

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA

v.

CASE NO. 6:22-cr-00201-WWB-LHP

EVAN EDWARDS

**GOVERNMENT’S RESPONSE IN OPPOSITION TO DEFENDANT’S
MOTION FOR RECONSIDERATION**

The United States hereby responds in opposition to the defendant Evan Edwards’s Motion for Reconsideration (Doc. 140) (the “Motion”), and states:

RELEVANT BACKGROUND

1. The Bureau of Prisons (“BOP”) issued a Forensic Report dated July 7, 2023 (the “Forensic Report”) following the Defendant’s referral to the Federal Medical Center in Devens, Massachusetts, pursuant to the provisions of 18 U.S.C. § 4241(b). *See* Forensic Report, p. 1. The Forensic Report found that the Defendant was not competent to stand trial. *Id.* at 8. Additionally, in the “Prognosis and Recommendations” section of the Forensic Report, the forensic psychologist commented: “a period of restoration to competency pursuant to Title 18, United States Code, Section 4241(d),¹ is not indicated for Mr. Edwards as he is not expected to benefit from educational interventions in light of his neurological disorder.” *Id.*

¹ This isolated reference to § 4241(d) is the only time § 4241(d) is mentioned in the entire eight-page Forensic Report.

2. Subsequently, this Court entered an Order (Doc. 136) (the “Order”) adopting and confirming the Magistrate’s Report and Recommendation (Doc. 117), which recommended § 4241(d) proceedings. As explained in the Order, the parties dispute “if there [is] 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.” As the Order further explained, “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.”

3. Now, Defendant seeks reconsideration of the Order on the sole contention that the BOP’s Forensic Report “included an express analysis of section 4241(d).” *See* Doc. 140.

4. As set forth below, the Defendant’s request for reconsideration of the Order should be denied because there is no legal basis for reconsideration. The mere inclusion of an isolated reference to § 4241(d) in the Forensic Report, that otherwise focuses entirely on a § 4241(b) evaluation, fails wholly to establish that the statutory requirements of § 4241(d) have been met.

MEMORANDUM

“[A] motion for reconsideration of a district court order in a criminal action is not expressly authorized by the Federal Rules of Criminal Procedure.” *United States v. Vicaria*, 963 F.2d 1412, 1413 (11th Cir. 1992); *see also United States v. Vives*, 546 Fed. Appx. 902, 905 (11th Cir. 2013). However, when district courts exercise their

discretion to entertain motions for reconsideration in criminal cases, they generally employ the standards underlying motions for reconsideration in civil cases. *United States v. Okonkwo*, No. 6:14-CR-5-ORL-40GJK, 2020 WL 5264914, at *1 (M.D. Fla. Aug. 10, 2020). Further, reconsideration is an extraordinary remedy which will only be granted upon a showing of one of the following: (1) an intervening change in law, (2) the discovery of new evidence which was not available at the time the Court rendered its decision, or (3) the need to correct clear error or manifest injustice. *Fla. Coll. of Osteopathic Med., Inc. v. Dean Witter Reynolds, Inc.*, 12 F. Supp. 2d 1306, 1308 (M.D. Fla. 1998). Here, none of these grounds exist. Thus, the Defendant's Motion should be denied.

The Defendant argues that "the Court's failure to acknowledge that the Bureau of Prisons has examined the Defendant under 18 U.S.C.'s § 4241(d)'s requirements warrants clear error." Doc. 140, p. 4. This argument, however, fails because the Bureau of Prisons ("BOP") has not, in fact, examined the Defendant under § 4241(d). Instead, the Forensic Report explicitly provides that it was issued based on a referral under § 4241(b) and states that the evaluation period ran for 30 days (instead of the 4-month period authorized by § 4241(d)). Aside from one paragraph in the "Prognosis and Recommendations" section, the Forensic Report focuses entirely on whether the Defendant is competency to stand trial, not on restorability or treatment directed at restorability.

In fact, the Defendant has not actually undergone any restoration treatment. The goal under § 4241(b) is to provide an initial competency evaluation, not to provide

treatment in an attempt to restore competency. Accordingly, the Forensic Report does not document any treatment to restore Mr. Edwards, as there could be none until issuance of an order pursuant to § 4241(d). The forensic psychologist's prognosis and recommendations included in the § 4241(b) Forensic Report was not the final opinion by BOP after a period of restoration treatment, as is required under § 4241(d). *See United States v. Brennan*, 928 F.3d 210, 217 n.2 (2d Cir. 2019) (explaining that the initial evaluation period under § 4241(b) is "necessarily temporally limited, constraining a medical professional's ability to evaluate and treat a mentally incompetent defendant"); *United States v. Filippi*, 211 F.3d 649, 651 (1st Cir. 2000) (the evaluation of defendant's future competency "requires a more careful and accurate diagnosis before the court is faced with the serious decision whether to defer trial indefinitely and (quite often) to release the defendant back into society"); *United States v. Strong*, 489 F.3d 1055, 1062 (9th Cir. 2007) (evaluation of future competency requires a more "careful and accurate diagnosis" than the brief interviews and review of medical records that tend to characterize the initial competency proceeding") (citing *United States v. Ferro*, 321 F.3d 756, 762 (8th Cir. 2003)).

Moreover, the inclusion of the forensic psychologist's opinion in the Forensic Report about restorability fails to change the requisite statutory scheme and/or applicable case law. As the Court stated in its Order: "Section 4241(d) explicitly states that upon a finding of incompetency, 'the court shall commit the defendant to the custody of the Attorney General.'" Doc. 136. Further, "this language is mandatory and leaves no discretion to the Court." *Id. See United States v. Donofrio*,

896 F.2d 1301 (11th Cir. 1990). The express statutory mandate under § 4241(d) and binding Eleventh Circuit precedent remain just as applicable, even in light of the isolated reference to § 4241(d) in the Forensic Report.

At best, the comment by the § 4241(b) forensic psychologist in the Forensic Report (that a period of restoration to competency was not indicated) is merely evidence that the Defendant's condition may be permanent. However, at this point in the proceedings, the issue of permanency, as explained by *Donofrio*, is not before the Court. Moreover, the Government has not been given the opportunity for the in-depth evaluation of the defendant to which it is entitled. A thirty-day short study, targeted at determining whether the defendant is competent to stand trial, is not tantamount to a four-month, in-depth evaluation focused on restoration. Thus, this Court should apply the holding of *Donofrio*, which is controlling, and commit the defendant in this case for restoration under § 4241(d).

Ultimately, regardless of any evidence that restorability is unlikely, § 4241(d) requires that the Defendant be committed to the custody of the Attorney General for treatment 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.” Such treatment has not yet occurred. *See United States v. Shawar*, 865 F.2d 856, 863 (7th Cir. 1989) (“Our reading of 18 U.S.C. § 4241(d) is not only that commitment is mandatory, but also that likelihood of recovery is not something to be considered by the district court in deciding whether to commit the defendant for the evaluation period.”).

Thus, there has been no clear error, the Motion for Reconsideration should be denied, and § 4241(d) treatment should commence.

WHEREFORE, the United States respectfully requests that the Court deny the Motion for Reconsideration.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 5, 2024, a true and correct copy of the foregoing was filed via the CM/ECF filing system, which will send service to all counsel of record:

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/s/ Kara M. Wick
Kara M. Wick
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