

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:16-HC-2204-BO

UNITED STATES OF AMERICA,)
)
)
v.)
)
KAYLAN JAY [REDACTED])
)

ORDER

This cause comes before the Court following a hearing to review the commitment of respondent, Kaylan [REDACTED] as a sexually dangerous person pursuant to the Adam Walsh Child Protection and Safety Act of 2006 (the Act), 18 U.S.C. § 4248. For the reasons that follow, the Court provisionally orders the conditional release of [REDACTED] pursuant to a set of conditions to be determined.

BACKGROUND

[REDACTED] was committed to the custody of the United States Attorney General on April 27, 2017, after this Court found that the government had satisfied its burden under 18 U.S.C. § 4248 to demonstrate by clear and convincing evidence that [REDACTED] was sexually dangerous – that is, that [REDACTED] had engaged or attempted to engage in sexually violent conduct or child molestation and that he suffered from a serious mental illness, abnormality, or disorder as a result of which he would have serious difficulty refraining from sexually violent conduct or child molestation if released. 18 U.S.C. § 4247(a)(6). The Court’s commitment order was affirmed on appeal by a published opinion of the Fourth Circuit Court of Appeals entered on March 12, 2018. *United States v. [REDACTED]* 884 F.3d 500, 503 (4th Cir. 2018).

On May 24, 2021, █████ petitioned for a review hearing pursuant to 18 U.S.C. § 4247(h), arguing that he should be discharged from commitment. [DE 55]. This Court held a review hearing on January 21, 2021 in Elizabeth City, North Carolina. At the hearing, the Court heard testimony from █████ three expert psychological witnesses, Dr. Joseph Plaud, Dr. Justin Rigsbee, and Dr. Dale Arnold; and the clinical coordinator for the Commitment and Treatment Program (“CTP”) at FCI Butner, Dr. Patrick Cook. Following the conclusion of the hearing, both █████ and the government filed proposed findings of fact and conclusions of law [DE 80, 81].

DISCUSSION

The Court incorporates by reference as if fully set forth herein the factual background included in its order of commitment entered April 27, 2017 [DE 39].

I. Legal standards.

A person committed pursuant to 18 U.S.C. § 4248 bears the burden to demonstrate following a review hearing pursuant to § 4247(h) that he would no longer be sexually dangerous if released either unconditionally or with a prescribed regimen of care or treatment. *United States v. Searcy*, 880 F.3d 116, 120 (4th Cir. 2018); *United States v. Barrett*, 691 F. App’x 754, 755 (4th Cir. 2017). If the court determines that the respondent has satisfied his burden, “then the court must order the appropriate discharge.” *United States v. Comstock*, 627 F.3d 513, 516 (4th Cir. 2010) (§ 4248(e)).

II. Findings of fact.

The following findings are derived from the hearing testimony and the evidence admitted at the review hearing. The Court specifically adopts those portions of respondent’s proposed findings of fact [DE 81] that recite █████ past conduct and the witness testimony presented at the

review hearing. To the extent they are not inconsistent with the foregoing, the Court incorporates those portions by reference as if fully set forth herein.

Kaylan [REDACTED] is currently 37 years old. He has been in the continuous custody of the Attorney General for over five years. [REDACTED] has participated in the Commitment and Treatment Program (“CTP”) and has reached Phase II of IV phases. [REDACTED] testified that, in the last few years after bettering his relationship with his family, he has been motivated to take treatment at CTP seriously. [REDACTED] testified that he has learned that his attraction to children will not go away, but that he has the ability to manage it in a safe manner. He feels that he has gained skills that allow him to manage deviant fantasies and has developed coping mechanisms to help him avoid triggering situations. [REDACTED] testified that he is particularly proud that he has stopped masturbating to fantasies of children, and that he now understands that, although the attraction may not go away, he can choose not to “feed” it by masturbation or ruminating on deviant fantasies or thoughts.

[REDACTED] testified candidly about his prior sex offenses, noting that he felt significant remorse for his past behavior and for the harm he caused his victims. [REDACTED] demonstrated empathy and insight into his victims, stating that he was particularly disgusted by his hand-on offense with his half-brother, because [REDACTED] occupied a position of trust at that time. He also understood that the children he exposed himself to were likely scared by his unacceptable behavior. This testimony starkly contrasts [REDACTED] testimony at his initial commitment hearing, where he did not take total responsibility for his prior actions.

[REDACTED]’s record while committed is not perfect, as he has had sexual encounters with other inmates. [REDACTED] admitted that medication compliance is a struggle for him and acknowledges that he will need a schedule should he be released. He testified that he recently started taking Lamictal, which he planned to continue taking, as the side effects were more manageable than the lithium he

was taking at the time of his initial commitment hearing. ■■■ testified that he would definitely continue sex offender treatment if released into the community, whether it was required or not. He stated that he had no plans to challenge his lifetime term of supervised release. ■■■ plans to return to Utah and hopes to live in a halfway house for 12 to 18 months upon release, to benefit from its structure while reintegrating into society. Last time he was released from BOP, he immediately began living on his own, and he does not want to repeat old mistakes.

As noted above, there were four physicians who testified about their opinions as to ■■■ continued sexual dangerousness. The Court recites the portions of the testimony most relevant to its analysis here.

At the outset, the evidence supports the Court's conclusion that ■■■ continues to meet the first and second criteria of § 4248 civil commitment: ■■■ has engaged in or attempted to engage in sexually violent conduct or child molestation and he continues to suffer from pedophilia, a serious mental illness, abnormality, or disorder. In weighing the testimony of the experts as to the third criteria, sexual dangerousness, the Court credits Dr. Plaud's opinion as being the most persuasive in this case.

Dr. Plaud's testimony focused on Plaud's analysis of ■■■'s current behavior.¹ Plaud concluded that ■■■ would be an excellent candidate for conditional release and that he thought ■■■ was ready to be moved to a less restrictive living environment. Plaud focused on three factors when concluding that ■■■ would not have serious difficulty in refraining from sexually violent conduct or child molestation if conditionally released: ■■■ institutional management of his sexual behavior, his improved medication compliance, and his participation and progress in the CTP. Plaud opined that ■■■ had demonstrated behavioral stability and treatment progress,

¹ Plaud also testified at ■■■ initial commitment hearing.

resulting in dramatically improved behavior over the past five years. Plaud noted that █████ progress was particularly impressive given █████'s intellectual deficits, which may be a result of a difficult home life in his early childhood. Plaud also highlighted that █████ discussed his awareness and remorse over his past sexual offense history. Plaud testified that █████ previous tendency toward immature behavior and faulty decision making could effectively be addressed through outpatient cognitive-behavioral treatment and medication.

Dr. Plaud also testified about █████'s risk of sexual reoffending, focusing on the "Risk-Needs-Responsivity" model. Plaud opined that, given █████ increased behavioral stability, █████ does not pose a high risk of sexual recidivism. This underpinned Plaud's opinion that █████ could be adequately treated in an outpatient facility and that █████ is not sexually dangerous if released with conditions.

Two psychologists from the BOP testified that █████ was not ready for conditional release. Dr. Rigsbee acknowledged that █████ had recently been making great progress and that his trajectory was encouraging. Both agreed that █████ needed more treatment in CTP to become a stable and independent person in the community. Dr. Arnold testified that if █████ continued to on his trajectory, he could be a good candidate for release in a year or two. Dr. Rigsbee recommended that █████ receive advanced substance abuse treatment, even though abuse had not happened since 2018. Dr. Rigsbee recommended that █████ should start family therapy and create a detailed release plan that ensures no break in treatment before he is released. Dr. Arnold recommended that █████ make a detailed plan about how to handle relapse in the community before █████ is released. Both Rigsbee and Arnold scored █████ on the Static-99R scale and deemed him a "9," which they state means █████ has a high risk of re-offense. However, Dr. Plaud also addressed the Static-99R scale

and opined that █████ actual behavior, not a predictive static number, is a better indicator of █████ future behavior.

Dr. Cook is the clinical coordinator of the CTP at FCI Butner. Cook did not offer an opinion as to whether █████ was sexually dangerous. He did note that █████ impulsive behavior had decreased, and that █████ has an understanding of how to use the intervention tools that he has learned in treatment at CTP. Cook testified that no one had completed the CTP program since he became the clinical coordinator.

The Court has considered that █████ has twice been suspended from and once dropped out of treatment. However, the Court does not give this significant weight when evaluating █████ current ability to control his behavior and impulses. █████ has demonstrated insight into his past offenses and has internalized treatment concepts and strategies into his daily life. The Court emphasizes that █████ in his own testimony, noted that medication has helped him, but that medication compliance is a struggle for him and that he would benefit from a structured schedule should he be conditionally released. Lastly, the Court notes that █████ has not committed any hands-on offenses as an adult. As an adult, all of his offenses have been exposure offenses and, although this Court previously found that they escalated in severity, there is no evidence of exposure while in the BOP over the past five years.

Nothing in the statute requires a § 4248 committee to complete the BOP prescribed treatment plan in order to demonstrate that he is no longer sexually dangerous, and the Court is persuaded by the testimony Dr. Plaud that █████ is a good candidate to move to treatment in a less restrictive environment. Having considered all the unique circumstances in this case, the Court concludes that it cannot countenance simply warehousing █████ at Butner where he is unable to move forward with getting his life back on track. Indeed, Section 4248's commitment scheme is

civil in nature, and thus the goal in committing individuals is not punitive. *United States v. Timms*, 664 F.3d 436, 456 (4th Cir. 2012).

█ has failed to carry his burden to show that he can be unconditionally discharged. The Court finds Dr. Plaud's and Dr. Cook's testimony persuasive regarding █'s ongoing behavioral control in critical areas of his life – substance abuse, sexual behavior, and general behavior. The Court gives considerable weight to the testimony about █'s progress by Plaud, Cook, Rigsbee, and Arnold. However, given all the psychologist's comments on █'s positive growth and trajectory, the Court finds that █ has carried his burden to demonstrate that the appropriate medical care or treatment outside of Butner can keep him from being sexually dangerous to others. *United States v. Wooden*, 887 F.3d 591, 609 (4th Cir. 2018).

III. Conclusions of law.

Based upon the foregoing, the Court makes the following conclusions of law.

1. █ continues to meet the first and second criteria of § 4248 civil commitment in that he has engaged or attempted to engage in sexually violent conduct or child molestation and he currently suffers from pedophilia, a serious mental illness, abnormality, or disorder.
2. █ has failed to demonstrate by a preponderance of the evidence that he will no longer be sexually dangerous if released unconditionally.
3. █ has satisfied his burden to show that he will not be sexually dangerous if released under a prescribed regimen of medical, psychiatric, or psychological care or treatment. 18 U.S.C. § 4248(e)(2)(A).

The Court places great weight in Dr. Plaud's opinion that five years participation CTP programs has given him the tools to succeed in a less restrictive environment. The Court has considered and finds credible Dr. Arnold and Dr. Rigsbee's testimony. However, the Court gives

their opinions less weight than that of respondent's expert, whose opinion was more well-reasoned and considered ■■■'s considerable progress more thoroughly in light of ■■■'s developmental and intellectual deficits. The Court also gives weight to the fact that ■■■ will be subject to a lifetime term of supervision in addition to the conditions imposed by this Court. Before the Court can fully grant ■■■'s conditional release, a suitable residential placement and treatment plan must be established that would sufficiently mitigate against his risk of sexual dangerousness. *See* 18 U.S.C. § 4248(e)(2)(A).

CONCLUSION

Consistent with the foregoing, respondent's request for discharge or release is provisionally GRANTED IN PART. The parties, to include the appropriate staff members at the Bureau of Prisons and the United States Probation Office, shall confer to determine whether there is a suitable facility to which respondent may be conditionally released and what conditions of release should apply. The parties shall file their proposed conditional release plans, either jointly or separately, not later than March 18, 2022. Respondent shall remain in the custody of the Attorney General pending an order of this Court granting in full his conditional release and approving conditions for his release.

SO ORDERED, this 4 day of March, 2022.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE