UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

United States of America,

Appellee,

v. Docket No. 25-1165-cr

Luke Marshall Wenke,

Appellant.

OPPOSITION TO MOTION FOR A STAY PENDING APPEAL

Defendant-Appellant Luke Marshall Wenke moves for a stay of the district court's order of commitment pending appeal. For the reasons set forth herein, the Court should deny Wenke's motion.

BACKGROUND

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 2251A(2)(B) (Cyberstalking). (Dkt.[1] 42).

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,

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[1] For efficiency, the government utilizes the same reference convention as Appellant uses in his motion. All references to "Dkt. # " are to document numbers entered in the docket for *United States v. Wenke*, W.D.N.Y. Docket No. 1:22-cr-35. All references to "Doc. #" are to document numbers entered on the instant case.

in fact, violated his terms of supervised release. (Dkts. 51 and 54). 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. (Dkt. 66).

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." (Dkt. 67). Just two months later, Wenke appeared on a second violation of supervised release. (Dkt. 78). On November 7, 2023, Wenke admitted to one of the allegations in the violation petition, and the district court accepted his admission. (Dkt. 95).

A. Wenke's Competency is Evaluated

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 (Dkts. 113–115, 122).

On April 16, 2024, the district court adjourned the proceedings to permit time for additional psychiatric evaluations. (Dkts. 125 and 143–144). Dr. Kaitlyn Nelson, supervised by Dr. Robin Watkins, and both employed by the Bureau of Prisons (BOP), evaluated Wenke and concluded that he was competent, while asserting that he suffered from a personality disorder with

mixed personality features, and filed their report under seal on November 14, 2024. (Dkt. 164; Dkt. 191, pp. 24–26 and 61–52).

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. (Dkt. 166).

B. 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. (Dkt. 175). 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. (Dkts. 182 and 190).

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. (Dkt. 186, pp. 23–25, 28). Dr. Leidenfrost explained that the interview revealed "paranoid, persecutory and grandiose delusions, namely… the defendant's fixation on particular individuals." (*Id.* at 29). 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. (*Id.* at 29–30). Wenke insisted that external forces, including the victim in his underlying criminal matter, KV, and the courts, were keeping them apart. (*Id.* at 30). One of the supports for Wenke's beliefs was his purported communication with a psychic. (*Id.* at 32).

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. (Dkt. 186, p. 32). 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." (*Id.* at 35). 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." (*Id.* at 35–36). Following the interview, Dr. Leindenfrost concluded that Wenke was at high risk for future violence, causing serious physical injury, and imminent risk of violence. (*Id.* at 36).

Dr. Leidenfrost testified that he conducted a second evaluation in January 2025, to provide an opinion as to whether Wenke required treatment in an appropriate facility pursuant to 18 U.S.C. § 4244. (Dkt. 186, p. 38). 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. (*Id.* at 38, 42–43). Notably, the BOP competency report reached a different conclusion as to Wenke's diagnosis, and asserted that Wenke was not delusional. (Dkt. 191, pp. 35–37, 58, 77–79).

Dr. Leidenfrost testified that, during the second interview, Wenke fixated on KV and RG, repeatedly diverted the conversation, and seemed consumed by his delusional beliefs. (*Id.* at 40). As a result, Dr. Leidenfrost updated his diagnosis to schizoaffective disorder, bipolar type (*id.* at 39) 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 (*id.* at 41–42).

Dr. Leidenfrost testified that he reached a different diagnosis than Drs. Watkins and Nelson for several reasons. (*Id.* at 43). First, the BOP report asserted as 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." (*Id.* at 44). 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. (*Id.* at 44). These facts "took it way beyond what an ordinary person would if they talked to a psychic medium." (*Id.* at 70).

During Dr. Watkins' 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 § 4244 evaluation. (Dkt. 191, p. 42). 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." (Dkt. 191, pp. 10–11).

Through counsel, Wenke argued that even if the court found sufficient evidence of a mental disease or defect, hospitalization was unnecessary. (Dkt. 192, pp. 9–10). Or, at most, "there is a way to follow Dr. Leidenfrost's recommendations locally." (Dkt. 186, p. 3). The government argued in favor of

a finding that Wenke suffered from a mental disease or defect and should be committed to a suitable facility for care or treatment, in lieu of a sentence of imprisonment. (Dkt. 193, p. 14). Both Wenke and the government filed post-hearing submissions, and the district court issued its decision on April 23, 2025. (Dkts. 192–194).

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." (Dkt. 194, p. 6). 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 (*id.* at 8). While acknowledging that Dr. Leidenfrost's diagnostic conclusions differed from Drs. Nelson and Watkins', the district court nevertheless remained convinced by Dr. Leidenfrost. (*Id.* at 8–9). 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." (*Id.* at 9).

Wenke filed a Notice of Appeal on May 1, 2025. (Dkt. 196). On May 9, 2025, Wenke moved to stay the order of commitment and the government opposed. (Dkts. 202, 204). The district court denied the motion. (Dkt. 205).

On May 28, 2025, Wenke moved this Court for a stay of the district court's order of commitment pending appeal. (Doc. 12). On June 2, 2025, Wenke filed an uncontested motion to expedite the appeal. (Doc. 14).

ARGUMENT

A. Standard of Review

A stay is "an exercise of judicial discretion and the propriety of its issue is dependent upon the circumstances of the particular case." *Nken v. Holder*, 556 U.S. 418, 433 (2009) (internal quotation marks and alterations omitted). "The party requesting a stay bears the burden of showing that the circumstances justify an exercise of [the Court's] discretion." *Id.* at 433–34.

This Court evaluates applications to stay district court orders or other proceedings pending appeal using the following factors: "(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, 122–23 (2d Cir. 2020) (quoting *In re World Trade Ctr. Disaster Site Litig.*, 503

F.3d 167, 170 (2d Cir. 2007)). "The first two factors of the traditional standard are the most critical." *Nken*, 556 U.S. at 434.

B. Governing Law

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).

C. Discussion

1. Wenke has not made a "strong showing" that he is likely to succeed on the merits.

Wenke's argument regarding his likelihood of success relies almost entirely on dismissing the district court's credibility assessment. But this Court pays "special deference to the district court's factual determinations going to witness credibility." *Berchansky*, 719 F.3d at 153 (internal quotation marks omitted). Wenke argues that Dr. Leidenfrost's opinion was "based on erroneous and insufficient information," and specifically that his conclusions were "directly contradicted" by Drs. Nelson and Watkins. (Doc. 12, pp. 6–7). However, Wenke simultaneously relies on Dr. Leidenfrost's testimony that being in custody away from his family might worsen Wenke's condition. (Doc. 12, p. 9). Wenke does not address this discrepancy, nor the standard of review that he would have to overcome to succeed in his appeal, nor whether the district court's factual findings were clearly erroneous.

At the outset, 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.

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." (Dkt. 194, p. 9). Moreover, the court found that Dr. Leidenfrost "testified credibly at the hearing" in concluding that Wenke suffered from schizoaffective disorder, bipolar type. (Dkt. 194, p. 6). This Court pays "special deference to the district court's factual determinations going to witness credibility." *Berchansky*, 719 F.3d at 153 (internal quotation marks omitted). 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" (Dkt. 194, p. 6), while Drs. Nelson and Watkins "did not fully evaluate" Wenke's delusional beliefs and could not render an opinion under § 4244 (*id*. at 8). 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, this Court is not likely to find clear error.

Wenke does not address the high standard of review he faces in demonstrating that the district court committed clear error. 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." *Esteras*, 102 F.4th at 104 (internal quotation omitted). Put another way, the district court's judgment is clearly erroneous when the decision strikes the Court as wrong "with the force of a five-week-old, unrefrigerated dead fish." *United States v. Phibbs,* 999 F.2d 1053, 1075 (6th Cir. 1993). If there are two permissible views of the evidence, as Wenke seems to argue, then the district court's choice between them cannot be clearly erroneous. *Nichols*, 56 F.3d at 411. Wenke has failed to address how he would overcome the high standard of review for both the credibility determination and the factual finding itself, and therefore he cannot show that he has a strong likelihood of success on the merits.

Third, Wenke's arguments are weak on the merits. In essence, Wenke seeks to apply the § 4241 analysis done by Drs. Watkins and Nelson to the § 4244 issue that the district examined in the evidentiary hearing. But even Dr. Watkins explained that without specifically examining Wenke pursuant to a § 4244 evaluation, she could not render an opinion on whether he presently suffered from a mental disease or defect for which he required custody, care, or treatment in a suitable facility. (Dkt. 191, p. 42). Dr. Watkins conceded that "they are

separate questions…. There could be someone who was competent, but does have a mental disease or defect that requires treatment in a suitable facility, under 4244." (Dkt. 191, pp. 10–11). In fact, "the inquiry and the examination of diagnosis would be much more broad [in a 4244 examination] based in terms of looking at the history and – you know, I would, kind of, describe it as a deeper dive into that area." (*Id.*, p. 29). Wenke's focus on the diagnosis in the competency evaluation, and the accuracy of the diagnosis of delusions, thus "erroneously focuses on the symptoms or side-effects of his mental disease rather than on the existence of the disease itself." *United States v. Murdoch*, 98 F.3d 472, 476 (9th Cir. 1996).

Accordingly, Wenke has failed to show a strong likelihood of success on the merits, and the Court should deny the request for a stay.

2. Wenke will not be irreparably injured absent a stay.

Wenke asserts that denying a stay will result in him "being deprived of the opportunity to receive appellate review." (Wenke Motion, p. 10). This is incorrect. Not only is appellate review available to Wenke, but the government has agreed to an expedited briefing schedule to ensure that his appellate rights are vindicated. Thus, Wenke cannot show that he will suffer an irreparable injury absent a stay.

To the contrary, the order of commitment provides Wenke with an opportunity to receive treatment for his mental disease or defect before the maximum term expires. 18 U.S.C. § 4244(d). Wenke himself appears to have requested similar accommodations for mental health treatment throughout the case. For example, after his initial violation of supervised release, Wenke requested a sentence of time served with mental health treatment to ensue upon his new term of supervision. (Dkt. 66). The district court obliged, sentencing him to a period of time served with 34 months of supervised release, "intended to accommodate [Wenke's] mental health treatment plan." (Dkt. 67). With respect to the § 4244 determination, Wenke made little argument as to whether he *had* a mental disease or defect, instead asserting that hospitalization was unnecessary. (Dkt. 192, pp. 9–10). Or, at most, "there is a way to follow Dr. Leidenfrost's recommendations locally." (Dkt. 186, p. 3). These do not appear to be the strategic decisions of someone who will be irreparably harmed by additional mental health treatment pursuant to § 4244.

Because Wenke makes no substantive argument as to how receiving the care he so clearly needs would injure him, and relies only on the scheduling timing of his appeal, this factor weighs against granting a stay.

3. The issuance of a stay would substantially injure the government and is against the public interest.

The third and fourth factors, evaluating both the injury to the opposing party and the public interest, "merge when the Government is the opposing party." *Nken*, 556 U.S. at 435. *See also New York v. U.S. Dep't of Homeland Sec.*, 969 F.2d 42, 58–59 (2d Cir. 2020) (same). Wenke argues there is no harm to the government or the public interest because he would remain in custody even if the stay is granted. (Doc. 12, p. 11).

But the interest in acting now is that confinement in a suitable facility will provide Wenke with the treatment and resources needed between now and the maximum term of sentence so that some active steps can be taken to help Wenke with his diagnosed mental disease or defect. As Dr. Leidenfrost testified, Wenke's symptoms "cloud[] 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." (Dkt. 186, pp. 35–36). The goal in the district court's order of commitment is to provide an opportunity for Wenke to rehabilitate himself and receive treatment. All this weighs in favor of the public's interest in Wenke's commitment for treatment for his medical disease or defect.

CONCLUSION

Based on the foregoing, this Court should deny the motion for a stay pending appeal.

DATED: June 9, 2025, Buffalo, New York

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