IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
	:	Criminal No. 04-783-01
vs.	:	
	:	
VERNA SESSION	:	

MEMORANDUM OPINION

J. Davis August 14, 2006

On June 9, 2005, Verna Session ("Session") was found not guilty by reason of insanity on the charge of kidnaping a minor. After this special verdict, Session was committed to the Federal Medical Center, Carswell ("FMC") in Fort Worth, Texas. On February 27, 2006 and April 7, 2006, the Court held hearings pursuant to 18 U.S.C. § 4243(c). At these hearings, Session failed to meet the requirements for release under 18 U.S.C. § 4243(d). Pursuant to 18 U.S.C. § 4243(e), the Court now commits Session to the custody of the Attorney General.

I. Factual and Procedural History

The following factual and procedural history is relevant to the Court's determination that Session failed to meet her burden for release under 18 U.S.C. § 4243(d).

A. Session's Mental Health Background

Session, a forty-six year-old woman, has a history of mental health illness. She was diagnosed with schizophrenia, paranoid type, in 1985, at the age of twenty-five, and has been involuntarily hospitalized and judicially committed on numerous occasions at various residential facilities and hospitals in Pennsylvania, including at Gaudenzia, Ancora State Hospital, Mercy Hospital, and Jefferson Hospital. (See May 9, 2003 Sadoff Report, at 4-5; Transcript of June 9,

2005 Hearing ("June 9, 2005 Tr."), at 6; Transcript of February 27, 2006 Hearing ("February 27, 2006 Tr."), at 65-66). Session also reported receiving outpatient mental health treatment through the Philadelphia Office of Mental Health and Mental Retardation Access Service. (See Inpatient Psychiatric Summary, at 2).

In addition to mental health issues, Session has a history of drug abuse. She began using marijuana at the age of thirteen, a period of use which lasted until she was twenty-six years old. (See Transcript of April 7, 2005 Hearing ("April 8, 2005 Tr."), at 101). At the age of twenty-six, Session switched to crack cocaine, which she continued to use until her most recent arrest for kidnaping a minor. (Id., at 100-101). Session's drug use causes her to become medication non-compliant, thereby operating as a trigger for mental health problems. (See February 27, 2006 Tr., at 64, 73).

B. Session's Criminal Background

Session has a long criminal history. On November 13, 1985, Session was arrested for kidnaping and obstructing police. (See Pretrial Services Report). On January 4, 1988, Session was arrested for, *inter alia*, arson and aggravated assault; she was convicted of arson on November 15, 1998, and a sentence of ten years was imposed and ultimately served. (Id.; February 27, 2006 Tr., at 66; April 7, 2006 Tr., at 120). Following her release from prison in 1998, Session was arrested for simple assault and endangering the welfare of a child on May 7, 1999, and for aggravated assault on January 8, 1999, May 8, 1999, September 16, 1999, September 30, 2001, and November 23, 2002. (See Pretrial Services Report). The November 23, 2002 arrest remains open in the Philadelphia court system. (Id.). On two occasions, Session also failed to appear for court dates before the Philadelphia Court of Common Pleas. (Id.).

Most recently, Session was arrested on April 14, 2003 for kidnaping a minor. Session was homeless at the time. (See April 7, 2006 Tr., at 104).

C. 2003 Kidnaping Charge

On April 13, 2003, Session abducted a two-year old boy, T.H., from his home at 3038 Syndenham Street, Philadelphia, Pennsylvania. (See June 9, 2005 Tr., at 17). At the time, T.H. was playing with other children outside his house (Id.). A neighbor offered a description of Session as the kidnapper. (Id.). On April 14, 2003, two detectives responded to a phone call and discovered Session with T.H. at the Pittsburgh Hotel in Atlantic City, New Jersey; Session and T.H. were sleeping in the lobby of the hotel. (Id., at 18). Upon inquiry, Session identified T.H. as her son, and told police that she came to Atlantic City from Philadelphia in January to obtain medical treatment. (Id., at 18). After the intervention of the Division of Youth and Family Services, T.H. was properly identified, and, later that day, T.H. was reunited with his mother. (Id., at 19).

On April 15, 2003, the government filed a criminal complaint against Session based upon the April 13, 2003 kidnaping. (See Doc. No. 1). On April 16, 2003, the magistrate judge ordered Session to undergo a psychiatric evaluation for competency. (See Doc. No. 5). On May 16, 2006, the magistrate judge found Session not competent to stand trial. (See Doc. No. 13). Following treatment at the FMC, Session was found competent to stand trial on October 27, 2004. (See Doc. No. 17).

On December 14, 2004, a federal grand jury returned a one-count indictment against Session charging her with unlawfully kidnaping a minor and willfully transporting a minor in interstate commerce, a violation of 18 U.S.C. § 1201. (See Doc. No. 19). A bench trial was held

on June 9, 2005. During the bench trial, the government and Session stipulated not only to the factual predicate of the kidnaping offense, as described above, but also to the legal conclusion that Session was insane at the time of the offense, believing that T.H. was her own child. (See June 9, 2005 Tr., at 17-28). Ultimately, the Court issued a special verdict finding Session not guilty by reason of insanity, and required a psychiatric examination of Session pursuant to 18 U.S.C. § 4243(b). (Id., at 26-28).

Session was transported to the FMC on August 31, 2005 to undergo the § 4243(b) evaluation. On October 27, 2005, Dr. James Shadduck, Ph.D. ("Shadduck"), a forensic psychologist at the FMC, issued a report finding that Session had "recovered from symptoms of a mental disease or defect to the extent her conditional release would not create a substantial risk of bodily injury to another person or serious damage to property of another." (See October 27, 2005 Report, at 5). Specifically, the October 27, 2005 report found that the prescribed regimen of anti-psychotic medication, including an intramuscular injection of an anti-psychotic drug (fluphenazine decanoate) on a bi-monthly basis, removed Session's "overt" psychotic symptoms for the past two years and that, so long as she complies with this regimen, her risk of "future violent, inappropriate, or illegal activities is low." (Id, at 3). Nonetheless, the October 27, 2005 report warned that if Session "discontinues her treatment, there is a substantial likelihood her symptoms would quickly reemerge, and at that time she could pose a substantial risk to the safety of others." (Id., at 3). It also warned that Session "has a history of becoming non-compliant with recommended mental health treatment, particularly when she is discharged from inpatient or residential facilities." (Id.).

On October 24, 2005, David Griffin ("Griffin"), a clinical social worker at the FMC,

issued a social work conditional release plan. (See October 24, 2005 Conditional Release Plan). The conditional release plan recommends that Session transition into a supervised living facility, where she would be required to participate in a psychiatric and/or psychological treatment program, to remain medication compliant, to undergo serum blood level screening, if required by her treating doctors, to refrain from consuming illegal drugs and alcohol, and to comply with the demands of her supervising probation officer. (Id., at 1-2). Noting Session's desire to continue with an appropriate therapeutic regimen in a supervised living facility, Griffin found Session's release outlook to be "good," so long as she maintains her psychotropic medication regimen, undergoes outpatient treatment, and abides by the recommendations made by the United States Probation Office and the mental health treating facility. (Id., at 2). Griffin also informed the Court that the conditional release plan could not be immediately implemented due to a four- to six-month waiting period for placement in a suitable treatment facility. (Id., at 1).

On October 28, 2004, FMC's warden issued a Certificate of Recovery for Session. (See Doc. No. 42). On December 2, 2005, the government moved for a hearing pursuant to 18 U.S.C. § 4243(c). (See Doc. No. 40). The Court scheduled a § 4243(c) hearing on February 27, 2006. Prior to the hearing, Shadduck issued a report reiterating the conclusions of his October 27. 2005 report. (See February 23, 2006 Report). Again, Shadduck emphasized that Session no longer expresses symptoms of paranoid schizophrenia and that her risk of future violent or inappropriate activities is "low," so long as she remains medication compliant and follows the terms of her conditional release plan. (Id.). Dr. William Pederson, M.D. (" Pederson"), Session's treating psychiatrist at the FMC, also signed the February 23, 2006 report. (Id.).

D. February 27, 2006 Hearing

The Court held a § 4243(c) hearing on February 27, 2006. Session and three witnesses, Shadduck, Pederson, and Griffin, testified at the hearing.

1. Shadduck's Testimony

Shadduck testified that he had been treating Session since her arrival at FMC in June 2003, at which time she was psychotic and delusional, believing not only that she had been repeatedly raped and impregnated, but also that fetuses had been ripped from her body and implanted in others while she was unconscious. (See February 27, 2006 Tr., at 4-5). Shadduck also testified that by October 2004, Session no longer exhibited symptoms of paranoid schizophrenia, and that, more recently, Session had developed "some insight" into the seriousness of her mental illness and the inter- and intra-personal ramifications of this illness. (Id., at 6, 9). Furthermore, Shadduck informed the Court that Session participated in a telephonic interview with the staff at Gaudenzia House, Broad Street ("Gaudenzia-Broad"), in Philadelphia, Pennsylvania, and was accepted into the Gaudenzia-Broad program. (Id., at 10-12). Ultimately, Shadduck concluded that if Session was released from custody without supervision, she would pose a substantial risk to herself and to the welfare of others; but, that, through placement in a residential facility, with the regular administration of medical health medication, including her bi-monthly injection, Session did not pose a substantial risk to the safety of others. (Id., at 10).

During inquiry from the Court, Shadduck conceded that Session has a history of non-compliance with recommended mental health treatment, including medication regimens, upon release from prison. (Id., at 23). Shadduck further admitted that although motivation to participate in treatment is measured in part through the patient's prior history of treatment compliance, he was unaware of the factual circumstances surrounding her prior arrests and her

prior medical treatment; nor did he examine the treatment records from Session's eight prior hospitalizations. (Id., at 15-21). In fact, Shadduck conceded that he lacked any information as to how many prior treatment programs she successfully completed, as to how many treatment programs she left against the medical advice of her treating doctors, or as to how many treatment programs from which she simply fled. (Id., at 20-22). Shadduck ultimately agreed that, unless incarcerated, Session has never demonstrated a capacity to comply with her medication regimen for a substantial period of time. (Id., at 23).

2. Pederson's Testimony

Pederson testified that Session's symptoms of paranoid schizophrenia disappeared after several months of treatment compliance at the FMC. (Id., at 27). Pederson also testified that Session is not dangerous now, nor is likely to be dangerous in the future, so long as she continues to take her medication. (Id., at 30). Pederson further testified that Session is motivated to continue to take her medication, despite awareness of the negative side-effects of taking anti-psychotic medication, such as lethargy and weight-gain. (Id., at 31).

Upon inquiry from the Court, Pederson conceded that, despite the relevance of such information, he never reviewed the records of Session's medical history prior to reaching his conclusions. (See Tr., at 36-38, 44, 46, 50). Specifically, Pederson never looked to see how many times Session previously had been hospitalized for symptoms of paranoid schizophrenia, the factual circumstances surrounding Session's prior hospitalizations, the treatment regimens during these hospitalizations, Session's compliance history with these treatment regimens, Session's history of fleeing from in-patient treatment facilities, or what types of variables influence Session's level of compliance with prescribed treatment regimens. (Id., at 32-38, 45-

46, 48). Nor did Pederson ever ask Session why she stopped taking her prescribed medication in the past, indeed, why previous treatment plans were unsuccessful. (Id., at 28, 32, 34). Pederson also admitted that Session failed to take her medication "regularly" in the past, as evidenced by her departure from a treatment facility against medical advice on at least one occasion and by her arrival at the FMC in 2003 in a psychotic state. (Id., at 44, 48). Finally, Pederson testified that he lacked knowledge of the factual circumstances regarding her prior arrests, including her most recent arrest for kidnaping a minor. (Id., at 41-44).

3. Griffin's Testimony

Griffin testified that, in November 2004, he and a member of pre-trial services made an application on behalf of Session to Gaudenzia-Broad, an inpatient dual diagnosis facility for persons suffering from mental health and substance abuse issues. (Id., at 53- 54). Following Session's telephonic interview with the director of Gaudenzia-Broad in January 2006, Session was accepted into the program. (Id., at 55). Upon inquiry from the Court, however, Griffin admitted that he lacked knowledge of Gaudenzia-Broad's method for ensuring compliance with the conditions proposed in the conditional release plan, the number of psychiatrists and clinical social workers at Guadenzia-Broad, the percentage of patients who leave Gaudenzia-Broad against medical advice or who flee from the program, the security measures in place to prevent premature departures, the average length of time it takes to locate patients who abscond from the facility, or the ratio of clients to case managers. (Id., at 58-60). Griffin also conceded that he never reviewed Session's treatment records from prior institutions. (Id., at 55, 61).

4. Session's Testimony

Session testified that she started experiencing mental health problems at the age of

fifteen, and that she has been voluntary and involuntarily placed in several mental health facilities, from hospitals to residential programs. (Id., at 66). Session further testified that the reason for her past treatment failures was her drug addiction, which, due to the adverse feeling from the mixture of prescription medication and illicit street drugs, caused her to stop taking her prescription medication. (Id., at 64-65). Session averred that her maturation, her recognition that it was time, at the age of forty-six years old, to "straighten up and fly right," guarantees her future cooperation with treatment protocols. (Id., at 68).

Upon inquiry from the Court, Session testified that the longest period of time of medication compliance was five years, between 1993 and 1998, while she was incarcerated for her arson conviction. (Id., at 69). During that time, Session realized that her mental health medication enables her to function, to "feel better." (Id., at 74-76). Despite her awareness of the necessity of medication compliance, Session testified that, following her release from prison in May 1998, she stopped taking her medication by December 1998. (Id., at 71). Session also testified that she was arrested on an annual basis between 1998 and 2003, with each arrest occurring when Session was not taking her prescription medication and was consuming illegal street drugs. (Id., at 72-74).

E. April 7, 2006 Hearing

Shortly after the February 27, 2006 hearing, the government requested a supplemental hearing to address some of the issues raised by the Court during the February 27, 2006 hearing. The Court held a supplemental hearing on April 7, 2006. Ann Cross ("Cross"), a social worker for Gaudenzia-Broad, Madl-Young ("Madl-Young"), the program director for Gaudenzia-Broad, Renee Mason ("Mason"), the mother of T.H., and Session offered testimony.

1. Cross's Testimony

Cross described the content of the Gaudenzia-Broad program, which only accepts patients who are chronically mentally ill and who suffer from a drug and/or alcohol addiction, identifying the various tasks that patients must complete in order to achieve reentry into the community. (See February 27, 2006 Tr., at 8-30). In general, patients acquire more and more responsibility as they pass through various stages in the treatment process, eventually earning the opportunity to leave the facility on their own for extended periods of time. (Id., at 24-28). Cross testified that the entire the length of the program typically lasts from nine months to one year. (Id., at 30). Cross further testified that Gaudenzia-Broad contains twenty-four hour staffing, with the capacity to comply with judicially stipulated conditions, such as weekly urine screens and blood serum testing. (Id., at 33-34). Cross also indicated that an undisclosed number of patients have left Guadenzia-Broad in the past by simply walking out of the facility, although about 85% return within twenty-four hours. (Id., at 36, 37).

2. Madl-Young's Testimony

Madl-Young testified that she conducted the intake session with Session, that she believed the sincerity of Session's professed desire to remain drug-free and treatment compliant, and that she was responsible for accepting Session into the program. (Id., at 55-58, 69-70). However, Madl-Young testified that the telephonic nature of the intake session was an anomaly, a deviation from the standard practice of meeting a patient in person to gauge the veracity of his or her responses. (Id., at 65, 73). Madl-Young also conceded that although she accepted Session into the Gaudenzia-Broad program, finding her to be a suitable candidate, Madl-Young knew very little about the factual circumstances behind Session's prior involvement with treatment

programs, including the number of treatment facilities from which Session left without permission, or her mental health history in general. (Id., at 67-70). Nor did Madl-Young know about Sesson's 1985 kidnaping arrest, or the factual circumstances concerning Session's 1985 arrest for arson and her 2003 arrest for kidnaping a minor. (Id., at 70, 74-76).

Madl-Young also testified about the staffing and security precautions at Gaudenzia-Broad. The facility currently employs one psychiatrist, one social worker, one recovery specialist, six primary counselors, two counselor assistants, and six part-time and two full-time nurses. (Id., at 44-46, 50-51). Although Gaudenzia-Broad lacks security guards, counselors frequently initiate head counts, an alarm is located on every door, the front door gate is locked at 6:00pm, and the windows have escape-prevention features. (Id., at 50-52). Importantly, however, Madl-Young emphasized that Gaudenzia-Broad is a voluntarily facility which cannot prevent patients from leaving. (Id., at 53-54). Nor does Gaudenzia-Broad have explicit procedures in place to address the situation where a patient, whose presence at the facility is judicially mandated, leaves the program without permission. (Id., at 54-55). Within the past year, ten patients left Gaudenzia-Broad against staff advice. (Id.).

3. Mason's Testimony

Mason voiced objection to Session's release. (Id., at 77-78). In support of this objection, Mason testified to the facts of T.H.'s abduction, her physical and emotional reaction to his day-long absence, and her efforts to locate T.H. after his disappearance. (Id., at 78-93). Mason also informed the Court of a post-kidnaping conversation in which T.H. told his mother that Session physically hit him on several occasions. (Id., at 94-95). Mason further speculated, based upon a prior conversation with a security guard who contributed to Session's apprehension, that

Session took T.H. to New Jersey to sell him at a black market for children. (Id., at 78-79).

4. Session's Testimony

Session testified that she was committed to remaining drug-free and treatment compliant. (Id., at 103, 119-121). Nonetheless, Session testified that she had previously attended a Gaudenzia facility, but left prematurely after four days to use illegal street drugs. (Id., at 98-100). She also testified that although she intended to take her psychotropic medication upon her release from prison in 1998, it only took her two months to resume the consumption of illicit street drugs. (Id., at 120-121). Session further admitted that she gets violent and unstable when she does not take her prescribed medication. (Id., at 100).

Session also testified in part as to her recollection of the factual predicate behind the 2003 kidnaping charge. Session testified that she was in the victim's neighborhood to obtain food from a girlfriend who lived nearby. (Id., at 107). Session was homeless at the time. (Id.). According to Session's narrative, T.H. approached Session, acted like a cat, asked to be taken to the store, and then immediately informed Session, a stranger, that he had been "raped" and "stabbed." (Id., at 104, 109-110). Session acknowledged that she did not believe T.H. was her child at this juncture. (Id., at 111-112). Allegedly acting out of fear for T.H.'s safety, Session then removed T.H. from his block, from his family, and walked him to the bus stop. (Id., at 104-105, 113-114). Session conceded that, although she genuinely believed she was protecting T.H., she did not call the police because she was evading arrest on an outstanding warrant stemming from her assault of a nurse at a local hospital. (Id., at 114-115).

Once Session and T.H. reached the bus stop, T.H. allegedly told Session that a man at the bus stop was the one who "stabbed" T.H. in the back of the neck. (Id., at 104). According to

Session, the man then stated, "That's why I don't mess with you." (Id., at 105). Following this interaction, Session picked up T.H. to take him back home, but T.H. resisted, telling Session that his nickname was "Da-Da," at which point Session started to believe that T.H. was her own son. (Id., at 105, 112-113). Session then transported T.H. to Atlantic City via a bus and several trains. (Id., at 117-118). At one point, T.H. started crying and asking for his mother. (Id.). In response, Session exited the train and purchased some snacks for him; Session never answered T.H.'s pleas by representing that she was his actual mother. (Id., at 119).

II. Discussion

In order to determine whether Session has met her burden under 18 U.S.C. § 4243(d), the Court must briefly outline the content of the statutory scheme governing the hospitalization of persons found not guilty by reason of insanity, identify the applicable burden of proof, and determine whether Session has met this burden.

A. Background

Following a special verdict in which a defendant is found not guilty by reason of insanity, a court must conduct a hearing to evaluate that person's dangerousness and degree of mental illness. See 18 U.S.C. § 4243(c). Section 4243(d) states the applicable burden of proof, which varies according to the nature of the crime:

> In a hearing pursuant to subsection (c) of this section, a person found not guilty only by reason of insanity of an offense involving bodily injury to, or serious damage to the property of, another person, or involving a substantial risk of such injury or damage, has the burden of proving by clear and convincing evidence that his release would not create a substantial risk of bodily injury to another person or serious damage of property of another due to a present mental disease or defect. With respect to any other offense, the person has the burden of such proof by a preponderance of the evidence.

Id. § 4243(d). The failure to meet this standard requires the court to commit the person to the

custody of the Attorney General, who, in turn, releases the person to the appropriate official of the State in which the person is domiciled or was tried. Id. § 4243(e). Annual reports concerning the person's mental status and need for continued hospitalization must then be submitted to the Court. Id. § 4247(e).

Pursuant to the statutory scheme, as interpreted by the Third Circuit, a district court lacks the power to order a conditional release at a § 4243(c) hearing. See United States v. Stewart, 452 F.3d 266, 274 (3d Cir. 2006) (under § 4243(e), district court may not impose requirements on release of person found not guilty by reason of insanity); United States v. Baker, 155 F.3d 392, 396 (4th Cir. 1998) (district court erred by conditionally releasing at § 4243(c) hearing person found not guilty by reason of insanity). Instead, a district court presiding over a § 4243(c) hearing must either commit or unconditionally release the person. See Stewart, 452 F.3d at 274. Thus, in contrast to a § 4243(f) hearing, which takes place after a person is committed for failing to meet his burden of proof at the § 4243(c) hearing, a court rendering a § 4243(e) determination may not craft or consider conditions of release in determining whether a particular person remains dangerous. Id. Stated differently, the court's analysis at a § 4243(c) hearing may not be influenced by risk-eliminating modes of post-release or transitional-release surveillance, but, instead, must evaluate the dangerousness of the person seeking release according to his capacity to re-enter the community on his own, without the aid of judicial monitoring or a conditional release program. See Baker, 155 F.3d at 396.

B. Burden of Proof

The Court finds that the offense of kidnaping, for which Session was found not guilty by reason of insanity, triggers the clear and convincing burden of proof. Several reasons support

this conclusion. First, an element of physical coercion, if not the threat of severe bodily injury, clearly inheres in the definition of kidnaping a minor. See 18 U.S.C. § 1201(g) (defining kidnaping a minor as unlawful abduction and holding of any person under the age of eighteen by non-relative or non-custodian over the age of eighteen). Indeed, the unsanctioned physical removal of a minor from the aegis of his parent/guardian certainly carries, at the very least, the risk of physical injury to the victim. Second, the particular facts of this case, in which Session, while strung out on drugs, homeless, and suffering from schizophrenic delusions, surreptitiously seized a two-year-old child from the steps of his home, transported him from Philadelphia to Atlantic City, and forced him to sleep on the floor of a hotel lobby, confirm this potential for physical harm. Third, the Court notes that both the government and Session appear to concede the applicability of the clear and convincing standard. (See February 27, 2006 Tr., at 80, 97).

In summary, because the offense for which Session was charged and ultimately found not guilty by reason of insanity–kidnaping a minor--involved a "substantial risk of injury" to the victim, Session must prove by clear and convincing evidence that her release would not create a "substantial risk of bodily injury to another person or serious damage of property of another due to a present mental disease or defect." 18 U.S.C. § 4243(d).

C. Application

Session's treating doctors predicate their conclusions regarding her non-dangerousness upon her compliance with a prescribed medial treatment protocol, which controls the symptoms of Session's paranoid schizophrenia, a mental illness that will never be cured. (See October 20, 2005 Report, at 3; February 23, 2006 Report, at 3). The implication of this logic is overt: if Session fails to comply with this treatment regimen, she poses a danger to herself and others.

(See February 27, 2006 Tr., at 22, 46). Indeed, Session's arrests for assault, kidnaping, and arson occurred during periods of time in which she was medically non-compliant, and Session admitted to becoming violent in the absence of prescription medication, recalling incidents in which she physically struck a nurse, a police officer, and her boyfriend. (Id., at 65, 70, 73). Therefore, to satisfy the § 4243(c) standard, Session must offer clear and convincing evidence that she will comply with the medication regimen on which the remission of her paranoid schizophrenia depends. See, e.g., United States v. Jackson, 815 F. Supp. 195, 197 (N.D. Tex. 1993) (requiring paranoid schizophrenic to offer clear and convincing evidence of likelihood of compliance with medication on which remission hinges prior to release under § 4243(e)), *aff'd*, 19 F.3d 1003 (5th Cir. 1994).

The Court finds that Session has not met her burden of demonstrating by clear and convincing evidence that she would remain medication compliant if released. Several reasons collectively contribute to this conclusion. First, Session has a long history of refusing to comply with medical treatment unless incarcerated, a history that prevents this Court from inferring that Session, if released, would continue to take her medication to avoid posing a substantial risk of bodily injury to others. See Jackson, 815 F. Supp. at 199 (refusing to release person suffering from paranoid schizophrenia at § 4243(c) hearing in part because of non-compliance with treatment in past). For instance, as illustrated by her eight hospitalizations in the six years of non-imprisonment between 1985 and 2003, the year of her most recent arrest for kidnaping, Session has never remained medication compliant. (See February 27, 2006 Tr., at 18-19, 23, 33). Nor has her attendance at private in-patient and out-patient facilities resulted in compliance. (See October 24, 2005 Report, at 3; February 23, 2006 Report, at 2-3). In fact, Session has a history

of fleeing from such facilities against the advice of doctors; in one instance, she left a facility without permission within four days of admission. (See February 27, 2006 Tr., at 20). Furthermore, Session's addiction to crack cocaine increases her likelihood of medication non-compliance outside the prison context, as evidenced by her history of using crack cocaine on the street to the exclusion of her prescribed psychotropic medication. (Id., at 64, 73; April 7, 2006 Tr., at 98-99, 120-121). Finally, the Court notes that while Session had recognized more than eight years ago the positive, normalizing influence of prescription medication on her mental illness, she nonetheless has failed to remain medication compliant for a substantial period of time since that revelation; Session herself concedes that she started using crack cocaine and stopped taking her mental health medication within two months of her release from prison in 1998, thereby commencing a five-year period characterized by seven arrests, homelessness, and voluntary and involuntary stays at mental health treatment facilities. (See February 7, 2006 Tr., at 66-69, 70-76; April 7, 2006 Tr., at 98-99, 120-122); see, e.g., Stewart, 452 F.3d at 274 (affirming district court's decision to deny release pursuant to § 4243(c) hearing because record lacked assurances that schizophrenic found not guilty by reason of insanity for stabbing offense would continue to take medication once released or would remain in structured and supervised environment); United States v. Burns, 812 F. Supp. 190, 194 (D. Kan. 1993) (denying § 4243(e) motion for release of paranoid schizophrenic found not guilty by reason of insanity on weapons charge in part because "defendant's history demonstrates an inability or unwillingness to continue on medication following his release from the hospital").

Second, although Session's treating doctors conceded that Session's mental salubrity deteriorates rapidly when medication non-compliant, neither doctor provided any evidence, let

alone clear and convincing evidence, that Session would remain medication compliant if released unconditionally into society or if placed in a residential treatment program. See United States v. Craig, 967 F.2d 592 (9th Cir. 1992) (unpublished opinion) (denying petitioner's release from commitment under 18 U.S.C. § 4243(e) because petitioner becomes dangerous when medication non-compliant and because no evidence from treating doctors that petitioner would continue taking medication if released). For instance, the reports and testimony of Session's treating doctors affirmatively state that Session's risk of decompensation only diminishes through external monitoring and supervision, thereby negating the possibility of an unconditional release. (See February 23, 2006 Report, at 3; February 27, 2006 Tr., at 10, 30). Shadduck even concluded in unequivocal terms that if Session was released from custody without the conditions imposed in the conditional release plan, she would pose a substantial risk of bodily injury to others due to the likelihood of medication non-compliance. (Id., at 10). Furthermore, neither treating doctor offered a particularized assessment as to whether Session was likely to remain medically compliant at a residential mental treatment program, such as Gaudenzia-Broad. (See February 27, 2006 Tr., at 21-22). Nor could these doctors offer such an assessment, as they never reviewed any of Session's prior medical records from previous hospitals and in-patient facilities, never evaluated the factual circumstances behind Session's litany of previous hospitalizations, never inquired into the successes and failures of prior treatment protocols, and knew very little about the content of the Gaudenzia-Broad program. (Id., at 12, 15-21, 32-38, 39-40, 45-46, 48); see United States v. Jackson, 19 F.3d 1003, 1007 (5th Cir. 1994) (affirming district court's denial of party's release under § 4243(e) because "no assurance" in record of medication compliance, despite representation by party's mother that she would oversee

treatment at home).

Third, this Court rejects the credibility of Session's testimony concerning her commitment to follow a medication regimen with exactitude. There is no objective history of compliance from which to infer the sincerity of Session's desire to comply. In fact, Session testified that she experienced similar desires to comply with her medication regimen at earlier phases in her life, but was simply unable to do so due to the allure of street drugs. (See February 27, 2006 Tr., at 64, 73; April 7, 2006 Tr., at 98-99, 120-121). Session's doctors also testified that she only recently acquired "some insight" into the consequences of her mental illness, as well as "some remorse" over the ramifications of her failure to remain medication compliant. (See February 27, 2006 Tr., at 9, 28); see Stewart, 452 F.3d at 274 (affirming denial of § 4243(e) release because although person found not guilty by reason of insanity "had made progress at FMC Devens, evidence suggested he had only recently recognized the seriousness of his illness and become compliant with the drug regimen"). Most importantly, however, the Court simply finds Session's testimony to be untrustworthy, if not manipulative; this absence of credibility is evidenced, *inter alia*, by her surreal, addlepated, and obviously fantastic recitation of the events of the 2003 kidnaping, her laughter at the memory of striking a police officer, her occasionally hostile tone with the Court, her attorney's agreement with the Court that she is manipulative, and her assertion in the presence of the victim's mother that she never kidnaped T.H. because she only took him for twenty-three hours, rather than twenty-four hours. (See February 27, 2006 Tr., at 701-71; April 7, 2006 Tr., at 105-114, 116, 126).

Fourth, the Court notes that Session's entire evidentiary justification for satisfying the § 4243(e) standard hinges on her erroneous belief in the legal authority of this Court to

conditionalize her release. See Stewart, 452 F.3d at 274. For instance, the conclusions of Session's treating doctors concerning her non-dangerousness are predicated upon the implementation of the conditional release plan. (See February 23, 2006 Report, at 4). Testimony was introduced regarding the capacity of Gaudenzia-Broad's staff to implement judicially imposed conditions for patients attending the facility through court order. (See April 7, 2006 Tr., at 31-33, 41-42). Session's attorney reiterated throughout the two hearings that he was only asking the Court to release Session subject either to the conditions in the conditional release plan or to any other set of conditions the Court deems necessary, an outcome which would be tantamount to "court supervision at this point for the release of her life." (See April 7, 2006 Tr., at 122-124). Even the government, by the end of the April 7, 2006 hearing, only agreed to support Session's release under § 4243(e) if the Court imposed additional conditions on the proposed conditional release order. (Id., at 131).

Finally, to the extent the Court can consider Session's acceptance into Gaudenzia-Broad as a factor influencing the § 4243(e) analysis, Session still fails to meet the clear and convincing standard. Initially, the Court expresses doubt as to whether Gaudenzia-Broad would be the appropriate residential facility for treatment of Session's mental health issues and drug addiction, particularly because Session's intake session was conducted over the telephone, rather than in person, because Madl-Young knew very little about the factual circumstances of Session's mental health and criminal history prior to accepting Session into the program, and because the program has a relatively short duration of nine months to one year. (See April 7, 2006 Tr., at 8-9, 65-76, 98-99). More importantly, however, the Court notes that Gaudenzia-Broad is a voluntary program, which Session could leave at any time by simply walking out of the facility. (See April

7, 2006 Tr., at 36-37, 53-54); see Stewart, 452 F.3d at 274 (noting voluntary nature of participation in post-release, mental health referral program in denying release under § 4243(e)). Nor is this fear speculative, as Session left a similar Gaudeniza facility in 2000 within four days of admission. (Id., at 98-99). Gaudenzia-Broad also has a history of premature departures; ten patients within the last year have left Gaudenzia-Broad against medical advice. (Id., at 35-36, 53-54). In addition, Session introduced no testimony concerning the success rate of patients who are accepted into the Gaudenzia-Broad program or the recidivism rate of patients who successfully complete the year-long program. See Stewart, 452 F.3d at 274 (considering absence of evidence on success rate of mental health referral program, in which party seeking release would participate, as factor in finding that party failed to meet § 4243(d) clear and convincing evidence standard).

D. Conclusion

In summary, the Court finds that Session has failed to establish that she will remain medication compliant upon her release from the FMC, particularly in the absence of judicial control over the scope of her release. See Stewart, 452 F.3d at 274. This finding is evident from the testimony and reports of Session's doctors, Session's own testimony, and the factual record before the Court. In turn, because medication compliance is necessary for Session to remain non-violent, the Court finds that Session has not met her burden of proving by clear and convincing evidence that her release would not create a substantial risk of bodily injury to another person. See 18 U.S.C. § 4243(d). Pursuant to 18 U.S.C. § 4243(e), Session is hereby committed to the custody of the Attorney General for further action consistent with that statutory section. An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
	:	Criminal No. 04-783-01
vs.	:	
	:	
VERNA SESSION	:	

ORDER

AND NOW, this 14th day of August 2006, following a hearing pursuant to 18 U.S.C. § 4243(c) on February 27, 2006 and April 7, 2006, it is hereby ORDERED as follows:

1. Verna Session ("Session") has failed to establish by clear and convincing evidence that her release pursuant to 18 U.S.C. § 4243(e) would not create a substantial risk of bodily injury to another person or serious damage of property of another due to a present mental disease or defect.

2. Session is committed to the custody of the Attorney General for action consistent with 18 U.S.C. § 4243(e).

BY THE COURT:

/S/LEGROME D. DAVIS
Legrome D. Davis, J.