

IN THE DISTRICT COURT OF PITTSBURG COUNTY  
STATE OF OKLAHOMA

IN RE: BENJAMIN R. COLE

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Case No. CV-2022-140  
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Execution set for October 20, 2022  
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RECORDED AND FILED  
IN DISTRICT COURT  
PITTSBURG COUNTY, OKLA.  
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ORDER ADDRESSING BENJAMIN R. COLE'S  
REQUEST FOR A WRIT OF MANDAMUS

The Movant, Benjamin Cole, appeared in person and with counsel of record.

The respondent, Warden Jim Farris, appeared in person and with counsel of record.

The purpose of this Order is to adjudicate whether Benjamin Cole has become incompetent to be executed. The relevant statute on this issue is 22 O.S. § 1005 which states:

If, after his delivery to the warden for execution, there is good reason to believe that a defendant under judgment of death has become insane, the warden must call such fact to the attention of the district attorney of the county in which the prison is situated, whose duty is to immediately file in the district or superior court of such county a petition stating the conviction and judgment and the fact that the defendant is believed to be insane and asking that the question of his sanity be inquired into. Thereupon, the court must at once cause to be summoned and impaneled from the regular jury list a jury of twelve persons to hear such inquiry.

## DISCUSSION

For a discussion of the relevant history of Mr. Coles case see *Cole v Trammell*, 2015 OK. CR. 13. The Court notes the Movant and the Respondent have filed proposed Findings of Fact and Conclusions of Law. The Respondents filing is literally one hundred and twenty-six (126) pages in length. The Movants is eighteen (18) pages. To the extent those findings and conclusions are not inconsistent with this Order the same are adopted by the Court.

The Court has reviewed the relevant caselaw and all of the other records and briefing presented in the case.

The Court first notes the expert reports are conflicting. This may be due to the inability of experts on behalf of the Movant being unable to communicate with Mr. Cole. Attempts have been made by the defense team and their experts to communicate with Mr. Cole as recently as April 25<sup>th</sup> and 26<sup>th</sup>, 2022. These attempts proved fruitless. Mr. Cole did not testify in the hearing conducted on September 30, 2022. He was transported for an MRI at Oklahoma State University Medical Center, Tulsa. The results were interpreted by Dr. Travis Snyder and are a part of the record. Also submitted are the reports and affidavits of David Hough, PH.D., ABPP together with the previous reports of the many experts who have evaluated Mr. Cole.

Also presented by the Movant was the testimony of Warden Farris. The Respondent did not present any witnesses but rested on the report of Dr. Orth which is included within the documents submitted by the Movant.

## ANALYSIS AND DECISION

It is clear the Eighth Amendment and the Due Process Clause of the Fourteenth Amendment to the United States constitution forbids execution of "the insane" person. See *Ford v. Wainwright*, 477 U.S. 399, 106 S. Ct. 2595, 2610, 91 L. Ed. 2d 335 (1986). However, the law "presume[s] that [a] petitioner remains sane at the time sentence is to be carried out, and may require a substantial threshold showing of insanity merely to trigger the hearing process." *Id.* at 426,

The Court is of the opinion the Movant does not meet the required "substantial threshold" showing of insanity. This conclusion is based on the Court's reading of the voluminous record presented; observations of those who have interacted with Mr. Cole; expert reports (especially those more recent to the relevant time period); the testimony of Warden Farris; the admitted medical records; and psychiatric records.

The Court is cognizant of Mr. Cole's refusal to cooperate with his defense team, nevertheless, he was evaluated at the Oklahoma Forensic Center by Dr. Orth. During this time, he did cooperate in the evaluation which lasted approximated one hundred and fifty (150) minutes. This was an examination the parties agreed to be performed at the Oklahoma Forensic Center, although they did not necessarily agree to Dr. Orth. Dr. Orth's report is extensive in scope and in the materials reviewed. The report is very persuasive on the issue of the Defendant's current capacity.

In considering the totality of the evidence, including Dr. Orth's report, the Court FINDS the Defendant is competent to be executed as currently scheduled on October 20, 2022. Therefore, the request for a Writ of Mandamus directing Warden Farris to conduct his duty under Section 1005 in notifying the District Attorney of Pittsburg County there is good reason to believe Benjamin Cole has become insane is Denied.

It is so ordered this 4<sup>th</sup> day of October, 2022.



JUDGE OF THE DISCTRRICT COURT

**CERTIFICATE OF MAILING**

I hereby certify on the 4<sup>th</sup> day of October, 2022, I mailed a true and correct copy of the foregoing document to the following:

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Pittsburg Count District Attorney's Office

Signed



Bailiff  
Pittsburg County Judge's Chambers