would not have been proper for him to then interpose the special plea, anticipating or hoping that the result of the investigation would later justify such action.

State v. Fitzgibbon, 32 Wash.2d 881, 886, 203 P.2d 1016, 1018 (1949). Likewise, it would have been improper for Defense Counsel to assert this special plea without first knowing that such action was justified upon receiving Dr. Beaver's opinion. Defense Counsel first

became aware of this possibility upon conversation with Dr. Beaver regarding his progress on his report on July 29, 2021. (See att. B, Certificate of Brooke Foley). Dr. Beaver's report received on July 30, 2021 indicated his opinion, that indeed, Caleb Sharpe was legally insane at the time of the offense and that he fits elements of diminished capacity. (See att. C, Certificate of Dr. Beaver). Also on July 30, 2021, Defense Counsel sent the report to the State. Subsequently, on August 3, 2021, Defense Counsel filed a Notice of Intent to Plead Not Guilty, Not Guilty by Reason of Insanity and Diminished Capacity.

This is not a case where the defense has waited until the day of, or a week prior to, or even a couple of months before trial to interpose a plea of not guilty by reason of insanity – even though certain situations in those timeframes would still make the plea proper. This was plead nearly half a year prior to the trial date. Despite the State's constant assertion that the defense is playing a shell game, and conducting trial by ambush, the defense did not have this information until the end of July 2021. This change of plea is significant for both parties, but it does nothing to change the State's process moving forward. The State must still get an expert to form an opinion regarding Mr. Sharpe's mental status at the time of offense regardless of Dr. Beaver's opinion specific to insanity.

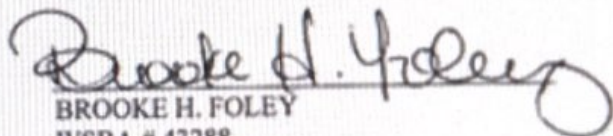
Further, a plea change to not guilty by reason of insanity requires extensive consultation with the defendant. After all, the consequences of such a plea are significant in both the burden that the defendant must carry, and the potential outcome which could be life at a mental institution. See *State v. Jones*, 99 Wash.2d 735, 747, 664 P.2d 1216, 1223 (1983) (finding error after the court entered a NGRI plea sua sponte, after defendant objected and without any inquiry into whether forgoing the plea was intelligent and voluntary.). Further, if after a plea, the

defendant were to move for acquittal by reason of insanity, and the court accepts the motion, then he waives his right to have a jury decide whether he committed the offense, waives his right to a jury on the issue of whether he is likely to commit felonious acts, and may subject himself to commitment for the maximum of the crime – in this case, life. See *State v. Brasel*, 28 Wn. App. 303, 312, 623 P.2d 696, 701 (1981). Thus, to say that defense counsel delayed their notice is to say that defense counsel should have pled insanity prior to knowing whether facts supported the defense and prior to consulting with the defendant about the consequences. The defense provided notice of the report when received and provided notice of intent to plead not guilty by reason of insanity shortly thereafter. As defense counsel has often cited, “[u]nder *Strickland*, counsel’s investigation must determine trial strategy, not the other way around.” *Weeden v. Johnson*, 854 F.3d 1063, 1070 (9th Cir. 2017). Good cause exists to permit the change of plea. As an offer of proof, the defense believes that 10.77.060(2) allows the defense expert to file their report, and Dr. Beaver has indicated in his letter he would support such a filing (See att. D, August 3, 2021 Letter to the Court from Doctor Beaver).

III. CONCLUSION

Defense Counsel’s Motion to change the plea should be granted as Defense had no knowledge of Defendant’s Insanity on the date of the offense until receipt of Dr. Beaver’s final report on July 30, 2021.

DATED this 6th day of August, 2021.



BROOKE H. FOLEY
WSBA # 43288
Attorney at Law

ATTACHMENT A

RECEIVED

AUG 03 2021

PROSECUTING ATTORNEY
SPOKANE COUNTY, WA

RECEIVED
AUG 03 2021
SUPERIOR COURT
SPOKANE COUNTY, WA

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

STATE OF WASHINGTON,

Plaintiff,

vs.

CALEB J. SHARPE,
(10/10/2001)

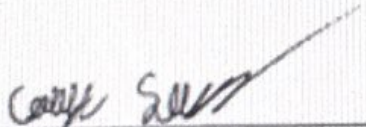
Defendant.

No. 19-1-10653-32

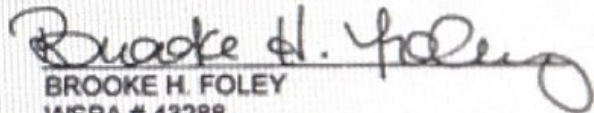
NOTICE OF PLEA OF NOT GUILTY BY
REASON OF INSANITY

Comes now the defendant, CALEB J. SHARPE, by and through his attorney, BROOKE H. FOLEY to enter a plea of not guilty and not guilty by reason of insanity as to all charged counts in addition to Mr. Sharpe's previous notice of the defense of diminished capacity.

DATED at Spokane, Washington this 3rd day of August, 2021.



CALEB J. SHARPE
Defendant



BROOKE H. FOLEY
WSBA # 43288
Attorney at Law

ATTACHMENT B

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

STATE OF WASHINGTON,

Plaintiff,

vs.

CALEB SHARPE

Defendant.

No. 19-1-10653-32

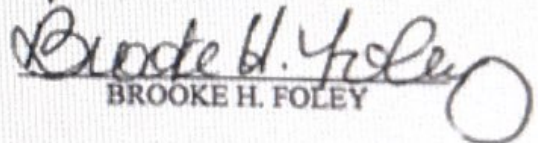
CERTIFICATE OF
BROOKE H. FOLEY

I, BROOKE H. FOLEY, do state as follows:

1. Dr. Beaver first indicated that he thought the client's mental status on the date of offense met the criteria for a plea of NGRI, tentatively, on July 29, 2021 and was confirmed in his written report on July 30, 2021.
2. Prior to this date, Dr. Beaver's preliminary review of past evaluations and testing conducted for the decline hearing indicated diminished capacity.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 6th day of August 2021 in Spokane, WA.


BROOKE H. FOLEY

ATTACHMENT C

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF SPOKANE

STATE OF WASHINGTON,

Plaintiff,

vs.

CALEB SHARPE

Defendant.

No. 19-1-10653-32

DECLARATION OF
DR. CRAIG BEAVER

I, CRAIG BEAVER, do state as follows:

1. Attached is the August 3, 2021 letter I wrote addressed to Judge Price regarding the report dated July 30, 2021. The substance of this letter is true and correct.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 5 day of August, 2021 in Spokane, WA.


DR. CRAIG BEAVER

ATTACHMENT D

Craig W. Beaver, Ph.D., ABPP - CN

Licensed Psychologist

913 W. River Street, Suite 440 • Boise, Idaho 83702 • (208) 336-2972 • Fax (208) 336-4408
Mailing Address: P.O. Box 9697 • Boise, Idaho 83707

August 3, 2021

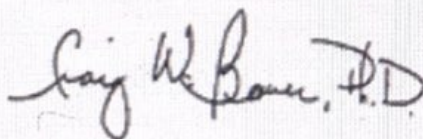
Honorable Michel Price
Superior Court
Spokane County, Washington

Re: **STATE OF WASHINGTON V. CALEB SHARPE**
Case No.: 19-2-10653-32

I recently submitted to the attorneys representing Caleb Sharpe, my Forensic Examination Report dated 07/30/2021. I concluded following my examination that Caleb Sharpe met elements of Diminished Capacity (WPIC 18.20) but met all criteria for Insanity at Time of Offense (WPIC 20.01).

Earlier, I had indicated to Caleb Sharpe's attorneys concern regarding his state of mind at the time of the offense on 09/13/2017. My initial impression was he met criteria under the Diminished Capacity Statute. However after more detailed examination of Caleb Sharpe, and review of records and several Washington court cases, I determined that Caleb Sharpe met all the criteria for Insanity at Time of Offense (WPCI 18.20).

Sincerely,



Craig W. Beaver, Ph.D., ABPP
Diplomate in Clinical Neuropsychology
CWB/pja

Diplomate in Clinical Neuropsychology, American Board of Professional Psychology