

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-41281

Summary Calendar

UNITED STATES OF AMERICA,

Appellee,

versus

JEFFREY MACK BOGGS,

Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
(1:90 CR 9 1)

August 25, 1995

Before HIGGINBOTHAM, DUHÉ, and EMILIO GARZA, Circuit Judges.

PER CURIAM:*

Jeffrey Jack Boggs appeals the district court's order revoking his conditional discharge under 18 U.S.C. § 4243. We affirm.

In June 1990, Boggs was tried on two counts of unlawful firearm possession and found not guilty only by reason of insanity. Pursuant to 18 U.S.C. § 4243, the district court then ordered him committed to the custody of the Attorney General for placement in

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

the Federal Medical Center for examination. On February 19, 1992, the district court found that he had recovered from his mental illness such that he would not pose a substantial risk of harm to others or to property if he followed a prescribed regimen of medical care. Pursuant to § 4243(f), the court conditionally discharged Boggs from custody and ordered him to follow his prescribed regimen of care and the recommendations of his mental health caregiver. The court subsequently modified that conditional discharge order to reflect Boggs' change of residence and treatment provider.

After the United States Probation Office informed the court that Boggs had improperly withdrawn from participation in his mental health treatment program, the court held a hearing under § 4243(g), which authorized it to revoke Boggs' conditional discharge if it found that "in light of his failure to comply with the prescribed regimen of medical, psychiatric or psychological care or treatment, his continued release would create a substantial risk of bodily injury to another person or serious damage to property of another." As a result of the hearing, the court revoked Boggs' conditional discharge and ordered him returned to the custody of the U.S. Bureau of Prisons' Federal Medical Center for further treatment. Boggs now appeals.

Boggs argues that he proved at the evidentiary hearing that he posed no substantial risk of bodily injury to any person or property of another. Review of the record demonstrates that this was a close case. Two of Boggs' mental health care providers

testified that Boggs posed only a small if unpredictable risk of injury to others in the near future, but that, in light of Boggs' failure to take his medication, he posed a substantial risk of harm in the long term. They were concerned that Boggs' paranoia would make him prone to "defend himself" violently even without provocation. Boggs emphasizes on appeal the doctors' admission that he did not pose a substantial risk in the near future, their concession that he should not be "committable for imminent danger" for any foreseeable acts he might commit within "the next 24 or 48 hours," and the lack of any evidence that he had ever harmed anyone in the past. Our sense that this case presents a close fact intense issue is not sufficient to upset the decision of the trial judge with its efforts to properly locate this defendant. We AFFIRM.