

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

UNITED STATES OF AMERICA

VS.

CASE NO: 6:22-cr-201-WWB-LHP

EVAN EDWARDS

ORDER

THIS CAUSE is before the Court on United States Magistrate Judge Leslie Hoffman Price's Report and Recommendation ("**R&R**," Doc. 117) regarding Defendant Evan Edwards' competency proceedings. Therein, Magistrate Judge Hoffman Price recommends that the Court determine that Defendant is presently suffering from a mental disease or defect rendering him mentally incompetent and the Court should commit Defendant to the custody of the Attorney General for hospitalization and treatment to determine if there is a substantial probability that Defendant will attain the capacity to permit the proceedings to go forward. Defendant filed Objections (Doc. 118) to the R&R.

I. BACKGROUND

On December 7, 2022, Defendant was charged by Indictment (Doc. 1) with one count of conspiracy to commit bank fraud in violation of 18 U.S.C. § 1349, one count of bank fraud in violation of 18 U.S.C. §§ 2, 1344, and two counts of visa fraud in violation of 18 U.S.C. § 1546(a), in connection with his alleged participation in defrauding the Government for approximately \$8,417,200.00 of Paycheck Protection Program funds under the Coronavirus Aid, Relief, and Economic Security Act. Defendant was arrested on December 14, 2022. (Doc. 10 at 1). During Rule 5 proceedings before Magistrate Judge David A. Baker, questions as to Defendant's competency and physical health

arose and Defendant was temporarily detained and committed to the custody of the United States Marshal to receive medical treatment. (Doc. 9 at 1; Doc. 14 at 4:13–22, 9:7–10:17).

On January 4, 2023, United States Magistrate Judge Embry Kidd determined that Defendant “may presently be suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense.” (Doc. 50 at 1 (quoting 18 U.S.C. § 4241(a))). Accordingly, Magistrate Judge Kidd appointed a doctor to examine Defendant and render an opinion regarding his competency to proceed to trial in this matter. (*Id.* at 2).

On February 24, 2023, Magistrate Judge Hoffman Price committed Defendant to the custody of the Attorney General for placement in a suitable facility for a period not to exceed thirty days for psychiatric or psychological examination. (Doc. 85 at 5–6). In a July 7, 2023 Report, the forensic psychologist that evaluated Defendant opined that he was not presently competent to stand trial as a result of neurological deficits associated with dementia. (Doc. 98 at 8). The prognosis was not favorable for recovery or improvement of his condition. (*Id.*).

On August 3, 2023, Magistrate Judge Hoffman Price held a hearing to address the findings in the competency report issued by the Bureau of Prisons (“**BOP**”) and the parties were ordered to submit additional briefing on the applicability of the restoration procedures set forth in 18 U.S.C. § 4241(d). (Doc. 104 at 1; Doc. 105 at 1). The parties fully briefed the issue, (see Doc. Nos. 108, 116), and Magistrate Judge Hoffman Price issued the R&R, to which Defendant objects. The matter is now ripe for review.

II. LEGAL STANDARD

When a party objects to a magistrate judge's findings, the district court must "make a de novo determination of those portions of the report . . . to which objection is made." 28 U.S.C. § 636(b)(1). The district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." *Id.* The district court must consider the record and factual issues independent of the magistrate judge's report, as de novo review is "essential to the constitutionality of [§] 636." *Jeffrey S. v. State Bd. of Educ.*, 896 F.2d 507, 512 (11th Cir. 1990). The objecting party must state with particularity findings with which it disagrees, along with its basis for the disagreement. *Kohser v. Protective Life Corp.*, 649 F. App'x 774, 777 (11th Cir. 2016) (citing *Heath v. Jones*, 863 F.2d 815, 822 (11th Cir. 1989)). The court will not consider "[f]rivolous, conclusive, or general objections." *Marsden v. Moore*, 847 F.2d 1536, 1548 (11th Cir. 1988) (citation omitted).

III. DISCUSSION

There is no dispute that Defendant is not presently competent to stand trial. (See Doc. 101 at 1). The parties dispute, however, if there a need to move forward with restoration procedures under 18 U.S.C. § 4241(d) in light of the unfavorable prognosis set forth in the report from the BOP. Based upon an extensive review of both binding and persuasive precedent, Magistrate Judge Hoffman Price recommended that § 4241(d) proceedings be ordered in this case because such proceedings are mandatory even when the possibility of restoration is minimal.

Although Defendant does not object to a determination that he is presently incompetent to stand trial, he objects to the conclusion that § 4241(d) proceedings are

mandatory in this case. Specifically, Defendant argues that the Eleventh Circuit's holding in *United States v. Donofrio*, 896 F.2d 1301 (11th Cir. 1990) is distinguishable because the BOP has already evaluated Defendant and determined that restoration is unlikely. Alternatively, Defendant argues that the holding in *Donofrio* would lead to an absurd result in this case and should, therefore, be rejected.

To the extent Defendant urges this Court to reject binding precedent and read exceptions into the plain language of § 4241(d), the Court declines to do so. It is not the role of this Court to legislate from the bench; instead, this Court must simply apply the law as written and as interpreted by the Eleventh Circuit and United States Supreme Court. Section 4241(d) explicitly states that upon a finding of incompetency, "the court shall commit the defendant to the custody of the Attorney General." As the Eleventh Circuit has stated, this language is mandatory and leaves no discretion to the Court. *Donofrio*, 896 F.2d at 1302. For the same reasons stated in *Donofrio*, Defendant's due process arguments are also without support. *Id.* at 1303; *see also United States v. McCarthy*, No. 22-12931, 2023 WL 5624616, at *1 (11th Cir. Aug. 31, 2023).

With respect to Defendant's remaining objection, Defendant essentially argues that the report made by the BOP pursuant to his § 4241(b) examination, which included a prognosis regarding his future likelihood of recovery, fulfills the requirements of § 4241(d). Defendant has not provided any legal authority in support of his argument that an initial commitment predicated on a finding of possible incompetence can fulfill § 4241(d)'s requirements, and this Court has failed to find such authority. To the contrary, the Eighth Circuit has rejected a similar argument, even when the defendant was inadvertently committed under subsection d before a finding of incompetency was

formally made by the district court. *See United States v. Millard-Grasshorn*, 603 F.3d 492, 494–96 (8th Cir. 2010). The Court is also not persuaded that the mere existence of a prognosis in the initial report means that the issuing provider considered and evaluated Defendant on the same basis as she would have if the commitment had been made pursuant to subsection d or that she was able to glean the same information in thirty days that she may in the longer period applicable under subsection d. There is no reference to subsection d in the report. Therefore, the Court is not persuaded that the existence of the prognosis set forth in the report made pursuant to Defendant's initial commitment under subsection b—as unfavorable as it might be—is sufficient to fulfill the mandatory requirements set forth in subsection d. Defendant's objections will be overruled.

IV. CONCLUSION

In accordance with the foregoing, it is **ORDERED** and **ADJUDGED** as follows:

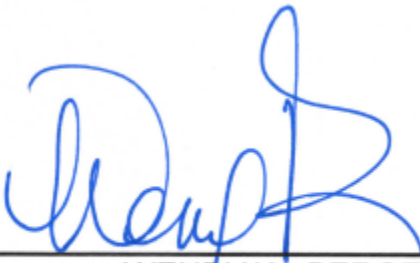
1. Defendant's Objections (Doc. 118) are **OVERRULED**.
2. The Report and Recommendation (Doc. 117) is **ADOPTED** and **CONFIRMED** and made a part of this Order.
3. The Court finds, by a preponderance of the evidence, that Defendant Evan Edwards is presently suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in this defense.
4. Pursuant to 18 U.S.C. § 4241(d)(1), Defendant shall be committed to the custody of the Attorney General, who shall hospitalize Defendant for treatment in a suitable facility for such a reasonable period of time—not to

exceed four months—as is necessary to assess whether there is a substantial probability that in the foreseeable future Defendant will attain the capacity to permit the proceedings in this action to go forward.

5. The Government shall promptly file a notice advising Defendant and the Court of the facility to which Defendant has been designated for treatment once such facility has been determined. Within seven days of the filing of the Government's notice, Defendant shall report to the designated facility. The failure of Defendant to do so shall be deemed to be a violation of his pretrial release conditions.
6. Within the four-month period, the Director of the designated facility shall advise the Court of Defendant's status. If necessary, the Court will entertain a request for an additional reasonable period of commitment as authorized under 18 U.S.C. § 4241(d)(2).
7. The parties shall furnish the Director of the designated facility with any information that relates to the issue of Defendant's competency, including the charging instrument, any pertinent medical records and past assessments of competency, and any relevant law enforcement reports.
8. If the Director of the designated facility concludes Defendant has recovered to such an extent that he is able to understand the nature and consequences of the proceedings against him and to assist properly in his defense, the Director shall file a certificate to that effect with the Clerk of Court.

9. Upon the conclusion of Defendant's treatment at the designated facility, he shall return to the custody of Mary Jane Edwards in accordance with the terms of his Conditions of Release (Doc. 114). Defense counsel shall promptly advise the Pretrial Services Office upon Defendant's completion of his treatment and the date upon which he is expected to return to his current place of residence in this District.

DONE AND ORDERED in Orlando, Florida on March 18, 2024.



WENDY W. BERGER
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record