

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA

v.

LUKE WENKE,

Defendant.

No. 1:22-CR-00035-JLS-HKS

**NOTICE OF MOTION FOR
A STAY OF DECISION AND
ORDER OF COMMITMENT
PENDING APPEAL**

MOTION BY:

Timothy P. Murphy, Assistant Federal Public
Defender, on behalf of Luke Wenke.

DATE, TIME & PLACE:

To be submitted without oral argument.

SUPPORTING PAPERS:

Memorandum submitted by Timothy P. Murphy,
Esq., dated May 9, 2025, and all prior
proceedings had herein.

RELIEF REQUESTED:

An order staying the enforcement of this Court's
Decision and Order of Commitment, entered
April 23, 2025, pending appeal.

Dated: May 9, 2025

Buffalo, New York

/s/ Timothy P. Murphy

Timothy P. Murphy

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On behalf of Defendant Luke Wenke

To: Franz M. Wright, AUSA

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

No. 1:22-CR-00035-JLS-HKS

LUKE WENKE,

MEMORANDUM IN SUPPORT
OF MOTION FOR A STAY OF
DECISION AND ORDER OF
COMMITMENT PENDING APPEAL

Defendant.

The defendant Luke Wenke respectfully submits through Timothy P. Murphy, Esq., Assistant Federal Public Defender for the Western District of New York, the instant memorandum in support of the defendant's motion for a stay of the enforcement of this Court's Decision and Order of Commitment, entered April 23, 2025 (**Dkt. 194**), pending the appeal of this matter to the U.S. Court of Appeals for the Second Circuit.

I. Pertinent procedural history

Mr. Wenke admitted in 2023 to violating a condition of his supervised release and is awaiting sentence. Doctor Corey M. Leidenfrost examined Mr. Wenke and issued reports on 4/1/24 and 1/14/25, opining that Mr. Wenke suffers from a "schizoaffective disorder, bipolar type," and, among other things, possesses symptoms significantly influencing a high risk for "future and imminent violence." **Dkt. 122 (filed on 4/2/24); 2/18/25 hearing, pp. 102-103; Dkt. 175 (filed 1/14/25).**¹ On 11/12/24, BOP Doctors Kaitlin Nelson and Robin Watkins issued a report finding Mr. Wenke to be competent, while suffering from an "other specified

¹ Dr. Liedenfrost's initial opinion, following an examination of the defendant in March of 2024, was that Mr. Wenke suffered from an unspecified bipolar I disorder, with psychotic features. **2/18/25 hearing, pp. 35; see also, id. at 22, 24.**

personality disorder, with mixed personality features.” **Dkt. 164 (filed on 11/14/24); 4/10/25 hearing, pp. 24-26, 61-62.** All three of these reports have been previously filed under seal herein and are incorporated by reference for purposes of this motion.

On April 23, 2025, this Court, following a two-day evidentiary hearing, conducted on 2/18/25 and 4/10/25 (**Exhibits A and B** herein), issued a Decision and Order of Commitment, finding by a preponderance of the evidence that Mr. Wenke suffers from “a mental disease or defect for which he is in need of custody for care or treatment in a suitable facility.” **Dkt. 194, at p. 10.** This order was deemed, pursuant to 18 U.S.C. § 4244, a “provisional sentence of imprisonment to the maximum term authorized by law for the violation of supervised release to which [Mr.] Wenke admitted.” *Id.* **at p. 10.**

On May 1, 2025, the defendant timely filed a notice of appeal. **Dkt. 196.** Our office has sought an expedited transcript schedule and intends to move for an expedited appeal schedule with the U.S. Court of Appeals for the Second Circuit.

II. This Court’s legal authority to issue a stay pending appeal

While the decision to grant a stay pending appeal is a matter of discretion for this Court, the Supreme Court has observed,

[t]he authority to hold an order in abeyance pending review allows an appellate court to act responsibly. A reviewing court must bring considered judgment to bear on the matter before it, but that cannot always be done quickly enough to afford relief to the party aggrieved by the order under review. The choice for a reviewing court should not be between justice on the fly or participation in what may be an “idle ceremony.” The ability to grant interim relief is accordingly not simply “[a]n historic procedure for preserving rights during the pendency of an appeal,” but also a means of ensuring that appellate courts can responsibly fulfill their role in the judicial process.

Nken v. Holder, 556 U.S. 418, 427 (2009) (internal citations omitted); but see *id.* at 427-428

(also discussing the importance of finality in court orders).

The four factors to be considered in issuing a stay pending appeal are: (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies. *United States v. Grote*, 961 F.3d 105, 122-123 (2d Cir. 2020), citing *In re World Trade Center Disaster Site Litig.*, 503 F.3d 167, 170 (2d Cir. 2007); *see again, Nken*, 556 U.S. at 435 (recognizing the third and fourth stay-related factors merge where the government is the opposing party).

III. Reasons for granting the stay

A. Likelihood of success

As to the likeliness of success on appeal, as Mr. Wenke argued previously, the opinion of Dr. Leidenfrost that Mr. Wenke suffered from a “[s]chizoaffective disorder, bipolar type,” and, among other things, possessed symptoms significantly influencing a high risk for “future and imminent violence,” **Dkt. 175, at pp. 4, 6-7**, was based on misinformation and insufficient information, as the doctor conducted only one in-person meeting with the defendant and failed to consult at all with defendant’s counsel and family. **2/18/25 hearing, pp. 55-56, 63, 74-75; Dkt. 192, at pp. 2-9**. This is despite such commonsense outreach efforts potentially providing helpful insight in arriving at a proper diagnosis. **2/18/25 hearing, p. 55**.

Dr. Leidenfrost’s opinion was also based on the erroneous conclusion that Mr. Wenke suffered from delusions. *See, Dkt. 192, at pp. 6-8* (counsel addressing eight examples of wrongly found delusions); *see also, 4/10/25 hearing, p. 32* (Dr. Watkins defining a delusion as “a fixed belief that remains steadfast even in the face of contrary evidence”); **4/10/25**

hearing, p. 41 (Dr. Watkins discussing 17-factor Cunningham Model for classifying individuals as delusional). All three doctors agreed that a “schizoaffective disorder, bipolar type” diagnosis is dependent upon there being psychotic symptoms, such as delusions. **2/18/25 hearing, pp. 20, 37-40; 4/10/25 hearing, pp. 77-79**. Indeed, the purported existence of delusions was “critical” to Dr. Liedenfrost’s diagnosis. **2/18/25 hearing, p. 73; see also, id. at 20-21.**

But Doctors Nelson and Watkins, whose conclusions were based on observing Mr. Wenke on a number of occasions over a 45-day period, directly contradicted Dr. Liedenfrost on this issue. *Contrast* **2/18/25 hearing, pp. 26-32, 35-36, 40, 42-45, 52-53, 57-60, 64-66, 69-71**, with **4/10/25 hearing, pp. 46-47, 59-60, 66-67, 77-79**. During the latter observation period, Mr. Wenke remained in general population, raising no concerns to Dr. Nelson regarding the safety of others in custody. **4/10/25 hearing, pp. 46-47, 59-60**. Indeed, Mr. Wenke demonstrated the ability to follow rules, **11/12/24 report, p. 13 (Dkt. 164)**, despite not being on medication during this time-period. **4/10/25 hearing, pp. 63.**² Moreover, a schizoaffective disorder is something that could be detected during individual interactions with the patient -- but wasn’t discovered here by either Doctors Nelson or Watkins. **4/10/25 hearing, pp. 77-79**. In sum, Doctors Nelson and Watkins believed that Mr. Wenke’s expressed beliefs were not “overtly” delusional. **4/10/25 hearing, pp. 35-37, 58; 11/12/24 report., p. 20.**

While part of Dr. Liedenfrost’s ultimate conclusions included his opinion that Mr. Wenke would likely refuse to voluntarily take medication, **2/18/25 hearing, p. 102-103**, he

² Dr. Liedenfrost acknowledged that mental health treatment had not been necessary for Mr. Wenke during his time in the BOP system. **2/18/25 hearing, p. 92.**

also testified to not actually knowing if the defendant could be medicated voluntarily. *See, id. at 100*. Moreover, neither Doctors Nelson nor Watkins could opine on a specific treatment plan, as Mr. Wenke suffers only from Other Specified Personality Disorder, with Mixed Personality Features -- containing features unlikely to significantly change in the near future. *See e.g., 4/10/25 hearing, pp. 62, 64-65* (Dr. Nelson opining that therapy, including group therapy, was important and that treatment could take time; not necessarily requiring hospitalization); *see also, 11/12/24 report, p. 18; Dkt. 192 at p. 10*. Even Dr. Liedenfrost acknowledged that Mr. Wenke could be released to his father's custody, who could then bring him to the Erie County Medical Center for treatment. **4/10/25 hearing, pp. 107-108.**

Along these lines, Dr. Liedenfrost recognized that having Mr. Wenke in custody hundreds of miles away, with less access to his family, could worsen his condition. **2/18/25 hearing, pp. 93-94, 101**. It's also telling that -- unlike BOP Doctors Nelson and Watkins -- Dr. Liedenfrost: (1) was not familiar at all with the BOP system, (2) had never been to any of its facilities and (3) naturally had no knowledge of BOP's treatment plans. **2/18/25 hearing, pp. 92-93**. As Mr. Wenke previously argued, even if his personality disorder qualified as a mental disease or defect, there was insufficient evidence before your Honor to warrant an order of hospitalization to provide appropriate treatment. **Dkt. 192, at pp. 9-10.**

Finally, Dr. Liedenfrost's opinion about Mr. Wenke's potential for committing future violence is suspect. For instance, the doctor references an incident flagged in social media of the defendant possessing a firearm in 2020. **2/18/25 hearing, pp. 32-33**. In addition to this purported event occurring two years before the 2022 offense at bar, there was no police report filed regarding this incident, nor was there any report of a gun being recovered. **2/18/25 hearing, pp. 77-78**. As this Court is aware, the 33-year-old Mr. Wenke had no prior arrest

record before the present matter. **11/12/24 report, p. 9 (Dkt. 164).**

B. Irreparable harm and potential injury to the government

Without this Court staying the enforcement of its April 23rd order, Mr. Wenke will be irreparably harmed by being deprived of the opportunity to receive appellate review. Mr. Wenke has been in custody on the instant violation of supervision since October 4, 2023. **Dkt. 78.** He admitted to committing charge #5 of the second amended petition on November 7, 2023. **Dkt. 95.** His maximum statutory penalty for this violation offense is two (2) years. 18 U.S.C. § 3583(e)(3). Upon information and belief, Mr. Wenke will have completed serving “the maximum term authorized by law” for his violation in early October of this year.

Should the director of the facility in which Mr. Wenke is held determine (pursuant to this Court’s April 23rd order) that the defendant has “recovered from his mental disease or defect to such an extent that he is no longer in need of custody or care in such a facility” (*see again, Dkt. 194, at p. 10*) prior to the defendant’s maximum term being completed in October 2025, his pending appeal will be moot.

As the defendant would remain in custody under this Court’s October 4, 2025 detainment order, **Dkt. 78**, even if he successfully obtained a stay herein, there is no potential injury, substantial or not, to the government or the public in this Court granting the relief sought herein.

Appellate counsel has sought the position of the government as to the relief sought herein. While we assume they oppose this motion, we have not received official confirmation in that regard.

WHEREFORE, Mr. Wenke respectfully requests that this Court stay the enforcement of its April 23, 2025 Decision and Order of Commitment (**Dkt. 194**) and grant such other and further relief as this Court deems just and proper.

Dated: Buffalo, New York
May 9, 2025

Respectfully submitted,

/s/ Timothy P. Murphy
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