25-1165-cr

In the United States Court of Appeals
for the Second Circuit

United States of America,

Appellee,

v.

Luke Marshall Wenke,

Defendant-Appellant.

On Appeal from the United States District Court
For the Western District of New York

BRIEF FOR APPELLEE
UNITED STATES OF AMERICA

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STATEMENT OF JURISDICTION

The district court had jurisdiction pursuant to 18 U.S.C. § 3231, by reason of an Indictment charging Defendant-Appellant Luke Marshall Wenke with violations of 18 U.S.C. §§ 2261A(2)(A) and 2261A(2)(B) (A[1] 25–26) (Cyberstalking).

On April 18, 2022, Wenke pleaded guilty, and the district court subsequently sentenced him to 18 months of imprisonment to be followed by three years of supervised release. (A 8). On June 23, 2023, Wenke was alleged to be in violation of the terms of his supervised release. (A 10). Wenke later admitted to violating the terms of his release and the district court sentenced him on August 10, 2023, to time served and 34 more months of supervised release. (A 10–11).

Wenke was again charged with violating his supervised release, and on November 7, 2023, Wenke admitted to one of the alleged violations. (A 12–14). As part of the presentencing proceedings, the district court ordered Wenke's competency to be evaluated. (A 130–38). Thereafter, on April 23, 2025, the district court found that Wenke was competent but issued a Decision and Order

[1] References herein to "A __" are to pages of the Joint Appendix filed by Wenke and to "SD __" are to portions of the documents filed under seal by Wenke (Doc. 38).

of Commitment 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 Wenke admitted." (A 444). On May 1, 2025, Wenke filed a timely Notice of Appeal. (A 446).

While a sentence pursuant to 18 U.S.C. § 4244 is technically considered provisional, a commitment order has sufficient indicia of finality that this Court has jurisdiction pursuant to 28 U.S.C. § 1291. *See Corey v. United States*, 375 U.S. 169, 175 (1963) (holding that a provisional sentence under a now-repealed but similar statute, 18 U.S.C. § 4208, was "freighted with sufficiently substantial indicia of finality" to permit an immediate appeal). *Accord United States v. Abou-Kassem*, 78 F.3d 161, 167–68 (5th Cir. 1996) (a provisional sentence under § 4244 "has both vital indicia of finality: (1) the defendant has been convicted of the crime(s) charges, and (2) the defendant is committed to the custody of the Attorney General") (abrogated on other grounds); *United States v. Ewing*, 494 F.3d 607, 613–15 (7th Cir. 2007) (same).

In the alternative, this Court has jurisdiction to review the Decision and Order of Commitment under the collateral order doctrine. *See United States v. Bescond*, 24 F.4th 759, 766–67 (2d Cir. 2021) (Court may review non-final rulings where it (1) "conclusively determine[s] the disputed question;" (2) "resolve[s] an

important issue completely separate from the merits of the action;" and (3) is "effectively unreviewable on appeal from a final judgment.").

COMBINED STATEMENT OF THE CASE AND STATEMENT OF FACTS

A. Initial Judgment and First Supervised Release Violation

On August 18, 2022, the district court (Sinatra, J.) sentenced Wenke to 18 months' imprisonment and three years of supervised release for violation of 18 U.S.C. §§ 2261A(2)(A) and 2261A(2)(B) (Cyberstalking). (A 109).

In June of 2023, the district court conducted a hearing for an alleged violation of Wenke's supervised release, after which it found that Wenke had, in fact, violated his terms of supervised release. (A 10) (Minute Entries dated 6/21/2023 and 6/23/2023). The government argued for a sentence of incarceration while Wenke requested a sentence of time served with mental health treatment to begin upon his new term of supervision. (A 11) (Minute Entry dated 8/3/2023).

The district court obliged Wenke's request, sentencing him on August 10, 2023, to a period of time served with 34 months of supervised release, "intended to accommodate [Wenke's] mental health treatment plan." (A 11) (Minute Entry dated 8/10/23).

B. Second Supervised Release Violation and Wenke's Competency is Evaluated

Just two months later, Wenke appeared on a second violation of supervised release. (A 12) (Minute Entry dated 10/4/2023). On November 7, 2023, Wenke admitted to one of the allegations in the violation petition, and the district court accepted his admission. (A 14) (Minute Entry dated 11/7/2023).

At a status conference on January 30, 2024, the district court ordered Wenke to undergo a psychiatric evaluation with Dr. Corey M. Leidenfrost whose report was filed under seal on April 2, 2024. (A 16; SD 36–57).

On April 16, 2024, the district court adjourned the proceedings to permit time for additional psychiatric evaluations. (A 17) (Minute Entry dated 4/16/2024). Dr. Kaitlyn Nelson, supervised by Dr. Robin Watkins, and both employed by the Bureau of Prisons (BOP), evaluated Wenke, concluded that he was competent, and filed their joint report under seal on November 14, 2024. (SD 58–83; A 278–80; A 317–18).

After reviewing the reports from Dr. Leidenfrost and Drs. Nelson and Watkins, the district court found Wenke competent under 18 U.S.C. § 4241, but determined there remained reasonable cause to believe he may be suffering from a mental disease or defect pursuant to 18 U.S.C. § 4244. (A 19–20) (Minute Entry dated 11/19/2024).

C. The District Court Conducts an 18 U.S.C. § 4244 Hearing

Dr. Leidenfrost submitted a supplemental report addressing the § 4244 question on January 14, 2025. (SD 84–90). Drs. Watkins and Nelson did not conduct a supplement evaluation or file a second report. The district court subsequently conducted an evidentiary hearing at which Drs. Watkins, Nelson, and Leidenfrost all testified. (A 21–22) (Minute Entries dated 2/18/2025 and 4/10/2025).

Dr. Leidenfrost testified that he initially evaluated Wenke in March 2024, using "over a dozen" letters that Wenke had sent to the court, information from social media, articles about the case, the presentence investigation report, a psychological assessment, and an individual interview he conducted with Wenke. (A 161–66). Dr. Leidenfrost explained that the interview revealed "paranoid, persecutory and grandiose delusions, namely… the defendant's fixation on particular individuals." (A 167). For example, Wenke discussed traveling 14 hours to rescue "RT," while believing that RT was infatuated and in love with him, despite only having known RT for two weeks. (A 167–68). Wenke insisted that external forces, including the victim in his underlying criminal matter, "KV," and the courts, were keeping them apart. (A 168). One of the supports for Wenke's beliefs was his purported communication with a psychic. (A 168–70).

Dr. Leidenfrost acknowledged that a belief in the accuracy of psychics is "culturally congruent," but concluded that, in this context, Wenke's other beliefs nevertheless turned it into a delusion. (A 170). For example, Wenke "[went] after RG, because he felt he didn't do a good enough job defending RT. And then somehow it expanded to KV and then it expanded to BT." (A 173). Dr. Leidenfrost determined that these symptoms "cloud[ed] his judgment, making him disinhibited, impulsive, engaging in behavior that had a high risk of being harmful, which he did over and over again … driving his violence risk." (A 173–74). Following the interview, Dr. Leindenfrost concluded that Wenke was at high risk for future violence, causing serious physical injury, and imminent risk of violence. (A 174).

Dr. Leidenfrost testified that he conducted a second evaluation in January 2025, this time to provide an opinion as to whether Wenke required treatment in an appropriate facility pursuant to 18 U.S.C. § 4244. (A 176). Dr. Leidenfrost again conducted an in-person interview, and reviewed letters to the district court as well as the November 2024 competency report from BOP Drs. Watkins and Nelson. (A 176–81). The BOP competency report reached a different conclusion as to Wenke's diagnosis and also asserted that Wenke was not delusional. (A 289–91; A 312; A 331–33).

Regarding the second interview, Dr. Leidenfrost testified that Wenke fixated on KV and RG, repeatedly diverted the conversation, and seemed consumed by his delusional beliefs. (A 178). As a result, Dr. Leidenfrost updated his diagnosis to schizoaffective disorder, bipolar type (A 177) and concluded that Wenke suffered from a serious mental illness or mental disease or defect, that the symptoms "still significantly contribute[d] to a violence risk," and that Wenke would benefit from receiving treatment in an appropriate facility (A 179–80).

Finally, Dr. Leidenfrost testified that he reached a different diagnosis than Drs. Watkins and Nelson for several reasons. (A 181). First, the BOP report asserted that Wenke could not have had a manic episode because there was no evidence of a clear change in his behavior; Dr. Leidenfrost, however, believed there was evidence of a marked change in personality between 2019 and 2020. (*Id.*). Second, the BOP report asserted that there was no manic episode because of the time frame it had apparently lasted; but Dr. Leidenfrost testified he had worked with individuals who experienced symptoms "for years without treatment, so there is no outer limit how long they can last." (A 182). Third, the BOP report asserted that the fixation on RT was not a delusion because the belief was consistent with spiritualism with respect to the psychic consultation; Dr. Leidenfrost explained that this ignored other evidence, such as Wenke "insisting

that if you do a Google search, the results prove they are destined to be together" and that outside forces were preventing them from being together, both beliefs that were not culturally congruent. (A 182). These facts "took it way beyond what an ordinary person would if they talked to a psychic medium." (A 208).

During Dr. Watkins's testimony, she explained that she could not render an opinion on whether Wenke suffered from a mental disease or defect for which he required treatment in a suitable facility, because she had examined Wenke only pursuant to a competency evaluation, not a § 4244 evaluation. (A 296). Dr. Watkins explained that "they are separate questions… There could be someone who was competent, but [also] does have a mental disease or defect that requires treatment in a suitable facility, under 4244." (A 264–65). Dr. Nelson, who was a post-doctoral fellow under Dr. Watkins's supervision at the time, echoed this testimony. (A 298–334).

Through counsel, Wenke argued that even if the court found sufficient evidence of a mental disease or defect, hospitalization was unnecessary. (A 347–48). Or, at most, "there is a way to follow Dr. Leidenfrost's recommendations locally." (A 141). Both Wenke and the government filed post-hearing submissions, and the district court issued its decision on April 23, 2025. (A 22).

The district court found by a preponderance of the evidence that Wenke "is presently suffering from a mental disease or defect for the treatment of which

he is in need of custody for care or treatment in a suitable facility." (A 440). In particular, the district court found that Dr. Leidenfrost had testified credibly and that his reports were "supported by a fulsome factual basis" (*id.*), while Drs. Nelson and Watkins "did not fully evaluate" Wenke's delusional beliefs and could not make a recommendation under § 4244 (A 442). While acknowledging that Dr. Leidenfrost's diagnostic conclusions differed from Drs. Nelson and Watkins's, the district court nevertheless remained convinced by Dr. Leidenfrost. (A 442–43). The district court observed that its own conclusion was corroborated by "the Court's lengthy involvement in the case, the facts of the case, Wenke's violation history, his [41 handwritten] letters to the Court, and the Court's courtroom observations of, and interactions with, Wenke." (A 443).

The district court issued a Decision and Order of Commitment on April 23, 2025. (A 444). Wenke filed a timely Notice of Appeal on May 1, 2025. (A 446). This expedited appeal followed.

STATEMENT OF ISSUE PRESENTED FOR REVIEW

Whether the district court committed clear error when it found, by a preponderance of the evidence, that Wenke suffered from a mental disease or defect, for the treatment of which he needed to be committed to a suitable facility pursuant to 18 U.S.C. § 4244.

SUMMARY OF THE ARGUMENT

The district court's conclusion that Wenke suffered from a mental disease or defect for the treatment of which he had to be committed to a suitable facility was well-grounded in the record, and there is no basis for this Court to find clear error. The district court solicited psychiatric evaluations from multiple sources, conducted a hearing at which all three doctors testified, and carefully weighed the credibility of each doctor's opinion. The district court then thoroughly explained its decision to order Wenke committed pursuant to 18 U.S.C. § 4244 in a written decision.

Before the district court, Wenke himself requested mental health treatment and seemed only to take issue with the type of facility in which he would be housed. On appeal, however, Wenke's arguments ask this Court to substitute its own credibility assessments for that of the district court, even though this Court pays special deference to factual determinations going to credibility.

Where the record supports the district court's factual findings and Wenke can point to no clear error, this Court should affirm the Order of Commitment in its entirety.

ARGUMENT

Legally Sufficient Evidence Supported the District Court's Factual Finding that Wenke Suffered From a Mental Disease or Defect For the Treatment of Which He Had to Be Committed to a Suitable Facility.

A. Governing Law and Standard of Review

To qualify for provisional sentencing pursuant to 18 U.S.C. § 4244, the record must show, based on a preponderance of the evidence, that a defendant presently suffers from a mental disease or defect for which he is in need of custody for care or treatment in a suitable facility. 18 U.S.C. §§ 4244(a) and (d). The district court's determination that Wenke suffers from a mental disease or defect that qualifies him for the provisional sentencing scheme under § 4244(d) is a finding of fact reviewed for clear error. *United States v. Prescott*, 920 F.2d 139, 146 (2d Cir. 1990).

This Court will only find clear error "where the record as a whole leaves us with a definite and firm conviction that a mistake has been committed." *United States v. Esteras*, 102 F.4th 98, 104 (2d Cir. 2024) (internal quotation omitted). With respect to the distinct, but related, question of competency, where there "are two permissible views of the evidence as to competency, the court's choice between them cannot be deemed clearly erroneous." *United States v. Nichols*, 56 F.3d 403, 411 (2d Cir. 1995) (internal quotation omitted). This Court also pays "special deference to the district court's factual determinations

going to witness credibility." *United States v. Berchansky*, 719 F.3d 139, 153 (2d Cir. 2013) (internal quotation marks omitted).

B. Discussion

The district court's factual finding that Wenke was suffering from a mental disease or defect that would qualify him for the provisional sentencing of § 4244(d) was well-grounded in the record. In the competency context, this Court has explained that "the district court may rely on a number of factors, including medical opinion and the court's observation of the defendant's comportment" in making its determination. *Nichols*, 56 F.3d at 411 (citing *United States v. Hemsi*, 901 F.2d 293, 295 (2d Cir. 1990)). Here, the district court properly relied on both.

First, the district court explained that its finding was supported in part by "the Court's lengthy involvement in the case, the facts of the case, Wenke's violation history, his [41 handwritten] letters to the Court, and the Court's courtroom observations of, and interactions with, Wenke." (A 443). Second, the court found that Dr. Leidenfrost "testified credibly at the hearing" in concluding that Wenke suffered from schizoaffective disorder, bipolar type. (A 440). Having reviewed the reports and observed all three doctors' testimony, the district court credited Dr. Leidenfrost's opinion and concluded it was "supported by a fulsome factual basis" (A 440), while Drs. Nelson and Watkins "did not fully evaluate"

Wenke's delusional beliefs and could not render an opinion under § 4244 (A 442). This Court pays "special deference" to such factual determinations going to witness credibility. *Berchansky*, 719 F.3d at 153 (internal quotation marks omitted).

Wenke nevertheless argues that there was legally insufficient evidence that (1) he suffered from a mental disease or defect; or (2) he required hospitalization. (Wenke Brief, pp. 9–13). Wenke's entire argument, however, merely attacks the district court's well-reasoned decision to credit Dr. Leidenfrost over Drs. Nelson and Watkins. (*See id.*).

With respect to the diagnosis of a mental disease or defect, Wenke complains that "[a] determination of this importance requires" consultation with Wenke's counsel and family, and more than one in-person meeting. (Wenke Brief, p. 9). But Wenke cites nothing in the record to support his claim of such a requirement. Just as before the district court, Wenke contests Dr. Leidenfrost's conclusion that Wenke suffered from delusions. (Wenke Brief, p. 10). But in considering the "cold record on appeal and in light of [the district court's] extended effort to secure a range of medical opinion," *Nichols*, 56 F.3d at 413, there is no basis to find clear error on this record. Dr. Leidenfrost testified at length as to why he disagreed with Drs. Watkins and Nelson, and had concluded that Wenke suffered from dangerous delusions. (A 170–74). In baldly

asserting that Drs. Watkins and Nelson should be credited over Dr. Leidenfrost, Watkins asks this Court to ignore the "special deference" given to the district court's credibility determinations. *Berchansky*, 719 F.3d at 153 (internal quotation marks omitted).

With respect to the conclusion that he required hospitalization in a suitable facility, Wenke concedes that Drs. Watkins and Nelson did not opine on a specific treatment plan—while Dr. Leidenfrost had explained at length why such hospitalization would be necessary. (Wenke Brief, p. 12–13). Wenke attacks Dr. Leidenfrost's overall conclusion and the district court's crediting of that opinion by complaining that Dr. Leidenfrost was not familiar with BOP treatment plans or facilities. (Wenke Brief, p. 13). But where Dr. Leidenfrost had a well-reasoned opinion as to why he believed hospitalization was necessary, and Drs. Watkins and Nelson could not opine as to an alternate treatment plan specifically as to Wenke, there is no basis to find that the district court committed clear error. *See Nichols*, 56 F.3d at 411 (where there "are two permissible views of the evidence as to competency, the court's choice between them cannot be deemed clearly erroneous.") (internal quotation omitted).

CONCLUSION

Based on the foregoing, this Court should affirm the district court's April 23, 2025, Decision and Order of Commitment relating to the supervised release violation admitted to on November 7, 2023.

Dated: August 13, 2025.
Buffalo, New York

Respectfully submitted,

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I, Katherine A. Gregory, Assistant United States Attorney for the Western District of New York, hereby certify that the foregoing brief complies with this Court's Local Rule 32.1(a)(4)(A) word limitation in that the brief is calculated by the word processing program to contain approximately 3,030 words, exclusive of the Table of Contents, Table of Authorities, and Addendum of Statutes and Rules.

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