

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

UNITED STATES OF AMERICA

Plaintiff,

v.

Case No: 6:22-cr-204-RBD-DCI

ORLANDO ROSA RODRIGUEZ

Defendant.

REPORT AND RECOMMENDATION

This matter is before the Court on the issue of the mental competency of the Defendant. 18 U.S.C. § 4241.

After examination, a psychologist concluded that the Defendant is not presently competent to assist in his defense. Doc. 226. This finding was not contested by the United States or the Defendant at the competency hearing held on September 26, 2023. At that hearing, the parties agreed that the Defendant was not competent to proceed, and the United States proffered the report of Dr. Jeremiah Dwyer, Ph. D. Doc. 226. Based on that report and given the agreement between the parties (Doc. 236), the Court found by a preponderance of the evidence that the Defendant was presently suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to assist properly in his defense.¹ 18 U.S.C. § 4241(d). Based on that

¹ At the time, the Court included the following footnote in the Order:

Despite Dr. Dwyer's conclusions at the end of his report, it appears from the entirety of that report that the Defendant does likely understand the charges against him, as well as the nature and consequences of these proceedings. Doc. 226. It appears that Dr. Dwyer's opinion concerning competence is based almost entirely on his assessment that the Defendant suffers from delusions related to his perceived

finding, the statute directs that “the court shall commit the defendant to the custody of the Attorney General.” *Id.* Pursuant to the statute:

The Attorney General shall hospitalize the defendant for treatment in a suitable facility—

(1) for such a reasonable period of 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; and

(2) for an additional reasonable period of time until—

(A) his mental condition is so improved that trial may proceed, if the court finds that there is a substantial probability that within such additional period of time he will attain the capacity to permit the proceedings to go forward; or

(B) the pending charges against him are disposed of according to law;

whichever is earlier.

If, at the end of the time period specified, it is determined that the defendant’s mental condition has not so improved as to permit the proceedings to go forward, the defendant is subject to the provisions of sections 4246 and 4248.

18 U.S.C. § 4241(d). The United States declined to dismiss the case. So, as stated at the hearing and in the parties’ joint filing, both the United States and the Defendant agreed that the Defendant should be committed to the Attorney General for competency restoration efforts pursuant to 18 U.S.C. § 4241(d). Docs. 236; 241. Accordingly, the Court committed the Defendant to the custody of the Attorney General to hospitalize the Defendant for treatment in a suitable facility to determine

wealth and his persecution by the government that are interfering with his ability to assist counsel in his defense. *Id.* at 16-17. Accordingly, the Court’s finding of incompetence is limited to the Defendant’s ability to assist properly in his defense. As the statute is written in the disjunctive, this is sufficient for a finding of incompetence and restoration. *See* 18 U.S.C. § 4241(a), (d).

Doc. 241 at 1 n1.

whether there is a substantial probability that in the foreseeable future the Defendant will attain the capacity to permit the proceedings to go forward.

On September 23, 2024, following several filings and at least two hearings, the Court received from the Bureau of Prisons a psychological forensic report from Dr. Kristina P. Lloyd, Psy.D, ABPP. Doc. 294. Dr. Lloyd concluded as follows:

[I]t is the opinion of the undersigned that [the Defendant's] mental disease or defect, namely schizoaffective disorder, is well managed by his psychotropic medication regimen. As such, it is my opinion that Mr. Rosa-Rodriguez is presently able to understand the nature and consequences of the proceedings against him and to assist properly in his defense.

Doc. 294 at 16.

Based on that report, the undersigned held status conference and set the hearing on competency restoration. Docs. 298; 299. At the scheduled competency hearing, defense counsel requested to withdraw, that motion was granted, new counsel was appointed, and the Court re-set the competency hearing. Docs. 302; 305. At the next scheduled competency hearing, the Defendant requested appointment of his own expert, the Court granted that request in part, and re-set the competency hearing to February 25, 2025, to allow the Defendant time to obtain the opinion of a defense expert concerning competency. Docs. 309; 312.

On December 23, 2024, the Defendant provided the Court with a forensic evaluation report of Dr. Jeffrey A. Danziger, M.D. Doc. 313-1. In that report, Dr. Danziger concluded as follows:

It is my overall opinion the defendant is presently competent to proceed. There is one caveat I wish to point out. The defendant said he was taken off his psychiatric medications following the recent neurological event, possibly a small stroke or TIA. Should the defendant remain off of his psychiatric medications, his psychiatric condition could worsen, potentially impacting his competency status. With that cautionary statement, it is my opinion as of December 20, 2024, the defendant is competent to proceed.

Doc. 313-1 at 8. On January 3, 2025, the government filed a motion for uncontested competency hearing, letting the Court know that the Defendant no longer contested his competency to proceed

and requesting an expedited hearing. Doc. 315. The Court granted that motion and set a January 9, 2025 hearing. Docs. 316; 318.

On January 9, 2025, the Court held a competency hearing. At the hearing, the government proffered Dr. Lloyd's report and asserted that the Defendant is competent to proceed based on the findings in that report. The Defendant then stipulated through counsel that he is competent to proceed, made no objection to Dr. Lloyd's report or findings, and chose not to present any evidence on the issue of the Defendant's mental competency to proceed in this case.

Based on an independent review of Dr. Lloyd's report and considering the Defendant's stipulation that he is competent to proceed, the undersigned respectfully **RECOMMENDS** that the Court find that the Defendant is competent to proceed in this case because the Defendant is **not** 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 his defense.

NOTICE TO PARTIES

The party has fourteen days from the date the party is served a copy of this report to file written objections to this report's proposed findings and recommendations or to seek an extension of the fourteen-day deadline to file written objections. 28 U.S.C. § 636(b)(1)(C). A party's failure to serve and file written objections waives that party's right to challenge on appeal any unobjected-to factual finding or legal conclusion the district judge adopts from the Report and Recommendation. See 11th Cir. R. 3-1; 28 U.S.C. § 636(b)(1).

ORDERED in Orlando, Florida on January 9, 2025.



DANIEL C. IRICK
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:

United States Marshal
United States Attorney
United States Probation Office
United States Pretrial Services Office
Counsel for Defendant