

DEATH WARRANT

IN THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT
IN AND FOR DIXIE COUNTY, FLORIDA

FYI

FILED
THOMAS D. HALL

OCT 08 2002

STATE OF FLORIDA,

CASE NO. 92-52-CF

vs.

CAPITAL CASE, DEATH WARRANT
SIGNED; EXECUTION SCHEDULED FOR
OCTOBER 9, 2002

AILEEN C. WUORNOS,

MOTION TO DECLARE DEFENDANT INCOMPETENT
PURSUANT TO Fla.R.Crim.P.3.851(d)

COMES NOW, the defendant, by and through undersigned counsel, and files this motion pursuant Fl.R.Crim.P.3.851(d) to determine whether the defendant is competent to proceed in capital proceedings and as a factual basis submits the following:

1. The Defendant was convicted of first degree murder and sentenced to death.
2. Pursuant to Fla.R.Crim.P.3.850, *et.seq.*, the defendant filed a motion to vacate her judgement and sentence in case number 92-52-CF.
3. On April 1, 2002, pursuant to the defendant's pro se motion, the Florida Supreme Court removed counsel only in cases 91-00257CFAES; 91-1232, keeping counsel assigned to the instant case.
4. On September 5, 2002, the Governor signed a death warrant for Ms. Wuornos in case number 91-0257-CFAES.
5. Shortly after the warrant was signed, counsel attempted to communicate with her concerning her present situation. Counsel could not communicate with Ms. Wuornos.
6. Counsel has attempted several other ways to communicate with Ms. Wuornos concerning her legal situation to no avail.

7. Counsel is of the opinion that the Ms. Wuornos does not have the sufficient present ability to consult with counsel with a reasonable degree of rational understanding and does not have a rational as well as a factual understanding of the collateral proceedings. See Fla.R.Crim.P 3.851(d)(8)(A).

8. Counsel has attempted to discuss several factual and legal matters, including the implications of *Ring v. Arizona*, *Bottoson v. State*, and *King v. State*. Ms. Wuornos has not been able to communicate on these matters.

9. Counsel requests that 3 experts be appointed to evaluate Ms. Wuornos for competency including, but not limited to, competency to waive her rights under the Fifth and Sixth Amendments, competency to waive counsel, competency under Fla.R.Crim.P 3.851(d)(8)(A),(B) & (C), ~~and competency to be executed~~

10. Counsel makes this motion in good faith and with grave understanding of the consequences of such an action. As a testament to good faith, counsel relates that numerous records including, but not limited to the following, were relied upon in making this determination:

- a) Telephonic conversation with the Florida Bar ethics division 10/4/02. Caller record number 34927.
- b) DSM III-R Definition of Borderline Personality Disorder, pp.346-47.
- c) Deposition of Dr. Harry Krop, 1/29/92.
- d) Deposition of Dr. Jethro Toomer, 1/8/92.
- e) Deposition of Dr. Elizabeth McMahon, 1/8/92-1/16/92.
- f) Letter from Raag Singhal to the Florida Supreme Court 9/17/02.
- g) Telephonic conversation with attorney Raag Singhal, 10/4/02.

- h) Letter from Dr. Bill E. Mossman dated 2/20/2001.
- i) Conversation with Richard Kiley, 10/3/02.
- j) Sanchez-Velasco v. Sec'y Dept. Corrections, 287 F.3d 1015 (11th Cir. 2002).
- k) Telephonic conversation with Dr. Elizabeth McMahon, 10/4/02; 10/6/02.
- l) Telephonic conversation with Dr. Jethro Toomer, 10/4/02; 10/7/02.
- m) Telephonic conversation with Dr. Glenn Caddy 10/4/02.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Motion has been furnished by

U.S. Mail, first-class to all counsel of record on this 7 day of October, 2002.



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Affidavit of Dr. Glenn Ross Caddy

My name is Glenn Ross Caddy. I am a psychologist licensed in the State of Florida. My office address is 2455 East Sunrise Boulevard, Suite 320, Fort Lauderdale, Florida 33304. I am Board Certified in Clinical Psychology, Forensic Psychology, Behavioral Medicine, and in the subspecialty of Human Sexuality. In the context of this Affidavit, my opinions are derived largely from the areas of Clinical and Forensic Psychology.

On Friday, October 4, 2002 I was contacted on an urgent basis by Peter Cannon, Esquire with the Office of the Capital Collateral Regional Counsel, Middle Region. Mr. Cannon asked if I could make the time to review a fairly voluminous set of records regarding Aileen Carol Wuornos and express whatever perspective those records afforded me dealing with the question of Ms. Wuornos's Competence to Proceed in the imposition of a death sentence.

I agreed to examine the matter of Ms. Wuornos's competence from the perspective of a record review to determine if the record offered me enough data on which to form an opinion. Clearly, the review of a record, no matter how comprehensive, cannot provide the basis for an ultimate expert opinion regarding competency one way or another. I have never examined this woman personally, and so I cannot offer an ultimate opinion regarding her present competency. Only a comprehensive clinically-based competency-focused examination could permit the development of my ultimate opinion regarding this matter. Nevertheless, it is also my opinion that a record-based review of an individual certainly may offer enough information to recommend the value of further specific clinical assessment to explore competency, just as it may suggest the likely lack of any reason to presume concerns regarding competency.

It is not presently possible, given the reality of a variety of constraints but principally time, to undertake a formal face-to-face clinical competency examination of this woman unless there is a stay regarding her date of execution.

Reviewing the details of literally two banker boxes of records over the past two and a half days leads me to certain professional conclusions which I am completely comfortable in giving. The conclusions that I am satisfied to offer, without reservation, are the following:

1. That Aileen Carol Wuornos has suffered, and continues to suffer, a constellation of quite serious symptoms of profound mental illness and she has

done so, no doubt, long before she was forensically evaluated in the early 1990's. Dr. Harry Kropp, who examined her in July of 1992, described her as suffering "A full blown delusional system" and having a "Borderline Personality Disorder with Paranoid Features". Dr. Kropp further described her as suffering "Delusions of a Persecutory Type". The more recent evidence of her ongoing extreme psychopathology is available through the report of Dr. Bill E. Mosman who noted, during his examination of Ms. Wuornos on February 19, 2001, profound indices of Borderline Personality Disorder and he noted, too, that "She manifested extreme ambivalence, high levels of emotional intensity; she could not control of and/or modulate her emotional reactions; she manifested rapid cycling". And overall, too, Dr. Mosman noted from the records that he reviewed functional impairments that were "clearly consistent over several decades of records". Even in the very recent letter that her attorney, Raag Singhal, directed to The Florida Supreme Court on September 17, 2002 there are ongoing indications of quite serious psychopathology. There are also records suggesting multiple suicide attempts since the teen years, the presence of paranoid ideation, delusional disorder, "fantasies" and even "a pervasive sense of anger which interferes with attention and cooperation". In fact, during her July 20, 2002 Competency hearing Ms. Wuornos made note of her extreme rage on various occasions. Clearly, Alleen Wuornos is today an extremely mentally disturbed woman and has been so for many years. There is no reason to believe that such an illness would go into remission in the days, weeks, or months prior to the enactment of the death penalty.

2. There is substantial evidence in the records I have reviewed showing the sort of underlying family rearing experiences and abusiveness that would set the stage for, and predict, the sorts of psychopathology with which Ms. Wuornos has been variously labeled. In my discipline, profound familial mistreatment and often exceptionally extreme abuse are the precursors to post-traumatic and borderline features in adulthood and the record contains many indicators of such psychopathology.

3. It is clear from the transcript of Ms. Wuornos's testimony before Judge Hutcheson of July 20, 2001 that she is making a powerful claim in favor of terminating her representation and moving as rapidly as she knows how to towards a death sentence. It also seems certain that at least during that hearing she was not being honest, specifically about her family background and I do not know what else. It is also clear that Judge Hutcheson found her competent to proceed by asking questions that had nothing to do with the possibility of a profound delusional process operating within this woman.

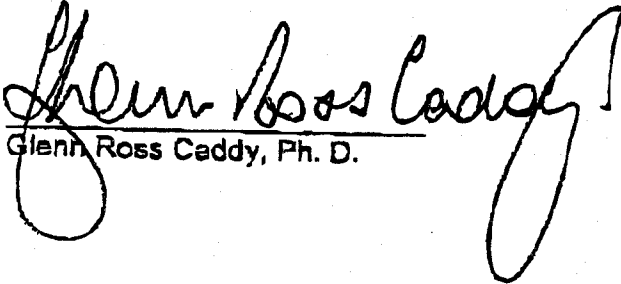
4. Ms. Wuornos is almost definitely suffering from a long standing delusional process. If Ms. Wuornos were suffering from a delusional process that encouraged her to seek death, the questions asked by Judge Hutcheson would be unlikely to reveal such a delusional process and they did not. If Ms. Wuornos' present strategy of seeking death is simply an extension of her underlying delusional system, it is likely she would lie to accomplish the goal of that delusional system while all the time asserting the newly found truthfulness of her testimony. Ms. Wuornos certainly may well have been playing out just such a process with Judge Hutcheson in his competency inquiry. I say this because above all else, there is evidence available in the record that indicates a long history of abuse going back to childhood which during her testimony of July 20, 2002 she denied. Further, there is some sort of religious conversion that Ms. Wuornos claims to have undergone since her incarceration, though I do not have information on precisely when that supposed religious conversion took place. Yet, despite her newfound Christian religiosity, Ms. Wuornos continues to present the view that she is still an extremely dangerous person who would be most willing to kill again (despite the essential "impossibility" of her ever being released from detention), and further, that she continues to have great rage against the world, a claim hardly consistent with her presumed newly developed religious convictions. There is great paradox in all of this. Additionally, in Ms. Wuornos' testimony before Judge Hutcheson, the level of her internally inconsistent thinking, the likely dishonest statements about her rearing history (she claimed that all the assertions of her poor and tragic rearing history were lies and her attorneys had supported those lies), and her continued assertions of rage must surely be seen as indicative of ongoing extreme psychopathology and just as likely an index of her relatively newly oriented underlying delusional process as indicative of a rational and sane desire to leave this world. The efforts of Judge Hutcheson, persistent as they were, are no substitute for a comprehensive mental competency examination and should not be seen as such.

Failure to comprehend the potential significance of the above noted inconsistencies demonstrated by Ms. Wuornos, the limitations of the Court in its efforts to explore competency while never exploring any possibility of the impact of a religiously based or other based delusional process operating to push Ms. Wuornos to encourage her own death, and failure to order further mental health analysis of the question of competency in such a severely pathological woman is inconsistent with my view of best practice in competency determination assessment. Especially when so much of Ms. Wuornos' psychopathology for so long has involved delusional process, (even the belief in her lawyers conspiring against her in 1992), it is my opinion that the presumption of ongoing delusional

thinking is a prerequisite to an ultimate determination of competency and the possible role of this delusion must be ruled out by examination by appropriately qualified mental health experts rather than never considered.

I declare and affirm under the penalty of perjury that the opinions expressed above are true and correct.

Dated this seventh day of October, 2002.


Glenn Ross Caddy, Ph. D.

Jethro W. Toomer, Ph.D.

Consulting Psychologist

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COUNTY OF DADE STATE OF FLORIDA

AFFIDAVIT OF JETHRO W. TOOMER, PH.D.

My name is Jethro W. Toomer, Ph.D.. I am engaged in the practice of clinical and forensic psychology in Miami, Dade County, Florida and I solemnly declare and affirm under the penalties of perjury that the contents of this affidavit are true and correct.

1. I, Jethro W. Toomer, Ph.D. am a licensed psychologist, specializing in the practice of clinical and forensic psychology. This affidavit is made upon my personal and professional knowledge and I am competent to testify to the matters set forth herein. My educational background includes a B.A. degree in Psychology from Morehouse College in Atlanta, Georgia and a Ph.D. degree from Temple University in Philadelphia, Pennsylvania. I received post doctoral training at Moss Rehabilitation Hospital in Philadelphia. I am a Diplomate of the American Board of Professional Psychology and a member of the American Academy of Board Certified Psychologists. In addition to my private practice in clinical and forensic psychology, I have for fifteen years, a professor and Director of the graduate training program in Mental Health Counseling in the Division of Psycho educational Services at Florida International University at University Park, Florida.
2. I have reviewed numerous documents, including court records, depositions, clinical and diagnostic records covering a thirteen year period, relating to Aileen Wuornos. My conclusions are based upon my review of these records and consideration of my evaluation of the defendant, which took place in 1992.
3. The totality of the data is consistent with a diagnosis of a borderline personality disorder, the existence of which is life-long and has adversely impacted Ms. Wuornos' overall functioning and adaptive capacity.
4. This disorder is characterized by a pervasive pattern of instability in mood, affect, identity and interpersonal relationships present in a variety of

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contexts and situations. She has exhibited transient periods of bizarre behavior, irrational impulses and delusional thoughts. Her overall functioning has been characterized by the existence of mini-psychotic episodes, where reality is blurred and she is unable to adequately test reality. Her condition is chronic and unpredictable.

5. This condition has characterized Ms. Wuornos' behavior from childhood through the life span and she has consistently manifested a demonstrated pattern of overall maladjustment.
6. Predispositional family history is characterized by early trauma and nurturance deprivation consistent with the above diagnosis and serve to negate the stability and predictability of life necessary for acquiring a consistent pattern of behaving and thinking.
7. Based upon the totality of the data, I am of the opinion that Ms. Wuornos fails to meet the criteria for competency to proceed. While she has an appreciation of the charges and of the range and nature of possible penalties, her ability to relate to her Attorney in a meaningful manner and to testify relevantly, is compromised by her impaired emotional and psychological functioning, secondary to the aforementioned diagnosis. While she has some understanding of the adversarial nature of the legal proceedings, this understanding is likewise compromised by impaired functioning secondary to the borderline personality disorder.
8. While Ms. Wuornos is seen as incompetent to proceed, restoration is achievable. Psychiatric assessment, to assess the feasibility of a pharmacologic regimen, which would serve to ameliorate symptomatology is warranted. This combined with competency education intervention would assist the subject in the process of reintegration of cognitive and emotional dimensions of her personality.

Jethro W. Toomer
Jethro W. Toomer, Ph.D.

Dated: October 7, 2002