

Court of Appeals, State of Michigan

ORDER

People of MI v Marita Glynise Talley

Docket No. 356518

LC No. 2018-267313-FC

Mark J. Cavanagh
Presiding Judge

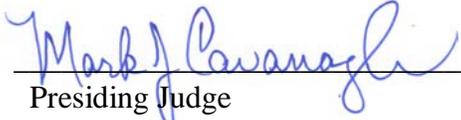
Deborah A. Servitto

Elizabeth L. Gleicher
Judges

The motion for immediate consideration is GRANTED.

Pursuant to MCR 7.205(E)(2), in lieu of granting the application for leave to appeal, the Court orders that the March 2, 2021, order denying defendant's motion for an *in camera* review of the decedent's medical records is REVERSED. On June 17, 2020, this Court remanded this case for a *Ginther* hearing in part to determine whether trial counsel rendered ineffective assistance of counsel by failing to consult a physician regarding the effect of the decedent's epilepsy medication on his behavior, especially when combined with alcohol. On July 16, 2020, this Court entered an order extending the timeframe set forth in the June 17, 2020, order to allow defense counsel sufficient time to investigate the matter and consult with possible expert witnesses. Defendant has established "a good-faith belief, grounded on some demonstrable fact, that there is a reasonable probability that the records are likely to contain material information necessary to the defense." *People v Stanaway*, 446 Mich 643, 677; 521 NW2d 557 (1994). The decedent's father testified that the decedent took anti-seizure medication, and the medical examiner screened for three medications, which were not detected in the decedent's system. Thus, a reasonable probability exists that the decedent had been prescribed a different type of anti-seizure medication. Dr. Gerald A. Shiener opined that some anti-seizure medications are known to cause aggressive behavior, especially when combined with alcohol. Therefore, defendant's motion for an *in camera* review of the decedent's medical records was not merely a fishing expedition. Defendant cannot establish whether she was prejudiced by trial counsel's performance without knowing whether the medication prescribed caused aggressive behavior when combined with alcohol. Further, if the medical records fail to indicate that the decedent had been prescribed an anti-seizure medication, defendant likewise cannot establish that she suffered prejudice as a result of trial counsel's failure to consult a physician regarding the effects of the medication. Accordingly, the trial court shall conduct an *in camera* review of the decedent's medical records.

The Court continues to retain jurisdiction.

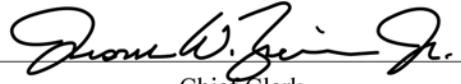

Presiding Judge



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

April 13, 2021

Date


Chief Clerk