

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Criminal Action No.
)	10-00131-CR-W-FJG
DENNY RAY HARDIN,)	
)	
Defendant.)	

ORDER

On May 14, 2010, I ordered that Defendant be committed to a United States Medical Center for Federal Prisoners to undergo a psychological examination (Doc. No. 18). The order stated that Defendant's commitment was not to "exceed 30 days unless that time is extended for an additional period of time not to exceed 15 days upon a showing of good cause that the additional time is necessary to observe and evaluate defendant." Defendant arrived at the Federal Medical Center on May 28, 2010. I received a letter dated June 10, 2010, from the Federal Bureau of Prisons requesting an additional time to complete Defendant's evaluation. I granted this extension, stating Defendant's period of commitment "shall not exceed 45 days from the date of his arrival" (Doc. No. 24).

On July 13, 2010, Jeremiah Dwyer at the Federal Medical Center in Englewood, Colorado contacted my chambers and requested a second extension until July 23, 2010. He stated that the Federal Medical Center had received a very large number of cases and had fallen behind in completing evaluations. Because this second extension would exceed the time limit set forth by 18 U.S.C. § 4247(b), I asked the parties advise me no later than Thursday, July 15, 2010, whether they object to this request and the legal authority that supported their position (Doc. No. 25).

Neither party advised me of their position. Although granting this request will exceed the

statutorily prescribed 45-day limit, I have little choice but to do so. The Federal Medical Center-Englewood is unable to complete Defendant's evaluation on time due to the sheer number of cases it has received lately. Resolution of the competency issue is necessary to proceed; both parties recognize this fact as is demonstrated by their respective requests for an evaluation (See Doc. Nos. 13, 15). If the Federal Bureau of Prisons' instant request were denied, Defendant would be returned without the evaluation having been completed. This would only create additional delay in that arrangements would have to be made for a local evaluation or Defendant would have to be sent a second time to an appropriate Bureau of Prison's facility for evaluation.

Title 18, United States Code, Section 4247(b) does not contain an express remedy for exceeding the prescribed time limit for evaluations. The Tenth Circuit has found that a defendant's rights were not violated by an extended period of commitment under similar circumstances. See United States v. Gagan, 95 Fed. Appx. 941, 947 (10th Cir. 2004). Accordingly, it is

ORDERED that the Federal Bureau of Prisons' request is granted. Defendant's competency evaluation shall be completed by July 23, 2010.

/s/ Robert E. Larsen
ROBERT E. LARSEN
United States Magistrate Judge

Kansas City, Missouri
July 16, 2010