

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

THOMAS TUMINSKAS,

Defendant.

ORDER

02-CR-0044-C-01

A hearing on defendant's discharge was scheduled to proceed in this case on March 21, 2003, before United States District Judge Barbara B. Crabb. The government appeared by Rita Rumbelow, Assistant United States Attorney; defendant was represented by his counsel, Michelle Tjader, but was not made available to participate in the hearing by telephone. When the clerk was unable to arrange Dr. Kelly Ball's and defendant's participation by telephone, the hearing was continued to a time at which defendant, Dr. Ball and counsel could participate.

In anticipation of the rescheduled hearing, I am directing the Bureau of Prisons to complete its efforts to secure a placement for defendant. At the present time, the Bureau has determined that defendant would not create a substantial risk of bodily injury to another

person or serious damage to the property of another if he were discharged conditionally from FMC Rochester. The first of the conditions is that defendant be transferred to a Wisconsin state facility that would assume responsibility for his evaluation and continued psychiatric treatment. However, the Bureau has been unable to find such a facility and has merely recommended certain possible placements for defendant. I am not persuaded that merely making recommendations complies with the provisions of 18 U.S.C. § 4243 (f)((2)(A) and I would be unwilling to find that defendant should be released from FMC Rochester until the Bureau has secured a definite placement for him. Under § 4243(f), which governs discharge of a person who has been determined to have recovered from his mental defect or disease to such an extent that he could be released without serious risk, the director of the facility to which defendant has been committed is responsible for preparing a prescribed regimen of medical, psychiatric, or psychological care of treatment for defendant and to certify such a regimen to the court as being appropriate for defendant.

Second, I am authorizing the Bureau of Prisons to provide to any facility the Bureau believes capable of treating defendant his complete risk assessment and his medical records, so as to allow the facility an opportunity to determine its ability to provide defendant the care and treatment he needs to reduce the risk he would otherwise pose.

ORDER

IT IS ORDERED that no later than April 1, 2003, the Bureau of Prisons is to complete its statutory task of preparing a regimen for defendant to follow if he should be discharged conditionally from FMC Rochester, including securing a placement for defendant in a Wisconsin facility willing to assume responsibility for evaluating defendant and providing him continued psychiatric treatment. FURTHER, IT IS ORDERED that the Bureau is authorized to disclose defendant's risk assessment and medical records to any facility the Bureau believes would be capable of treating and caring for defendant. A rescheduled hearing will be held before April 8, 2003, at a date and time to be determined. Dr. Ball and defendant are to be prepared to participate in the hearing by telephone.

Entered this 21st day of March, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge