

United States Court of Appeals
For the Eighth Circuit

No. 18-1137

United States of America

Plaintiff - Appellee

v.

John Donald Kelso

Defendant - Appellant

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

Submitted: January 7, 2019

Filed: January 10, 2019

[Unpublished]

Before BENTON, BOWMAN, and STRAS, Circuit Judges.

PER CURIAM.

John Donald Kelso appeals the district court's¹ order committing him to the custody of the Attorney General for hospitalization under 18 U.S.C. § 4246. Having jurisdiction under 28 U.S.C. § 1291, this court affirms.

After a hearing, the district court found by clear and convincing evidence that Kelso was suffering from a mental disease or defect such that his release would create a substantial risk of bodily injury to another person or serious damage to the property of another. *See* 18 U.S.C. § 4246. This court concludes the decision was not clearly erroneous. *See United States v. Williams*, 299 F.3d 673, 676-78 (8th Cir. 2002) (standard of review).

The commitment order is supported by medical opinions set forth in reports prepared by mental health professionals where Kelso is presently confined for treatment, and by defense counsel's independent psychological examiner. The reports noted that Kelso lacked insight into his medical condition, had a history of irregular medication compliance as well as psychotic and aggressive behaviors, and engaged in antisocial acts when released. These reports conclude there is a clear nexus between Kelso's mental illness and his aggressive behaviors, and that he suffers from a serious mental illness such that he meets the criteria for section 4246 commitment. *See United States v. Ecker*, 30 F.3d 966, 970 (8th Cir. 1994) (factors in determining potential dangerousness).

This court notes that the Attorney General is under a continuing obligation to exert reasonable efforts to place Kelso in a suitable state facility, and that Kelso's custodians must prepare annual reports concerning his mental condition and the need for continued commitment. *See* 18 U.S.C. §§ 4246(d) and 4247(e)(1)(B).

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.

The judgment is affirmed. Counsel's motion to withdraw is granted.
