



Psychiatric Security Review Board

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DOUGLAS A. DUCEY, GOVERNOR
JAMES P. CLARK, M.D., CHAIRPERSON
www.azdhs.gov/psrb

ARIZONA STATE PSYCHIATRIC SECURITY REVIEW BOARD OPEN SESSION MINUTES April 27, 2018

Members:

James P. Clark, M.D., Chairperson
Chandrika Shankar, M.D., Vice-Chairperson
Susan Stevens, Esq.
Paul O'Connell
Michael J. Klemens, Ph.D. ☞

☞ Absent

Assistant Attorney General:

Thomas Raine, Esq., for the Psychiatric Security Review Board

Staff:

Jaime L. Shapiro, Executive Director

Guests Present and/or Participating:

Adelene Wendy Sampson, COPE
Community Services
Alejandro B., Maricopa County Public
Defender's Office
Alissa Bodie, ADHS
Allyson Friestleben, ASH
Ana Karaffa
Anna Branson, Esq., Arizona Center for
Disability Law
Anna Clermont, ASH
Ashley Blum, Esq., Maricopa County
Deputy Public Defender

Bradley Herman, ASH
Brian Kociszewski, AHCCCS
Brittany Bauman, ASH
Caitlin Mitchum
Casi Harris, Esq., Yavapai Deputy County
Attorney ☞
Cole Arigoni, Mercy Maricopa Integrated
Care
D. Jimenez, ASH
David Joslyn, ASH
David Karaffa
Deborah Hall, La Frontera-EMPACT

Debra Garland
Diane Wagner, ASH
Donald DeWalt
Gabriela Oshita
Garrett Whiting, Esq., Apache Deputy
County Attorney
Gary Grove
Griselda Tapete
Harry Aaron, Maricopa County Public
Defender's Office
Jandely Eich, ASH
Jason Ceola
Jeff C., Maricopa County Public Defender's
Office
Jessica Lamar, ASH
Jim Mitchum
Johanna Lippert, N.P., ASH
Joseph Stewart, Esq., Defense Counsel
Joshua N. Mozell, Esq., Defense Counsel
Julie Jackson, ASH
Kennedy C. Klagge, Esq., Yavapai County
Public Defender ☎
Kristen Knutson, ASH

Leanne Bailey, Maricopa County Public
Defender's Office
Lindsey Arendt, ASH
Logan Massma
Lynn Russell
Manuel Gray, La Frontera-EMPACT
Nick Oshita
Nicole Floyd, ASH
Olaseyi Garland
Rick Russell
Robert Casey
Ross Kader, Maricopa County Public
Defender's Office
Susan Leong
Tahum Garland
Tammy Wray, Esq., Maricopa County
Deputy Public Defender
Telly Rivenburgh, Cenpatico
Toby Morales, ADHS
Tony Noritsky, Maricopa County Public
Defender's Office
Vivian Mitchum Ferrand
Wanda DeWalt

☎ Participated by Telephone

Call To Order:

James P. Clark called the meeting to order at 1:07 p.m. and read the Executive Session Confidentiality Statement:

“Minutes of and discussions made in executive session are required by law to be kept confidential and shall not be communicated to any person outside this meeting room, except to members of the Board, a person who is the subject of the discussion pursuant to Arizona Revised Statutes (A.R.S.) §38-431.03(A)(1), the auditor general in connection with an audit authorized by law and the attorney general.”

Dr. Clark swore in individuals who anticipated testifying.

Statutory Hearings:

Scott Joe Peterson – PSRB No. 16-03

Scott Peterson was present. Due to telephone technical difficulties, this hearing was deferred to a later time in the meeting.

Gary Reagan Sherrill – PSRB No. 16-04

Gary Sherrill was present with his attorney, Tammy Wray. The statutory hearing was held from 1:13 p.m. to 1:31 p.m. pursuant to A.R.S. § 13-3994(H). There was no recommendation at that time.

ASH had nothing to add to the report. Tammy Wray stated that Mr. Sherrill has shown marked improvement in the last two years and he is sad and remorseful for his index crime but also committed to his health.

Susan Leong, the victim's step-grandmother, requested that the Board deny any release for Mr. Sherrill. Ms. Leong gave details of her relationship with the victim, her memory of learning of the victim's death, and implored the Board to never let Mr. Sherrill out of the Hospital.

Nick Oshita, the victim's stepfather, testified that after the horrific event he was able to get the family to a better place. He detailed a series of negligent systemic failures contributing to the murder and stated that his son's blood is on their hands. Mr. Oshita discussed in detail the impact of the crime on his family and implored the Board to never let Mr. Sherrill out of the Hospital.

Griselda Tapete, a family friend, was sworn in and testified about the events leading up to the crime and the impact the crime has had on the surviving victims. She asked that the PSRB give the family justice by denying any privileges to Mr. Sherrill.

Margaret Castellani, a family friend, was sworn in and discussed the impact of the crime on the family. She detailed the abuse Gabriela Oshita endured while she was married to Mr. Sherrill and pleaded that Mr. Sherrill not appear before the PSRB every two years because of the negative impact it will have on the family.

Gabriela Oshita, mother of the victim, was sworn in and shared that she fears for the safety of her family and the safety of the public if Mr. Sherrill were to be released from confinement.

A motion was made by Susan Stevens, seconded by Paul O'Connell and passed 4 – 0 to deny conditional release for Gary Sherrill, based on the evidence presented by the Arizona State

Hospital's treatment team, that Mr. Sherrill did not prove by clear and convincing evidence that he no longer suffers from a mental disease or defect, that the mental disease or defect is in stable remission and that he is no longer dangerous. Gary Sherrill shall remain committed to the Arizona State Hospital.

Scott Joe Peterson – PSRB No. 16-03

Scott Peterson was present with his attorney, Kennedy C. Klagge, who appeared telephonically. The statutory hearing was held from 1:33 p.m. to 1:47 p.m. pursuant to A.R.S. § 13-3994(H). There was no recommendation at that time.

Kennedy C. Klagge, Yavapai County Public Defender, and Casi Harris, Yavapai Deputy County Attorney, were teleconferenced into the hearing. ASH had nothing to add to the materials already submitted. Ms. Klagge had not heard back from her client and did not know Mr. Peterson's position after she sent him the report. Ms. Harris noted that the materials contained objection to release from the victims.

Dr. Clark asked the treatment team if a resolution group, where individuals can learn how to not externalize blame and accept responsibility, is a part of Mr. Peterson's treatment plan.

A motion was made by James Clark, seconded by Susan Stevens and passed 4 – 0 to recess into executive session at 1:36 p.m. to discuss confidential information pursuant to A.R.S. § 38-431.03(A)(2).

After consideration in executive session, the Board reconvened in open session at 1:45 p.m.

In open session, Ms. Klagge and Ms. Harris were teleconferenced back into the hearing.

A motion was made by Chandrika Shankar, seconded by Susan Stevens and passed 4 – 0 to deny conditional release for Scott Peterson based on the evidence presented by the Arizona State Hospital's treatment team, that Mr. Peterson did not prove by clear and convincing evidence that he no longer suffers from a mental disease or defect, that the mental disease or defect is in stable remission and that he is no longer dangerous. Scott Peterson shall remain committed to the Arizona State Hospital.

Anthony William Watsula – PSRB No. 09-13

Anthony Watsula was present with his attorney, Tammy Wray. The statutory hearing was held from 1:48 p.m. to 2:07 p.m. pursuant to A.R.S. §§ 13-3994(N) and 31-502(A)(5). ASH recommended revocation of conditional release. Mr. Watsula was requesting conditional release to the community.

Dr. Dingle stated that Mr. Watsula was not presented to the Special Classification Committee (SCC). Ms. Wray argued that Mr. Watsula is treatment-compliant, has never had a rule violation, and proposed that Mr. Watsula be conditionally released to a 30 to 90 day inpatient substance abuse treatment program. She reiterated that Mr. Watsula was not returned to ASH for dangerousness or psychiatric deterioration, but a violation of the terms of his conditional release. She added that the outpatient treatment team is in favor of the request.

Dr. Clark stated that he found Dr. Walayat's report to be persuasive in her recommendation for revocation.

A motion was made by James Clark, seconded by Susan Stevens and passed 4 – 0 to recess into executive session at 1:49 p.m. to discuss confidential information pursuant to A.R.S. § 38-431.03(A)(2).

After consideration in executive session, the Board reconvened in open session at 2:03 p.m.

In open session, a motion was made by Chandrika Shankar to revoke conditional release for Anthony Watsula, based on the evidence presented by the Arizona State Hospital treatment team, that he violated the terms of his conditional release and that Mr. Watsula remain at the Arizona State Hospital for further evaluation and treatment.

After discussion, Dr. Shankar amended her motion to add that that Mr. Watsula did not prove by clear and convincing evidence that he is in stable remission and no longer dangerous, and that Mr. Watsula remain at the Arizona State Hospital for further evaluation and treatment. Paul O'Connell seconded the motion and it passed 4 – 0.

Paula Kristine Hughes-Riccio – PSRB No. 11-04

Paula Hughes-Riccio was present with her attorney, Tammy Wray. The statutory hearing was held from 2:08 p.m. to 2:13 p.m. pursuant to A.R.S. § 13-3994(H). Ms. Hughes-Riccio's outpatient treatment team recommended a reduction in medication monitoring.

ASH staff had nothing to add since Ms. Hughes-Riccio is no longer a patient at ASH.

Ms. Wray stated that Ms. Hughes-Riccio has made steady progress and is living successfully independently.

Sarah Fox, a friend of Ms. Hughes-Riccio, was sworn in and testified that Ms. Hughes-Riccio is a responsible and capable person and is able to move forward. Mr. Wray iterated that Ms. Hughes-Riccio will stay with the ACT team.

A motion was made by Susan Stevens, seconded by Paul O'Connell and passed 4 – 0 to reduce medication monitoring from once daily to twice per week for Paula Hughes-Riccio, based on the evidence presented by the outpatient treatment team that Ms. Hughes-Riccio remains in stable remission and is not dangerous.

Tahum Lekeith Garland – PSRB No. 02-04

Tahum Garland was present with his attorney, Tammy Wray. The statutory hearing was held from 2:14 p.m. to 2:54 p.m. pursuant to A.R.S. § 13-3994(H). The PSRB considered a modification to the terms of his conditional release.

Dr. Clark stated that he set this hearing in order to address what he considered an inadvertent oversight in that the terms of his conditional release were approved without the provisions for regular urine drug screens and weekly attendance to substance abuse meetings. Dr. Clark noted that the defense filed an objection to Dr. Clark setting the hearing and a request for permission to travel.

Dr. Clark felt that the crime was very serious and a high bar needed to be set regarding Mr. Garland being in the community, and because regular drug screens and attendance at substance abuse meetings were important parts of his recovery prior to readmission, there was no reason to not have those to be continued.

Ms. Wray argued that she and her client object to the hearing because there is no statute that allows for the Board to set a hearing, however, they will not press the formal objection because Mr. Garland is asking for permission to travel outside of Arizona. Discussion was held regarding Mr. Garland's history, his family and social supports, the factors contributing to his re-admission to ASH, and his requests for permission to travel and a reduction in monitoring to include independent living with family. Members of the inpatient treatment team were not present to clarify Dr. Clark's inquiry as to the request for independent living.

Ms. Wray stated that the current placement is not safe or supportive. Dr. Shankar shared that she found it troubling to hear that the patient is living in an environment that is not conducive to recovery and that it is up to the treatment team to assess this and should not lie on the patient. Extensive discussion was held.

A motion was made by James Clark, seconded by Paul O'Connell and failed 2 – 2 to amend the terms of Mr. Garland's conditional release to require that Mr. Garland attend at least one AA/NA meeting per week and that he provide proof of his attendance to his case manager.

Chandrika Shankar and Susan Steven opposed.

The Board continued to deliberate the issue but no additional motion was made.

A motion was made by James Clark, seconded by Chandrika Shankar and passed 4 – 0 to amend the terms of Mr. Garland’s conditional release to require at least one random urine drug screen per month or more frequently if ordered by the outpatient treatment team.

A motion was made by Paul O’Connell, seconded by Susan Stevens and passed 4 – 0 to grant Mr. Garland’s request for permission to travel to Torrance, California between the periods of June 7, 2018, to June 10, 2018, based on the evidence presented by the outpatient treatment team that Mr. Garland is in stable remission and no longer dangerous.

After discussion, a motion was made by Susan Stevens, seconded by Paul O’Connell and passed 4 – 0 to recess into executive session at 2:42 p.m. to obtain legal advice pursuant to A.R.S. § 38-431.03(A)(3).

After consideration in executive session, the Board reconvened in open session at 2:52 p.m.

In open session, a motion was made by Susan Stevens, seconded by James Clark and passed 4 – 0 to continue the issue for the request for a change in residential monitoring to the May meeting, for Dr. Konteh and the Assertive Community Treatment (ACT) Team, or anyone who is appropriate, to assess Mr. Garland’s current residence and his mother’s home and report to the Board regarding the appropriateness and safety of the request.

Raphael Nyagong Wani – PSRB No. 08-06

Raphael Wani was present with his attorney, Tammy Wray. The statutory hearing was held from 2:55 p.m. to 2:57 p.m. pursuant to A.R.S. § 13-3994(H). The PSRB considered the formal removal of the provision for Integrated Support from the conditional release order.

After brief discussion, a motion was made by James Clark, seconded by Susan Stevens and passed 4 – 0 to remove the provision for an Integrated Supportive Care Manager from Mr. Wani’s conditional release order.

Charles Clifford Holmes – PSRB No. 01-18

Charles Holmes was present with his attorney, Bernardo Garcia. The statutory hearing was held from 2:58 p.m. to 3:00 p.m. pursuant to A.R.S. §§ 13-3994(H) and 31-502(A)(5). The

PSRB considered whether to continue, modify, or terminate conditional release; ASH recommended termination of conditional release.

Mr. Garcia requested that the PSRB continue the hearing for three months while Mr. Holmes works with his providers to identify the issues leading to the recommendation for termination.

A motion was made by James Clark, seconded by Paul O'Connell, and passed 4 – 0 to continue the matter for three months.

The PSRB took a break from 3:01 p.m. to 3:05 p.m.

Jill Fraley Manahan – PSRB No. 09-13

Jill Manahan was not present and her attorney, Joshua N. Mozell, waived her presence. The statutory hearing was held from 3:06 p.m. to 3:25 p.m. pursuant to A.R.S. §§ 13-3994(H) and 31-502(A)(5). The PSRB considered whether to continue, modify, or terminate conditional release; ASH recommended termination of conditional release.

Mr. Mozell stated that his client would not be appearing because the last hearing was too contentious and she felt that it was not good for her mental health. Mr. Mozell went on to object to the hearing citing lack of due process based on his assessment of an *ex parte* communication written by Steven Dingle, Chief Medical Officer of ASH, to the PSRB; lack of proper application for a hearing; and lack of a report to the PSRB. Mr. Mozell requested that the PSRB vacate the hearing. Mr. Mozell requested that the PSRB order ASH to obey the PSRB's previous order to conditionally release Ms. Manahan.

Dr. Clark stated that ASH has a right to make its own decisions regardless of what the PSRB orders. Dr. Dingle iterated that ASH would always notify the PSRB in a timely manner should the Hospital learn of behaviors that significantly impact the grounds upon which the PSRB executed a conditional release plan. Dr. Clark pointed out that ASH submitted a report to the PSRB. Argument ensued. Louis Caputo argued that the PSRB's mandate is to assess stable remission and dangerousness and pointed out that there is no part of A.R.S. § 13-3994 where it states that ASH must put forth a specific recommendation. Mr. Mozell argued that an application involves a petition for relief, of which there was none. Dr. Clark stated that the simple matter is that there was a violation of a provision of the conditional release order whereby Ms. Manahan used non-prescribed opiate substances, which provides a basis to terminate conditional release.

A motion was made by James Clark, seconded by Susan Stevens, and passed 4 – 0 to recess into executive session at 2:42 p.m. to obtain legal advice pursuant to A.R.S. § 38-431.03(A)(3).

After consideration in executive session, the Board reconvened in open session at 2:52 p.m.

In open session, Dr. Clark noted and rejected defense counsel's objections citing that all parties were appropriately noticed.

A motion was made by Susan Stevens, seconded by Chandrika Shankar, and passed 4 – 0 to PSRB revoke the Conditional Release for Jill Manahan based on the evidence presented by the ASH treatment team that Ms. Manahan violated the terms of her conditional release, and that Jill Manahan remain at the Arizona State Hospital for further evaluation and treatment.

Rickey Farrell Russell – PSRB No. 09-05

Rickey Russell was present with his attorney, Joseph T. Stewart. The statutory hearing was held from 3:29 p.m. to 3:32 p.m. pursuant to A.R.S. § 13-3994(H). There was no recommendation at that time.

ASH staff stated that there was no review by the SCC. Mr. Stewart referred the Board members to the defense's motion to continue the hearing to June so an independent evaluation could be completed.

A motion was made by Susan Stevens, seconded by Chandrika Shankar, and passed 4 – 0 to grant the motion to continue the matter to the June meeting.

Benjamin Griffin Piette – PSRB No. 14-04

Benjamin Piette was not present and Andrew J. Blischak, who appeared on behalf of assigned attorney, John W. Blischak, waived his presence. The statutory hearing was held from 3:33 p.m. to 3:35 p.m. pursuant to A.R.S. § 13-3994(H). The hearing was continued from February and there was no recommendation at that time.

ASH staff stated that there was no review by the SCC, nor does the Hospital administration have any independent recommendation.

Mr. Blischak stated that he had no communication with Mr. Piette, nor did he have any knowledge of its review by assigned counsel. Ms. Stevens shared concern that the report from January had not been reviewed.

A motion was made by Chandrika Shankar, seconded by Susan Stevens, and passed 4 – 0 to deny the motion to continue.

A motion was made by Chandrika Shankar, seconded by Susan Stevens, and passed 4 – 0 to deny conditional release for Benjamin Piette based on the evidence presented by the Arizona State Hospital's treatment team, that Mr. Piette did not prove by clear and convincing evidence that he no longer suffers from a mental disease or defect, that the mental disease or defect is in stable remission and that he is no longer dangerous. Benjamin Piette shall remain committed to the Arizona State Hospital.

Rodney Bruce Woodville – PSRB No. 13-15

Rodney Woodville was present with Andrew J. Blischak, who appeared on behalf of assigned attorney, John W. Blischak. The statutory hearing was held from 3:37 p.m. to 3:38 p.m. pursuant to A.R.S. § 13-3994(H). There was no recommendation at that time.

After brief discussion, a motion was made by Paul O'Connell, seconded by Susan Stevens, and passed 4 – 0 to deny conditional release for Rodney Woodville, based on the evidence presented by the Arizona State Hospital's treatment team, that Mr. Woodville did not prove by clear and convincing evidence that he no longer suffers from a mental disease or defect, that the mental disease or defect is in stable remission and that he is no longer dangerous. Rodney Woodville shall remain committed to the Arizona State Hospital.

Wayne Charles Phifer – PSRB No. 09-09

Wayne Phifer was present with his attorney, Chester McLaughlin, who appeared telephonically. The statutory hearing was held from 3:39 p.m. to 3:52 p.m. pursuant to A.R.S. § 13-3994(H). The outpatient treatment team recommended independent living.

Mr. McLaughlin was teleconferenced into the hearing. Adelene Wendy Sampson, Mr. Phifer's case manager, was present and testified that Mr. Phifer engages exceptionally with his team, he has an ongoing ability to navigate difficult situations, has a strong support network, and has good insight and judgment.

Discussion was held around the current terms of Mr. Phifer's supervision and the structure of his day. It was clarified that Mr. Phifer will continue to check in at Los Altos twice per day for medication observation and that Mr. Phifer continues to seek employment.

A motion was made by James Clark, seconded by Susan Stevens and passed 4 – 0 to grant the request for Wayne Phifer to live independently, based on the evidence presented by the

outpatient treatment team that Mr. Phifer remains in stable remission and no longer dangerous.

Brian Price Mitchum – PSRB No. 17-16

Brian Mitchum was present with his attorney, Jess A. Lorona. The statutory hearing was held from 3:53 p.m. to 4:18 p.m. pursuant to A.R.S. § 13-3994(H). This was an initial hearing and Mr. Mitchum requested conditional release to the community.

Dr. Dingle stated that Mr. Mitchum did talk with the SCC about the request, though not as a formal review. Mr. Lorona reviewed the circumstances leading up to Mr. Mitchum's GEI adjudication and pointed out that from September 2016 to April 2017, Mr. Mitchum was placed in an outpatient treatment setting and did not pose a danger to himself or to others. Mr. Lorona added that Gary Grove's independent assessment indicates the same.

A motion was made by James Clark, seconded by Paul O'Connell and passed 4 – 0 to recess into executive session at 4:00 p.m. to discuss confidential information pursuant to A.R.S. § 38-431.03(A)(2).

After consideration in executive session, the Board reconvened in open session at 4:18 p.m.

In open session, a motion was made by Chandrika Shankar, seconded by Paul O'Connell and passed 4 – 0 to deny conditional release for Brian Mitchum based on the evidence presented by the Arizona State Hospital's treatment team, that Mr. Mitchum did not prove by clear and convincing evidence that he no longer suffers from a mental disease or defect, that the mental disease or defect is in stable remission and that he is no longer dangerous. Brian Mitchum shall remain committed to the Arizona State Hospital.

Discussion, Consideration and Possible Action Related to:

Review and Approval of the Per Diem Billing Policy:

After extensive discussion, a motion was made by James Clark, seconded by Paul O'Connell, and passed 4 – 0 to approve the policy amended to strike the phrase "as over 60 minutes per one day".

Discussion, Amendment and Approval of Minutes:

Executive session minutes from the March 30, 2018, meeting:

After extensive discussion, a motion was made by James Clark, seconded by Chandrika Shankar and passed 4 – 0 to approve the executive session minutes, as amended.

Open session minutes from the February 23, 2018, meeting:

After discussion, a motion was made by James Clark, seconded by Susan Stevens and passed 4 – 0 to approve the open session minutes, as amended.

Identification of Future Agenda Items:

No future agenda items were discussed.

Adjournment:

The Board meeting was adjourned at 4:43 p.m.