

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

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 6:22-cr-00201-WWB-LHP
	)	
EVAN EDWARDS,	)	
	)	
Defendant.	)	
_____	)	

**DEFENDANT EVAN EDWARDS’ OBJECTIONS TO
REPORT AND RECOMMENDATION [Dkt. 117]**

COMES NOW, the Defendant, Evan Edwards, by and through the undersigned counsel, and respectfully objects to the legal conclusions and factual findings of the U. S. Magistrate Judge in her Report and Recommendation of October 3, 2023, to the U. S. District Court [Dkt. 117], and in support thereof, states as follows.

STANDARD OF REVIEW

“The District Court reviews *de novo* those portions of a magistrate judge’s Report and Recommendation or specified proposed findings to which an objection is made.” United States v. Hernandez-Penaloza, 899 F. Supp. 2d 1269, 1272 (M.D. Fla. 2012). “The District Court may accept, reject, or modify in whole or in part the report and recommendation of a magistrate judge, or may receive further evidence,

or may recommit the matter to the magistrate judge with instructions.” Id. See generally 28 U.S.C. § 636(b)(1).

FUNDAMENTAL ASPECTS OF THE REPORT AND RECOMMENDATION

1. The Magistrate Judge found, based upon a Bureau of Prisons [hereinafter “BOP”] forensic report, that Mr. Edwards is currently incompetent to proceed to trial, consistent with the standards of 18 U.S.C. § 4241(d). The parties are not in dispute with respect to this issue. Dkt. 117, p. 1.

2. The Magistrate Judge concluded that pursuant to 18 U.S.C. § 4241(d)(1), commitment of a defendant for restoration is mandatory after a finding of incompetence. Dkt. 117, p. 2. Specifically, this is the legal issue which the parties briefed [Dkts. 108, 116, & Dkt. 111, filed under seal] for consideration of the Magistrate Judge and the legal conclusion to which Mr. Edwards’ objections are directed herein.

3. In the Report and Recommendation, the Magistrate Judge recommended, consequently, that the District Court commit Mr. Edwards to the custody of the Attorney General, who must then hospitalize Mr. Edwards for treatment in a suitable facility for a reasonable time, not to exceed four months, as is necessary to determine whether there is a substantial probability that in the foreseeable future, he will attain the capacity to permit the proceedings to go forward. Dkt. 117. See also 18 U.S.C. § 4241(d)(1)-(2).

4. In support of her recommendations, the Magistrate Judge stated that:

the period of confinement to assess restoration necessarily involves a much more detailed evaluation and assessment, focusing on the future. It “requires a more ‘careful and accurate diagnosis’ than the ‘brief interviews’ and ‘review of medical records’ that tend to characterize the initial competency proceeding. *United States v. Strong*, 489 F.3d 1055, 1092 (9th Cir. 2007) (citing *Ferro*, 321 F.3d at 72; *Filippi*, 211 F.3d at 651).

Dkt. 117, p. 13. The Magistrate Judge concluded that “with all due respect to Dr. Kissin’s opinions, whether or not Evan Edwards is capable to restoration to competency is not a foregone conclusion.” *Id.* This finding of fact is the primary factual finding to which Mr. Edwards objects, as stated herein.

DEFENDANT’S OBJECTIONS

5. As set forth below, the Defendant’s view is that the Magistrate Judge’s reliance on United States v. Donofrio, 896 F.2d 1301 (11th Cir. 1990) is misplaced, as the facts of that case are clearly distinguishable from the instant case. The issue of permanency of the defendant’s incompetency was **not at issue** in the district court in Donofrio, so the case is not on point. *Id.* at 1302-03. Here, the permanency of the Defendant’s mental impairment has been determined by the government’s experts, and a different result should obtain. The Court’s holding in Donofrio appears to offer a blanket, mechanical rule that commitment for restoration is mandatory under any circumstance. *Id.* at 1303. The mechanical application of an absolute rule can lead to an absurdity. As posited by the undersigned at a prior

hearing, despite the seemingly mandatory language of § 4241(d)(1), were the defendant in a Terri Schaivo-like brain-dead state, no such commitment for restoration would be appropriate. Similarly, here, the United States Bureau of Prisons, via its expert doctor (as well as the internal review and approval structure including other doctors who reviewed and approved the report in the instant case) has determined that restoration is not indicated, given the Defendant's mental and physical condition. Consequently, on this factual predicate, the clear and unambiguous conclusion of the Psy. D. employed by the United States Bureau of Prisons merits more weight than the Magistrate Judge afforded it. This is in stark contrast to the facts before the Court in Donofrio, which did present a situation wherein the BOP had already concluded that restoration was not indicated. See generally Donofrio, 896 F.2d at 1302-03.

6. Further, a mandatory return to the BOP for restoration implicates a Defendant's equal protection and due process rights. Sending the Defendant back for "restoration" when he lacks the awareness of his situation nor is he able to glean any benefit from such treatment is a paradigmatic example of a violation of the rights described above. The defendant's hospitalization and confinement must bear some reasonable relation to the purpose of the statute. United States v. Donnelly, 41 F.4th 1102, 1105 (9th Cir. 2022) (citing Jackson v. Indiana, 406 U.S. 715, 720 (1972) (holding that "the Fourteenth Amendment's due process clause prohibits a state from

confining a defendant for an indefinite period simply because he is not competent to stand trial”).

7. As the Magistrate Judge correctly states in the Report and Recommendation, the United States Court of Appeals for the Eleventh Circuit and other circuits have held that the restoration determinations are mandatory in many contexts and in varying factual circumstances. Contrary authority was not discovered by the undersigned, nor by the United States. However, this appears to be a result of these exact facts not yet coming before a court for a reported decision. The government’s own expert has determined restoration to be inappropriate, stating that such a prospect is “not indicated.” Dkt. 98, filed under seal. Clearly, when the mechanical application of an absolute rule produces unintended, harsh, and/or absurd result, the District Court may fashion relief in accordance with equal protection and due process principles.

8. In criminal law, the court must construe penal statutes with the rule of lenity. Dunn v. United States, 442 U.S. 100, 112 (1979); United States v. Smith, 35 F.3d 344, 346 (8th Cir. 1994). While Mr. Edwards does not go so far as to urge the Court to ignore the plain meaning of the word “shall” in 18 U.S.C. § 4241(d), instead he asks the District Court to create a unique and fact-specific departure from the harsh operation of a rule which Congress simply did not anticipate.

9. In Smith, the United States Court of Appeals for the Eighth Circuit

reversed the District Court’s interpretation of 18 U.S.C. § 1623(d), a perjury statute, which turned on an analysis of whether the term “and” in the statute meant “and” or “or.” Smith, 35 F.3d at 345-46. The Circuit Court held that even though the District Court had followed existing authority (including other Circuit Courts) in construing the statutory language against its plain meaning, a “flagrant injustice” would result if it adopted the District Court’s interpretation. Id. at 346. Such is the result here if the District Court does not go beyond the plain text of the statute and craft a result that comports with the statutory scheme, allowing for a fact-specific and proper diversion from the absolute nature of the text.

10. Neither Mr. Edwards nor the government can benefit from restoration treatment. Mr. Edwards has dementia, in the form of irreversible neurological damage. Dkt. 98, p. 8, filed under seal. Further, Mr. Edwards’ delicate physical condition requires substantial ongoing medical care that has been difficult and expensive for the government to accommodate. The nature of Mr. Edwards’ confinement must be reasonably related to important governmental purposes justifying such detention under the U.S. Supreme Court’s mandate in Jackson v. Indiana. Jackson, 406 U.S. at 738 (holding that “[a]t the least, due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed.”). Such purpose is not present here, but rather is a waste of scarce executive branch resources.

11. The Magistrate Judge relied on dicta from cases in other jurisdictions to reach a factual finding that the period of commitment for restoration involves a more detailed evaluation and assessment than the initial competency determination. Dkt. 117, pp. 12-13. Those cases, namely United States v. Brennan, 928 F.3d 210 (2d Cir. 2019); United States v. Strong, 489 F.3d 1055, 1062 (9th Cir. 2007); and United States v. McKown, 930 F.3d 721 (5th Cir 2019), are from other judicial circuits and not binding on this Court. It is of note, however, that no testimony or direct evidence has been presented as to how the restoration determination would differ from the initial competency determination, other than that the Report by the BOP's doctor has already reached the conclusion that restoration is not indicated on these facts. It is common knowledge that the BOP's psychologist-doctor is an expert and deals regularly with restoration matters. She has, correctly, concluded that restoration was not indicated as Mr. Edwards is not expected to benefit from educational interventions in light of his neurological disorder. Dkt. 98, p. 8, filed under seal. There is no record evidence to the contrary – there is only the United States' argument that the statutory scheme is mandatory and inviolable.

12. More narrowly stated, the Defendant objects to the conclusion that a more “detailed evaluation and assessment” is indicated here. Dkt. 117, p. 13. The BOP's conclusive findings are clear, unambiguous, and unrefuted. Consequently, they should be given due deference. Neither the government nor society at large can

benefit from the fruitless exercise of commitment for restoration.

WHEREFORE, the Defendant, Evan Edwards, objects to the Magistrate Judge's report and recommendations and hereby moves the District Court to find that the Magistrate Judge erred, for the varying reasons stated above, in interpreting the language of 18 U.S.C. § 4241(d) and in applying the relevant facts thereto.

Respectfully submitted this 17th day of October, 2023.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17th day of October, 2023, I filed a copy of the foregoing with the Clerk of the Court via the CM/ECF system. I further certify that all parties to this case are equipped to receive service of documents via that system.

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