

United States Court of Appeals
For the Eighth Circuit

No. 14-3843

United States of America

Plaintiff - Appellee

v.

Wilbert H. Cherry, Jr.

Defendant - Appellant

Appeal from United States District Court
for the Western District of Missouri - Springfield

Submitted: April 27, 2015

Filed: May 5, 2015

[Unpublished]

Before WOLLMAN, MURPHY, and GRUENDER, Circuit Judges.

PER CURIAM.

William Cherry, Jr. appeals the district court's¹ order committing him to the custody of the Attorney General for hospitalization and treatment pursuant to 18

¹The Honorable M. Douglas Harpool, United States District Judge for the Western District of Missouri, adopting the report and recommendations of the Honorable David P. Rush, United States Magistrate Judge for the Western District of Missouri.

U.S.C. § 4246, upon the court's finding, by clear and convincing evidence, that Cherry is suffering from a mental disease or defect as a result of which his release would pose a substantial risk of bodily injury to another person or serious damage to the property of another. For reversal, Cherry argues that the court improperly relied upon hearsay in committing him.

Reviewing for plain error because Cherry did not raise a hearsay objection below, see United States v. Pirani, 406 F.3d 543, 550 (8th Cir. 2005) (en banc), we reject the argument, see 18 U.S.C. § 4246(b); United States v. LeClair, 338 F.3d 882, 885 (8th Cir. 2003) (facts and data that form basis for expert opinion need not be admissible in evidence). We also find no clear error in the court's dangerousness finding, in light of the unanimous expert opinion recommending section 4246 commitment. See id. (standard of review); cf. United States v. Lewis, 929 F.2d 440, 442 (8th Cir. 1991) (per curiam).

Accordingly, we affirm the judgment of the district court. We also grant counsel's motion to withdraw, subject to counsel informing appellant about procedures for seeking rehearing or filing a petition for certiorari.
