

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 05-767(DSD/SRN)

United States of America,
Petitioner,

v.

ORDER

Calvin Wedington,
Respondent.

This matter is before the court upon respondent Calvin Wedington's objections to the April 9, 2010, report and recommendation of Magistrate Judge Susan. R. Nelson. The magistrate judge recommends that the court deny Wedington's 18 U.S.C. § 4247(h) motion for release from treatment. Wedington accepts the factual statements and legal standard in the report and recommendation, but objects to the conclusion that his continuing commitment is proper. (See Resp't's Objections 1-2.) The court reviews the report and recommendation of the magistrate judge de novo. 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(3); D. Minn. LR 72.2(b).

Wedington is a federal prisoner who was sentenced to life imprisonment for second-degree murder in 1982. On June 2, 2005, this court committed Wedington to FMC-Rochester for treatment pursuant to 18 U.S.C. § 4245. On December 9, 2009, through court-appointed counsel, Wedington filed the instant motion seeking a hearing to determine whether he "is suffering from a mental disease

or defect as a result of which he is in need of custody for care or treatment in a suitable facility" and whether he may be discharged. See 18 U.S.C. § 4247(c)(4)(E) and (h). On March 19, 2010, the magistrate judge conducted a hearing at which Wedington and the Chief of Psychology at FMC-Rochester testified.

The court has carefully reviewed the report and recommendation de novo. Based on the evidence received at the hearing, including Wedington's ongoing delusions that he is a medical doctor, his lack of awareness of his mental illness and his history of deteriorating health upon ceasing treatment, the court finds by a preponderance of the evidence that Wedington suffers from a mental disease and remains in need of treatment in a suitable facility. Furthermore, the court finds that Wedington's progress at FMC-Rochester shows that it is an appropriate facility for him. Therefore, the court adopts in full the magistrate judge's very thorough and well-reasoned report and recommendation.

Accordingly, **IT IS HEREBY ORDERED** that:

1. Wedington's objections to the magistrate judge's report and recommendation [Doc. No. 32] are overruled; and
2. The magistrate judge's report and recommendation [Doc. No. 29] is adopted in full.

Dated: May 12, 2010

s/David S. Doty
David S. Doty, Judge
United States District Court