

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

UNITED STATES OF AMERICA

v.

2:19-cr-000171

ROBERT JAMES McCABE,

Defendant.

MOTION TO DETERMINE COMPETENCY

COMES NOW, Counsel for the Defendant Robert James McCabe and hereby moves this Court, pursuant to 18 U.S.C. § 4241, for a hearing to determine Mr. McCabe's mental competency. Counsel is also requesting, pursuant to § 4241(b), that prior to any such hearing, the Court order that a psychiatric or psychological examination of Mr. McCabe be conducted, and that a psychiatric or psychological report be filed with the Court in accordance with the provisions of 18 U.S.C. § 4247(b) and (c). In support of these motions, counsel states as follows:

1. On August 24, 2021, the Court remanded Mr. McCabe into custody. Mr. McCabe was transported to Western Tidewater Regional Jail where he was held briefly prior to being transferred to Pamunkey Regional Jail the following morning;
2. Mr. McCabe has been held in solitary confinement where he is locked down in his cell 23 hours a day since he arrived at Pamunkey Regional Jail. Mr. McCabe will continue to be held in solitary confinement, in these lock-down conditions, pending his sentencing on May 20, 2022;

3. Mr. McCabe is 63 years old and was previously diagnosed with early-onset Alzheimer's disease;

4. A recent assessment done at the jail by Dr. Shridhar Bhat indicates early onset Alzheimer's disease, dizziness, sensory neural loss, and benign paroxysmal vertigo. This assessment also notes that Mr. McCabe was diagnosed with Alzheimer's following symptoms of memory loss;

5. Counsel has met with and spoken to Mr. McCabe and has become increasingly concerned that his medical conditions, coupled with the conditions of his confinement, have caused significant cognitive decline;

6. Counsel has witnessed Mr. McCabe's decline firsthand. Based upon counsel's interactions and observations of Mr. McCabe, he has reasonable cause to believe that the Mr. McCabe may presently be suffering from a mental disease or defect that renders him mentally incompetent to such a degree that he is no longer able to properly assist in his own defense; and

7. For these reasons, counsel is requesting that the Court order that Mr. McCabe undergo an examination by an appropriate medical practitioner in order to determine his competency and to set a hearing on this matter. Counsel also requests that a report of the findings of Mr. McCabe's examination be filed with the Court and provided to the parties in advance of such hearing.

CONCLUSION

WHEREFORE, for the reasons set forth above, counsel for the Defendant Robert James McCabe prays that this Honorable Court grant his motions and accordingly issue an appropriate order.

Respectfully submitted,

Robert James McCabe
By Counsel

_____/s/_____
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CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of January, 2022, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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