

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:06-HC-2205-BO

UNITED STATES OF AMERICA,
Petitioner,

v.

THOMAS SHANE [REDACTED]
Respondent.

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ORDER

This cause comes before the Court following a hearing to review the commitment of respondent, Mr. Thomas [REDACTED] as a sexually dangerous person under the Adam Walsh Child Protection and Safety Act of 2006, 18 U.S.C. § 4248. For the reasons that follow, the Court finds that respondent is no longer sexually dangerous and orders his release from commitment without conditions.

BACKGROUND

On November 22, 2006, the government instituted an action under 18 U.S.C. § 4248(a) to commit respondent as a “sexually dangerous person” under the Adam Walsh Child Protection and Safety Act of 2006 (“Adam Walsh Act”). The government filed a certificate stating that mental health personnel for the Federal Bureau of Prisons (“BOP”) had examined respondent and issued a preliminary determination that he was a sexually dangerous person within the meaning of the Adam Walsh Act. [DE 1]. At the time of the certificate’s issuance, respondent was serving a 41-month sentence for possessing child pornography. [DE 1-2 at 1]. The certificate stayed respondent’s release from federal custody pending a hearing.

In March 2012, the Court held an evidentiary hearing to determine whether the government could prove that respondent was sexually dangerous. [DE 127, 128]. On May 3,

2012, the Court concluded that, at the time, respondent was a sexually dangerous person within the meaning of the Adam Walsh Act. [DE 132, 133]. He has been civilly committed since that time.

On March 18, 2019, respondent filed a motion for a review hearing under 18 U.S.C. § 4247(h), arguing that he was no longer sexually dangerous and should be released from federal custody. [DE 165]. Respondent contemporaneously filed a psychological report written by Dr. Joseph Plaud, which concluded that respondent was not a sexually dangerous person. [DE 166]. The Court granted respondent's motion and set the case for a review hearing.

At the September 24, 2019 hearing, the Court heard testimony from respondent, as well as from four expert psychologist witnesses, Dr. Jeffrey Singer, Dr. Joseph Plaud, Dr. Gary Zinik, and Dr. Justin Rigsbee. Drs. Singer and Plaud both opined that respondent was not presently sexually dangerous. Dr. Zinik opined that respondent would not be sexually dangerous if released on conditions. Dr. Justin Rigsbee opined that respondent remained sexually dangerous. All four psychologists were qualified by the Court as expert witnesses and allowed to give their professional opinions.

Mr. Thomas [REDACTED]

Respondent testified on his own behalf at the hearing. Respondent testified that he was currently 43 years old, born in 1976. He has been in continuous custody for 16 years. He has been in custody since the age of 27. But for his civil commitment, his release date would have been in 2006.

Respondent testified about his childhood. He grew up in Virginia. He was raised by who he believed to be his biological parents, but at the age of 8, he learned he was actually being raised by his grandfather and step-grandmother and that his biological mother was a teenager

when she gave birth. He has since developed a relationship with his birth mother, though he still regards his grandparents as his parents. Respondent testified about experiencing bullying during his youth, specifically for his weight and looks, and that he struggled with self-esteem issues throughout his childhood.

Respondent testified about his sexual offense history. In 2000, he was convicted of travel with the intent to have sexual contact with a minor. Respondent testified that he drove to meet who he believed to be a thirteen-year-old girl he met on the internet, but who was in reality an undercover law enforcement officer. Respondent pleaded guilty and received a year-and-a-day sentence and was released in November of 2001. In August of 2002, he violated his supervised release by viewing child pornography. He received a six-month sentence and was released in February of 2003. In June of 2003, respondent was federally charged for the same child pornography that had accounted for his supervised release violation. He pleaded guilty and received a 41-month sentence. His supervised release was again violated for the same pornography, and he received an additional six months. Since 2003, respondent has never been released. Respondent testified that in the early 2000s, he watched adults molest children via webcam on perhaps five occasions. He testified that he was not in the room when this abuse occurred.

Respondent testified that he has never actually molested a child. Respondent testified about his participation in the Sex Offender Treatment Program (SOTP) at the Federal Correctional Institution at Butner (Butner) in 2005 and 2006. Respondent's participation predated the enactment of the Adam Walsh Act. Respondent testified that he felt pressured to confess to hands on victims, even though he had not molested a child. Respondent testified that he fabricated hands-on victims in order to try to stay in the program and succeed. He has

recanted these hands-on “admissions.” Although he did not complete the SOTP, respondent testified about what he learned and gained from the program. He testified that he suffers from pedophilic disorder and is sexually attracted to children.

Respondent testified about his time in prison. He has been employed throughout his sixteen years in the BOP. He has worked in food service, in recreation, as an inmate companion, and now currently in the library. Respondent has also begun to exercise regularly. Exercise was never previously a big part of his life, and he testified that doing so has helped with his self-esteem issues. Respondent continues to have family support in the form of correspondence and visits.

Respondent has been in custody for 16 years, since 2003. In those 16 years, he has received only minor infractions, and he has not received any infractions whatsoever since 2013. In the last 16 years, he has never had an infraction for possessing child pornography, possessing pictures of children of any kind, seeking out relationships with children, possessing stories about children, or having sexual contact with a guard or inmate.

Respondent testified about his decision not to participate in the Commitment and Treatment Program. Respondent feels betrayed by the program from his prior experience in the SOTP, and he does not wish to participate in a prison-sponsored program. Respondent testified about the efforts he made on his own, through self-study and correspondence courses, to do sex offender therapy. Respondent testified about what he learned from classes like path to wellness, anger management, internet addiction, and self-esteem. Respondent discussed a community reassurance plan that he created several years ago and has consistently updated. Resp. Ex. 5. Respondent went through the plan and discussed the chapters of the plan including his profile of offenses, life traps, cognitive distortions, premises that led to sexual offending, risk factors,

coping skills, emergency interventions, first and second order changes, and lifestyle balance. In addition to his self-guided treatment, respondent also testified about his education pursuits, including a paralegal program and a degree in theology (he wrote his thesis on prison evangelism).

If he were to be released, respondent testified that he would reside in North Carolina, where his adoptive mother has since relocated. Respondent has researched sex-offender treatment available in the area, as well as groups like Circles of Accountability and Support that can provide additional support. Respondent has looked into various reentry resources like Zero Recidivism to explore job opportunities and transitional assistance. He also testified that he would register as a sex offender—that he has always registered when in the community and never had a failure-to-register violation. Respondent testified that he would never molest a child if released.

Dr. Jeffrey Singer

Dr. Singer opined that respondent was not presently a sexually dangerous person. Dr. Singer found that respondent met the first prong of the Adam Walsh Act by virtue of his travel offense which constituted attempted child molestation. Dr. Singer found that respondent met the second prong of the Adam Walsh Act because of his pedophilic disorder. However, Dr. Singer found that respondent would not have serious difficulty refraining from reoffending if released.

Dr. Singer performs forensic evaluations of sex offenders and also provides sex-offender treatment. He has provided treatment for sex offenders since 1995, and he has conducted approximately 1300 sex-offender evaluations. Dr. Singer wrote in his report:

Mr. [REDACTED] has accepted his Pedophilic Disorder in a psychologically meaningful manner. Mr. [REDACTED] does not have an antisocial orientation and in fact appears dedicated to making contributions to the greater good. He has a demonstrated record of integrating essential treatment concepts to prevent future

sexual offending. A SPJ [structured professional judgment] assessment analysis using the SVR 20 underscores a low risk for sexual offending behavior.

Resp. Ex. 3 at RESP_MATH_CH_35. Dr. Singer focused on respondent's efforts to reform himself, the positive ways that he has spent his time, his insight and his strong intentions not to reoffend. Dr. Singer looked at respondent's progress and current state in the context of his past sex offenses, which were both related to online activity. Dr. Singer found it significant that respondent had never had a hands-on victim, and that the research shows that online offenders present a lower risk of re-offense than other offenders.

Dr. Singer testified that respondent's offenses occurred over 16 years ago when respondent was in his twenties. He was less mature then and lacked proper coping skills and insight. Dr. Singer does not credit the hands-on "admissions" that respondent made in the SOTP and later recanted, as there was no independent evidence to corroborate any of them. Dr. Singer testified that this process of encouraging participants to disclose "victims" can lead to fabrication of victims in sex-offender treatment programs.

Dr. Singer found that respondent's efforts to undergo self-study show that respondent is sincere in his efforts for self-growth. Dr. Singer found respondent's prison record as a whole to be evidence of present volitional control and behavioral regulation. Dr. Singer credited respondent for not only his self-study, but his educational pursuits, employment history, lack of institutional infractions, and absence of any sexual misconduct. Dr. Singer disagreed that there was current evidence of many of the dynamic risk factors that the Bureau of Prisons Psychologist, Dr. Justin Rigsbee, found present, including offense-supportive attitudes, lifestyle impulsiveness, poor problem solving, negative social influences, and resistance to rules.

Dr. Gary Zinik

Dr. Zinik was the only expert who testified both at respondent's initial commitment hearing in 2012 and at respondent's review hearing in September 2019. Dr. Zinik was retained by the government to perform an evaluation, and he was listed as a government witness in the Pretrial Order. [DE 187 at 7.] However, respondent's counsel called Dr. Zinik during their case-in-chief. Dr. Zinik found that respondent met the prior act prong and the mental illness prong of the Adam Walsh Act by virtue of his travel offense and his pedophilic disorder, respectively. Dr. Zinik found that respondent would not be sexually dangerous to others if released on conditions.

In 2012, Dr. Zinik opined that respondent was a sexually dangerous person. Importantly, Dr. Zinik did not interview respondent in 2012, but he did for the first time to prepare his 2019 report. Dr. Zinik's opinion of respondent fundamentally changed from 2012 to 2019 in several important ways. First, Dr. Zinik's diagnostic impressions of respondent changed. In 2012, Dr. Zinik diagnosed respondent with pedophilia, sexual sadism, and personality disorder not otherwise specified. In 2019, Dr. Zinik only diagnosed respondent with pedophilic disorder. After careful review, Dr. Zinik dropped the other two diagnoses. Gov. Ex. 31 at USAO_MATH_5653-5654. Second, Dr. Zinik found in 2012 that respondent should be committed to the Bureau of Prisons. In 2019, Dr. Zinik found that respondent could be safely released into the community on conditions.

Dr. Zinik analyzed respondent's efforts to pursue self-help treatment and personal growth classes. Dr. Zinik wrote about several of the courses that respondent took, including Miracles Prison Ministry, Offender Responsibility, Cognitive Awareness, Offender Corrections, Anger Management, Contentious Relationships. Gov. Ex. 31 at USAO_MATH_5655-5656. Dr. Zinik

considered respondent's community reassurance plan, Resp. Ex. 5, which he found to be detailed and insightful.

Through his years of experience evaluating whether committed individuals could be released from custody, Dr. Zinik developed a Ready for Release Checklist. Gov. Ex. 31 at USAO_MATH_5658-5659. Dr. Zinik was careful to note that this was not an empirically validated instrument, but rather a list that he has designed of items he feels are relevant in his analysis. Respondent satisfies almost every item on the list, including honest discussion of past and present sexual fantasies, demonstrates understanding of offense pathways, demonstrates genuine remorse, good institutional adjustment, understanding risk factors and relapse prevention strategies, demonstrates understanding and application of Good Lives Model of treatment, and committed to living a life guided by ethical values and moral integrity.

Dr. Zinik found relevant that respondent has never been convicted, charged, or accused of a hands-on sex offense against a minor. Dr. Zinik testified that he found no corroborating evidence of any of the hands-on "admissions" that respondent made in treatment and later recanted. He testified that respondent was a participant in the SOTP during the time the Butner Study was being conducted. Gov. Ex. 31 at USAO_MATH_5652. Dr. Zinik explained that the "purpose of the study was to uncover the rate of undocumented contact sex offenses in the histories of child pornography offenders." *Id.* Dr. Zinik discussed the widespread criticism of the Butner Study, including that it is an "outlier," has "methodology problems," and "author bias." *Id.*

Dr. Zinik ultimately found that respondent's progress through his self-study and educational pursuits, combined with his good institutional conduct and other items on his Ready

for Release Checklist, led him to the conclusion that respondent would not be sexually dangerous to others if released on conditions.

Dr. Joseph Plaud

Dr. Plaud opined that respondent was not presently a sexually dangerous person. Like Dr. Singer, Dr. Plaud found that respondent met the first prong of the Adam Walsh Act by virtue of his travel offense which constituted attempted child molestation. Dr. Plaud also found that respondent met the second prong of the Adam Walsh Act because of his pedophilic disorder. And, like Dr. Singer, Dr. Plaud opined that respondent would not have serious difficulty refraining from reoffending from child molestation if released. Dr. Plaud has evaluated and treated sex offenders for thirty years. Dr. Plaud wrote in his report:

This analysis also reveals that Mr. [REDACTED] prior sexual offense history does not show the hallmark features of generalizing to other victims going forward in time in 2019 and beyond now that he is an adult who has attained 43 years, and a well thought out plan in his transition back to the community. There appear to be unique perpetrator-victim characteristics in Mr. [REDACTED] sexual offense history, involving specific social influences and historic social and sexual immaturity, and negative core beliefs surrounding his not having pedophilic sexual interests and associated faulty decision making earlier in life. It is also my professional opinion that in 2019 Mr. [REDACTED] does understand the wrongfulness of his past behavior; he does have remorse for his prior bad conduct; and is realistically committed to reentering the community in a safe and productive manner.

Resp. Ex. 1 at RESP_MATH_CH_3. Dr. Plaud credited respondent for his self-study, his educational pursuits, employment history, lack of institutional infractions, and absence of any sexual misconduct. Dr. Plaud found overall that since respondent was civilly committed in 2012, respondent has demonstrated excellent volitional control, insight, and commitment not to reoffend. Dr. Plaud found significant that a number of years had passed since respondent's last offense, which was a child pornography offense. Dr. Plaud found that respondent had matured since then and had worked on issues in his life that led to his offense behavior. Dr. Plaud does

not credit the hands-on “admissions” that respondent made in the SOTP and later recanted, as there was no independent evidence to corroborate any of them.

Like Dr. Singer, Dr. Plaud disagreed that there was present evidence of many of the dynamic risk factors that the Bureau of Prisons Psychologist, Dr. Justin Rigsbee, found present, including offense-supportive attitudes, lifestyle impulsiveness, poor problem solving, negative social influences, and resistance to rules.

Dr. Justin Rigsbee

Dr. Justin Rigsbee is a psychologist employed by the Bureau of Prisons. This was the fourth time that Dr. Rigsbee has testified in an Adam Walsh Act proceeding (both initial commitment hearings and review hearings). For the past three years, he has conducted an annual review of respondent, although he has only interviewed respondent once, back in 2017. Each of the three years, he has opined that respondent remains a sexually dangerous person. He diagnosed respondent with pedophilic disorder, antisocial personality disorder, and sexual sadism. Dr. Rigsbee testified that respondent presented eight out of ten dynamic risk factors, and he wrote in his report:

There is no evidence to suggest that Mr. ██████ has undergone significant changes in these areas, as he has not participated in the CTP program and his efforts at self-improvement appear to be limited to self-help books and correspondence courses.

Gov. Ex. 29 at 6.

DISCUSSION

The Adam Walsh Act provides authority for the government to civilly commit sexually dangerous persons. To determine whether a respondent is presently sexually dangerous, as defined by the Adam Walsh Act, the Court must determine whether (1) respondent “has engaged or attempted to engage in sexually violent conduct or child molestation” and (2) that respondent

“suffers from a serious mental illness, abnormality, or disorder as a result of which he would have serious difficulty in refraining from sexually violent conduct or child molestation if released.” 18 U.S.C. §§ 4247 (a)(5) and (a)(6). As to the second step, parties treat this definition in two parts—the mental disorder prong and the volitional control prong.

Respondent attempted child molestation by virtue of his travel conviction, and the Court already determined that the first prong is met in its 2012 commitment order. [DE 133 at 7]. Additionally, all four experts testified that respondent had pedophilic disorder; the Court finds the mental disorder prong satisfied.

Serious Difficulty Refraining

The Court finds the first two prongs are met and so the only issue is whether respondent would have serious difficulty refraining from reoffending if released. Respondent must prove by a preponderance of evidence that he would not have serious difficulty refraining.

After carefully reviewing the record, the Court has determined that respondent has proved by a preponderance of the evidence—indeed, by the overwhelming weight of the evidence—that he would not have serious difficulty refraining from reoffending if released, and that he is not a sexually dangerous person.

The Court credits the hard work and effort respondent has undertaken to better himself over the last several years. Drs. Singer, Plaud, and Zinik testified about respondent’s extensive self-study, which they viewed as sincere and diligent efforts to reform. The Court credits respondent’s testimony about his self-study, educational pursuits, and efforts to find treatment through correspondence courses. The Court finds compelling respondent’s community reassurance plan and his testimony about the plan. Respondent has clearly learned treatment concepts, internalized them, and is committed not to reoffend.

The Court finds compelling the lack of any sexual misbehavior for 16 years. Respondent has never once been cited for a sexual infraction of any kind. Without a single blip of sexual misbehavior in 16 years, the Court cannot find that respondent presently has serious difficulty controlling his behavior. Along the same lines, the Court finds respondent's lack of any disciplinary infractions since 2013, his employment history, and his educational pursuits all relevant to his demonstrated effort to reform.

The government asked each witness about the “admissions” of hands-on conduct that respondent made in treatment in 2005-2006—over a decade ago—but later recanted. This line of questioning was unpersuasive. The district court order committing respondent explicitly acknowledged that “[REDACTED] has not been convicted of a ‘hands-on’ sex offense and that the government has not offered any evidence to independently verify that any of the incidents that [REDACTED] disclosed in the SOTP actually occurred.” DE 133 at 14. Moreover, Dr. Singer testified about the practice of some treatment programs encouraging these sorts of “admissions” and leading to fabricated victims, and Dr. Zinik convincingly testified about the Butner Study and potential problems with it. In short, the government offered no new independent corroborating evidence to confirm the existence of any hands-on victim. The government's focus on these recanted “admissions” is unpersuasive.

The Court was unpersuaded by the testimony of Dr. Justin Rigsbee. Compared to the other experts who testified and have been working in this arena for decades, Dr. Rigsbee's relevant experience began in 2017. This was his fourth time testifying in federal court. Dr. Rigsbee continued to label respondent with diagnoses that the Court did not adopt in 2012 (sexual sadism and antisocial personality disorder, DE 133 at 9-13), and that Dr. Zinik has dropped in his 2019 opinion. Dr. Rigsbee rigidly adhered to these diagnoses despite not having

interviewed respondent since March 2017. Dr. Rigsbee continued to find relevant the presence of several dynamic risk factors, including offense-supportive attitudes, lifestyle impulsiveness, poor problem solving, negative social influences, and resistance to rules—even without any current evidence to support their continued existence. The Court did not find Dr. Rigsbee’s opinion to be persuasive or informed. Rather, the more informed, detailed, and nuanced opinions of the other three experts were persuasive to the Court.

The Fourth Circuit’s opinion in *United States v. Wooden*, 887 F.3d 591 (4th Cir. 2018) (*Wooden III*), offers guidance in the review hearing context. In *Wooden III*, the Fourth Circuit upheld the district court’s finding at a review hearing that a respondent was no longer sexually dangerous. On appeal, the government pointed again and again to Mr. Wooden’s past pedophilic acts and behaviors, and argued that “the absence of evidence of pedophilic urges does not mean that Wooden is not currently experiencing those urges.” *Id.* at 607. The court rejected the government’s argument, explaining that “[t]o accept the government’s argument would effectively mean that an offender diagnosed with pedophilic disorder could never be released, as the government could always prove future impulse-control problems by pointing to past failures to exercise control. The structure of the Act, which requires discharge if the inmate is no longer sexually dangerous, clearly shows that Congress believed that sexually dangerous predators could change and grow out of the sexually-dangerous classification.” *Id.* The government invites the Court to do what the Fourth Circuit rejected in *Wooden III*, to focus on past offenses as evidence of serious difficulty controlling behavior and ignore the lack of current evidence to the contrary. The Court is not so inclined.

The Court finds that there is no evidence to show that respondent is more dangerous today than he was in 2012. Indeed, he is much less dangerous. He is older, and he has not had a

single incident since he was committed to suggest he would have serious difficulty refraining from reoffending if released. Respondent displayed genuine remorse and insight into his offending. For the past 16 years in prison, he has been an example of good behavioral management. He has shown over and over that he can conform his behavior to the rules of the institution. He is now in his 40s, a decade and a half removed from his offending, and is now older and more mature.

In sum, the Court has considered all of the evidence and finds that respondent has met his burden of proving that he would not be sexually dangerous to others if released. The overwhelming weight of the evidence demonstrates that respondent has volitional control. His hard work through self-study and education, his institutional conduct, his good behavioral management, his remorse and insight, the lack of sexual misbehavior for 16 years, and his lengthy term in custody all support such a finding.

The Court concludes that the opinions of Drs. Singer and Plaud are complete, thorough, carefully consider the current evidence, and are therefore persuasive. The Court finds Dr. Zinik's review of respondent's progress compelling. This evidence—finding in favor of respondent's release—greatly outweighs Dr. Rigsbee's opinion, which the Court finds unpersuasive.

Unconditional Release

The Court finds that because respondent has shown he is not a sexually dangerous person, he should be released unconditionally. Drs. Singer and Plaud each opined that respondent was not a sexually dangerous person regardless of whether respondent had conditions of release. “The Act requires the immediate discharge of detainees who will not be sexually dangerous to others if released unconditionally.” *Wooden III*, 887 F.3d at 609 (quoting 18 U.S.C. § 4248(e)(1)) (internal quotations and brackets omitted). The Act “authorizes conditional

discharges only for detainees who will not be sexually dangerous to others if released under a prescribed regimen of medical, psychiatric, or psychological care or treatment[.]” *Id.* (quoting § 4248(e)(2)) (internal quotations omitted). “A conditional discharge thus is authorized only for those detainees who require medical care or treatment to keep them from being sexually dangerous; a detainee who is not sexually dangerous must be discharged unconditionally.” *Id.*

Because respondent has proved that he is no longer a sexually dangerous person, the Court orders him released unconditionally.

CONCLUSION

For the above reasons, the Clerk is DIRECTED to enter judgment in favor of the respondent, Mr. Thomas [REDACTED] and against the petitioner, the United States of America. The government is ORDERED to release the respondent.

SO ORDERED, this 22 day of October, 2019.


TERRENCE W. BOYLE
CHIEF UNITED STATES DISTRICT JUDGE