

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 21-20237-CR-RUIZ

UNITED STATES OF AMERICA

vs.

MARCOS CAMPOS,

Defendant.

THE UNITED STATES' OBJECTION TO THE MAGISTRATE JUDGE'S ORDER
DENYING THE GOVERNMENT'S MOTION TO EXTEND THE PERIOD OF TIME
TO RESTORE COMPETENCY

The United States of America, by and through the undersigned Assistant United States Attorney, hereby files this Objection to the Magistrate Judge's Order denying the government's Motion to Extend the Period of Time to Restore Competency Pursuant to 18 U.S.C. § 4241(d)(2)(A). See [ECF No. 64]. Because there is a substantial probability that the Defendant's competency can be restored, the Order is clearly erroneous and should be reversed.

I. BACKGROUND

On April 15, 2021, a grand jury returned an indictment against the Defendant, charging him with receipt and possession of child pornography, in violation of 18 U.S.C. § 2255(a)(2), (b)(1), (a)(4)(b), and (b)(2). [ECF No. 19]. The charges were the culmination of an investigation in which three different groups of law enforcement officers *independently* discovered that the Defendant was downloading and sharing digital files depicting child sexual abuse material ("CSAM"). Specifically, in February 2020, police officers in Plano,

Texas, discovered that the Defendant's IP address ("IP Address") was being used to share CSAM via BitTorrent. Those officers subsequently downloaded multiple files of CSAM from the Defendant's IP Address, including a photo of a prepubescent female being anally raped by an adult male and a prepubescent female performing oral sex on an adult male. Thereafter, in July 2020, agents from Homeland Security Investigations' ("HSI") Key West Field Office downloaded files of CSAM from the Defendant's IP Address, which included a video of an adult male vaginally and anally penetrating a prepubescent female, as well as, a video of an adult female performing oral sex a minor male. Finally, in late July 2020, agents from HSI's Miami Field office executed a search warrant on the Defendant's home and discovered that his computer contained CSAM, including a video of an adult male ejaculating in naked minor females face. Agents also discovered that the day prior to the execution of the search warrant, the Defendant's computer was used to download CSAM.

Upon being indicted, defense counsel filed a Motion for Competency Determination, in part based on a 2011 child pornography case in this district where the Defendant was found to be incompetent at the time he entered a guilty plea.¹ [ECF No. 18]; see also United States v. Campos, S.D.F.L. Case No. 11-CR-201518-CMA. The motion was referred to the Magistrate Judge who granted the order and ultimately appointed Dr. Alejandro Arias, a psychologist, to evaluate the Defendant's competency. [ECF Nos. 29, 34]. Dr. Arias concluded that the Defendant was incompetent, [ECF No. 39-3], and the Magistrate Judge subsequently ordered that the Defendant be committed to the custody of the Attorney General for restoration treatment. [ECF No. 49].

¹ In support of her motion, counsel also included two evaluations from experts retained by the defense who opined that the Defendant was incompetent. [ECF No. 18 at 1-2]; see also [ECF Nos. 39-1, 39-2].

The Defendant self-surrendered to the Federal Medical Center in Butner, North Carolina (“Butner FMC”), on September 14, 2022.² Prior to the expiration of the Defendant’s evaluation period, counsel for the Bureau of Prisons (“BOP”) advised the undersigned that BOP would be requesting the Defendant’s evaluation period be extended under 18 U.S.C. § 4241(d)(2)(A) based upon its medical personnel’s belief that there was a substantial probability that the Defendant’s competency could be restored. As a result, the government moved to extend the period of time to restore the Defendant’s competency pursuant to § 4241(d)(2)(A), [ECF No. 54 (“Government’s Motion”)], while the Defendant filed a motion for his immediate release, [ECF No. 55 (“Defendant’s Motion”)].

Thereafter, on January 17, 2023, BOP issued a Forensic Evaluation authored by Dr. Allyson Sharf, a forensic psychologist, and Dr. Tracy O’Connor Pennuto, a neuropsychologist. [ECF No. 61-2 (“Forensic Evaluation”)]. In the Forensic Evaluation, Dr. Sharf noted that the Defendant knew the crimes that he had been charged with, *id.* at 17, and the reason that he was being evaluated, *id.* at 2, 8. Dr. Sharf also indicated that, after consistent participation in the Slater Method,³ the Defendant “reported learning that the judge makes a ‘decision about [the] case,’ such as whether someone is competent or incompetent.” *Id.* at 8. The Defendant also described the “district attorney” as wanting to “prosecute you”

² As a result, the Defendant’s four-month evaluation period under § 4241(d)(1) expired on January 11, 2023. *See* 18 U.S.C. § 4241(d)(1); *see also* [Forensic Evaluation at 1].

³ The Slater Method is a knowledge-based approach to competency restoration treatment. Forensic Evaluation at 7. The Slater Method “consists of five modules that are each repeated a minimum of three times prior to progression to the next module in the sequence.” *Id.* “The first module covers the review of charges, pleas, and potential consequences.” *Id.* “The second module focuses on a review of courtroom personnel.” *Id.* “Module three reviews courtroom proceedings, trial, and plea-bargain.” *Id.* “Module four reviews concepts related to the defendant’s ability to communicate with his attorney, providing testimony, and assisting in the defense.” *Id.* “Lastly, module five covers tolerating the stress of the proceedings.” *Id.*

and “prove the evidence.” Id. The Defendant understood that the public defender’s role was to defend his rights, and that the defense attorney was on his side while the prosecutor against him. Id. at 17. Additionally, in the neuropsychological portion of the evaluation, Dr. O’Connor Pennuto concluded that the Defendant’s “current cognitive profile is remarkably improved compared to his prior neuropsychological evaluation at FMC Butner in 2012.” Id. at 15. Dr. Sharf ultimately concluded that the Defendant was presently “not competent to stand trial” but opined that “there is a substantial probability that his competency related skills could improve” and requested an additional 120 days to attempt to restore the Defendant’s competency. Id. at 19-20.

Thereafter, on January 20, 2023, the Magistrate Judge held a “Telephonic Status Conference” on the Government’s Motion and the Defendant’s Motion. [ECF Nos. 63, 65]. The Magistrate Judge did not hold an evidentiary hearing, permit the parties to call witnesses, or hear any argument from the parties, but rather announced that she was granting the Defendant’s Motion and denying the Government’s Motion. See [ECF No. 65]. The Magistrate Judge advised that she had considered the Forensic Evaluation from BOP, found that there was not a substantial probability that within the additional 120-day period requested by the government that the Defendant would be restored to competency, and ordered that the Defendant be released from BOP custody. Id. The Magistrate Judge subsequently detailed her findings in a written order. [ECF No. 64 (“Magistrate Judge’s Order”)]. The government now objects to the Magistrate Judge’s Order insofar as it held that there is not a substantial probability that the Defendant’s competency can be restored in an additional reasonable period of time.

II. ARGUMENT

This Court should reverse the Magistrate Judge's Order because there is a substantial probability that the Defendant's competency can be restored. District courts have reviewed competency determinations by a magistrate judge *de novo*. See, e.g., United States v. Frere, No. 17-cr-80030, 2017 WL 11509794 (S.D. Fla. July 27, 2017); United States v. Zessin, No. 2:22-cr-5, 2022 WL 1811190 (S.D. Ga. June 2, 2022); United States v. Brennan, 354 F. Supp. 250, 258 (W.D.N.Y. 2019). Nevertheless, even under a clearly erroneous standard, the Magistrate Judge's Order should be reversed. See Fed. R. Crim. Pro. 59(a) (For non-dispositive matters, "[t]he district judge must consider timely objections and modify or set aside any part of the order that is contrary to law or clearly erroneous.).

Here, the Forensic Evaluation authored by both a forensic psychologist and a neuropsychologist concluded that there was a substantial probability that the Defendant's competency could be restored. See generally Forensic Evaluation. "The legal test for competency is whether the defendant had 'sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding' and whether he had 'a rational as well as factual understanding of the proceedings against him.'" United States v. Cruz, 805 F.2d 1464, 1479 (11th Cir. 1986) (quoting Dusky v. United States, 362 U.S. 402, 402 (1960)). The Forensic Evaluation clearly supports the conclusion that the Defendant can be restored to competency here.

As noted above, the Defendant understood the nature of the charges against him, the purpose of the evaluation, and the respective roles of the prosecutor, the defense attorney, and the jury. Dr. Sharf summarized these conclusions, stating:

"Over the course of the current [four-month] evaluation period, Mr. Campos evidenced the ability to participate and remain engaged throughout interviews

and in group, as well as learn and retain relevant information. Mr. Campos demonstrated a basic factual understanding of the roles and responsibilities of participants in the courtroom, court procedures, and the charges against him. Moreover, neuropsychological testing indicated Mr. Campos has the ability to learn information and recall it after a delay.”

Forensic Evaluation at 19. Additionally, while the Defendant exhibited some confusion over the types of pleas a defendant could enter, id. at 17, he was able to provide rational explanations as to why it would or would not be advantageous for a defendant to enter a guilty plea when presented with hypothetical scenarios:

“Mr. Campos was provided scenarios of several hypothetical plea bargains with varying degrees of advantageousness towards the defendant. For example, he was asked what his thoughts would be regarding a plea bargain if the offer was 20 years in a situation without a lot of evidence. He stated, ‘No ... don’t have a lot of evidence against you.’ In contrast, when provided with an example of a plea bargain wherein his lawyer advised there were multiple examples of evidence, he stated, ‘Then you take it. If you go to trial you will lose if you go to trial.’ Mr. Campos identified his preference for how he would like to proceed with his case. While he noted he would consider some other options, should his lawyer advise him to, he stated there were certain strategies he would not consider. His reasoning was reasonable and reality-based.”

Id. at 18. The Defendant also understood that “he would have to plead guilty in order to get a plea bargain” and in doing so would relinquish his right to trial. Id. at 17. Moreover, he understood that he could assist his attorney in trial and consult with her if he did not understand something:

“When asked what he would do if a witness tells lies about him in the courtroom, he stated, ‘My lawyer will defend us through the lies.’ It was noted that the lawyer may not know if someone is lying. At that point, he responded, ‘I would have to talk to her to explain what’s going on.’ When asked what he would do if he did not understand something a witness was saying, he stated, ‘Tell my lawyer about it.’”

Id. at 18.

In situations such as this, courts have the ability to extend the period of time to restore a defendant’s competency “for an additional reasonable period of time . . . if the court finds

that there is a substantial probability that within such additional period of time [the defendant] will attain the capacity to permit the proceedings to go forward” 18 U.S.C. § 4241(d)(2)(A); see also United States v. Donofrio, 896 F.2d 1301, 1303 (11th Cir. 1990). In denying the Government’s Motion, the Magistrate Judge stated that the Forensic Evaluation “describes that Defendant ‘could benefit’ from further additional restoration, and that there is a substantial probability that Defendant’s ‘competency related skills could improve[,]” however, “the evaluators do not opine that there is a substantial probability that Defendant will have regained competency to permit these proceedings to go forward to trial at the end of the 120-day extension to the restoration period requested.” In doing so, the Magistrate Judge gave too little weight to the substance of Dr. Sharf and Dr. O’Connor Pennuto’s findings. Whether or not the Forensic Evaluation included a formulaic recitation of the standard is not determinative. The substantive findings in the Forensic Evaluation, as outlined above, clearly establish that there is a substantial probability that the Defendant’s competency will be restored.

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Accordingly, the United States submits that the Magistrate Judge's Order be reversed as clearly erroneous, and respectfully requests that the Defendant's restoration period be extended an additional 120-days pursuant to § 4241(d)(2)(A) or, alternatively, that this Court hold a hearing to determine if an extension under § 4241(d)(2)(A) is appropriate.

Respectfully submitted,

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