

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

United States v. Curbow

United States v. Curbow · No. 20-7797 · Decided October 19, 2021

SUMMARY

The Fourth Circuit affirmed the Eastern District of North Carolina’s order civilly committing Gary Curbow under 18 U.S.C. § 4246 after he was found incompetent to stand trial and dangerous to others. The court rejected his argument that he was ineligible for certification because the Attorney General no longer had legal custody of him, distinguishing and applying the court’s prior decision in *United States v. Wayda*. The court also rejected Curbow’s additional challenges to his civil commitment.

CASE DETAILS

COURT	United States Court of Appeals for the Fourth Circuit
WRITING FOR THE COURT	Judge King; King, Circuit Judge; Thacker, Circuit Judge; Traxler, Senior Circuit Judge
JURISDICTION	Federal
DECIDED	October 19, 2021
DOCKET	20-7797
DISPOSITION	affirmed
PROCEDURAL POSTURE	Curbow appealed from an Eastern District of North Carolina order civilly committing him under 18 U.S.C. § 4246 after the district court denied his motions to dismiss the Government's dangerousness certificate.
STANDARD OF REVIEW	Factual findings in a civil commitment decision are reviewed for clear error and legal conclusions de novo. The district court's reasonableness determination regarding the duration of custody is reviewed for clear error.
PRECEDENTIAL VALUE	Published, precedential Fourth Circuit opinion
PARTIES	Gary Curbow v. United States of America

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QUESTIONS PRESENTED

1. Whether Curbow was eligible for civil commitment under 18 U.S.C. § 4246(a) when the Government filed the dangerousness certificate.
2. Whether the 49-day period between the unrestorability determination and the filing of the § 4246 certificate was unreasonable under *United States v. Wayda*.
3. Whether alleged delays during Curbow's first two periods of competency-related custody rendered him ineligible for later § 4246 certification.
4. Whether § 4246(a)'s eligibility provisions are subject-matter jurisdictional or may be waived.
5. Whether the district court erred by failing to require additional evidence regarding the unavailability of state custody and care or by inadequately explaining its dangerousness finding.

HOLDINGS

1. The 49-day period between the June 6, 2019 unrestorability determination and the July 25, 2019 filing of the § 4246 certificate was reasonable, so Curbow remained eligible for certification under § 4246(a).
2. Curbow waived his theory that alleged unreasonable delays during his first two periods of § 4241(d) custody caused his legal custody to expire before the third period began.
3. The eligibility provisions in § 4246(a) establish an element of a civil commitment claim rather than a subject-matter jurisdictional condition.
4. Curbow waived his contention that the district court was required to receive additional evidence and make separate findings concerning the unavailability of suitable state custody and care because he did not raise the issue below.
5. Any assumed error in the district court's explanation of its dangerousness finding was harmless because Curbow did not challenge the sufficiency of the dangerousness evidence, and his own expert agreed that he met the statutory definition.

KEY QUOTATIONS

“When the government has in its custody an individual whose incapacity renders him unable to stand trial and therefore eventually subject either to possible release or civil commitment, we expect the government to “strive to certify” individuals in a time frame that eliminates or at least minimizes the time spent as an incompetent, unrestorable person waiting for [a § 4246 or] a § 4248 determination.” (at 12)

“Adhering to this authority, we are convinced that § 4246(a)’s eligibility provisions set forth an element of a civil commitment claim, and not a jurisdictional condition.” (at 47-48)

FACTUAL BACKGROUND

Curbow repeatedly shot at military helicopters flying over his Mississippi farm, claiming that the helicopters were harming his livestock and property. He was charged under 18 U.S.C. § 32 and found incompetent to stand trial. Evaluators at FMC Butner concluded that he was unlikely to be restored to competency in the foreseeable future and that, because of his mental disease or defect, his release would create a substantial risk of bodily injury to another person or serious damage to another's property. The FMC Butner warden certified him as dangerous under § 4246, and the Eastern District of North Carolina ultimately ordered his civil commitment.

PROCEDURAL HISTORY

Curbow was charged in the Northern District of Mississippi and found incompetent to stand trial. After competency, restorability, and dangerousness evaluations at FMC Butner, the facility warden certified him as dangerous under § 4246 and the Government filed the certificate in the Eastern District of North Carolina. The North Carolina district court denied Curbow's motions to dismiss, later found by clear and convincing evidence that his release would create a substantial risk of bodily injury or serious property damage, and ordered civil commitment. The Fourth Circuit affirmed.

DISPOSITION

affirmed

CASES CITED

- United States v. Wayda, 966 F.3d 294 (4th Cir. 2020)
- United States v. Timms, 664 F.3d 436, 452-53 & n.14 (4th Cir. 2012)
- United States v. Welsh, 879 F.3d 530, 535 (4th Cir. 2018)
- United States v. Flanery, No. 88-5605, 1989 WL 79731, at *4 (4th Cir. July 13, 1989)
- United States v. Heyer, 740 F.3d 284, 292 (4th Cir. 2014)
- Pennsylvania Threshermen & Farmers' Mutual Casualty Insurance Co. v. Thornton, 244 F.2d 823, 825 (4th Cir. 1957)
- United States v. Olano, 507 U.S. 725, 733 (1993)
- Gonzalez v. Thaler, 565 U.S. 134, 141 (2012)
- Steel Co. v. Citizens for a Better Environment, 523 U.S. 83, 89 (1998)
- Reed Elsevier, Inc. v. Muchnick, 559 U.S. 154, 161 (2010)
- Arbaugh v. Y & H Corp., 546 U.S. 500, 515-16 (2006)
- Volvo Construction Equipment North America, Inc. v. CLM Equipment Co., 386 F.3d 581, 603 (4th Cir. 2004)
- United States v. Ziegler, 1 F.4th 219, 226 (4th Cir. 2021)
- Godinez v. Moran, 509 U.S. 389, 396 (1993)
- United States v. Copley, 935 F.2d 669, 672 (4th Cir. 1991)
- United States ex rel. Bunk v. Gosselin World Wide Moving, N.V., 741 F.3d 390, 405 (4th Cir. 2013)
- United States v. Ross, 912 F.3d 740, 746 (4th Cir. 2019)

- Jackson v. Indiana, 406 U.S. 715, 733, 738 (1972)
- United States v. Joshua, 607 F.3d 379, 386 (4th Cir. 2010)
- United States v. Magassouba, 544 F.3d 387, 391-92, 409, 411 n.16, 415 (2d Cir. 2008)
- United States v. Brennan, 928 F.3d 210, 214 (2d Cir. 2019)
- United States v. Shawar, 865 F.2d 856, 860 (7th Cir. 1989)
- United States v. Montalvo-Murillo, 495 U.S. 711, 717-20 (1990)

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