

Certiorari dismissed, April 6, 2009

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 07-7563

UNITED STATES OF AMERICA,

Petitioner - Appellee,

v.

VICTOR PERKINS,

Respondent - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. W. Earl Britt, Senior District Judge. (5:92-hc-654-BR)

Submitted: January 20, 2009

Decided: February 6, 2009

Before NIEMEYER and MICHAEL, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Thomas P. McNamara, Federal Public Defender, Jane E. Pearce, Assistant Federal Public Defender, Raleigh, North Carolina, for Appellant. George E. B. Holding, United States Attorney, Anne M. Hayes, Assistant United States Attorney, David T. Huband, Special Assistant United States Attorney, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Victor Perkins appeals the district court's order continuing his civil commitment under 18 U.S.C. § 4246 (2006). On appeal, he argues that the district court erred in concluding that his release would pose a substantial risk of bodily injury to another person or serious damage to property of another as a result of mental disease or defect. We affirm.

In order for Perkins to succeed in his renewed attempt at release, it was incumbent upon him to show by a preponderance of the evidence that he has recovered from his mental disease or defect to such extent that his release would no longer create a substantial risk. See 18 U.S.C. § 4246(e) (2006). The district court's finding on the matter will not be overturned on appeal unless it is clearly erroneous. See United States v. Cox, 964 F.2d 1431, 1433 (4th Cir. 1992).

After conducting a hearing, the district court found by "overwhelming evidence" that Perkins "continues to suffer from a mental disease or defect as a result of which his release would create a danger to others." Our thorough review of the record leads us to conclude that the district court did not clearly err in finding that continued civil commitment was warranted. Accordingly, we affirm the order of the district court. We further deny Perkins' pro se motions for summary judgment and release. We dispense with oral argument because

the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED