

UNPUBLISHED

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MICHAEL DEAN MARSH,

Defendant.

No. CR06-4006-MWB

ORDER

The plaintiff has filed a motion (Doc. No. 36), pursuant to 18 U.S.C. § 4247(b), on behalf of the warden of the facility where the defendant is being evaluated, for an extension of time to complete the evaluation. In a letter dated March 12, 2007, the warden states, in relevant part, as follows:

The statute allows our psychology staff 45 days to complete the testing and examination. Our clinical psychologist requests a 30-day extension as permitted by the statute in order to complete the testing and examination necessary to develop a history, diagnosis, and opinion regarding both the 4241 and 4242 questions. . . . It is anticipated that the evaluation will be completed by May 21, 2007. Three copies of the report will be submitted to the court within three weeks of completion of the evaluation . . . by June 11, 2007. . . .

Doc. No. 36-2.

The court ordered the defendant's evaluation pursuant to 18 U.S.C. § 4241(b), which allows the facility thirty days to complete the evaluation as provided by 18 U.S.C. § 4147(b). However, although no notice pursuant to Federal Rule of Criminal Procedure 12.2 has been filed by the defendant, *see* 18 U.S.C. § 4242, the court nevertheless asked the evaluator to consider the defendant's mental condition at the time of his arrest on the current charges. Accordingly, the court finds the facility is entitled to the forty-five day evaluation period

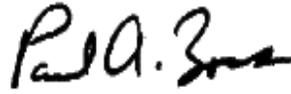
specified in 18 U.S.C. § 4247(b), for consideration of factors described in 18 U.S.C. § 4242(a). As a result, the warden may apply for a thirty-day extension of the evaluation period, rather than the fifteen-day extension set forth in the court's order for the evaluation. *See* 18 U.S.C. § 4247(b).

Therefore, the warden's request for an extension of time to complete the evaluation is **granted**. The next issue is the date from which the evaluation period should be calculated. The warden indicates her belief that the evaluation period commenced upon the defendant's arrival at her facility. *See* Doc. No. 36-2. Neither the warden nor the plaintiff cites any authority in support of this position. The statute is explicit in its limitation of the time period during which the defendant may be committed to the custody of the Attorney General for purposes of the evaluation. In the present case, the applicable time limit is forty-five days, which may be extended by thirty days "upon a showing of good cause that the additional time is necessary to observe and evaluate the defendant." 18 U.S.C. § 4247(b); *see* 18 U.S.C. § 4242(a). The court's order committing the defendant to the Attorney General's custody was entered on February 9, 2007. (Doc. No. 33) The Speedy Trial Act specifies that any delay in excess of ten days that results from transportation of the defendant "to and from places of examination or hospitalization" is "presumed to be unreasonable." 18 U.S.C. § 3161(h)(1)(H). No evidence has been offered to rebut this presumption. Accordingly, the court finds the time period for the evaluation commenced on February 19, 2007, seventy-five days from which is May 5, 2007. Because May 5, 2007, falls on a Saturday, the evaluation period is extended to the following Monday, i.e., May 7, 2007.

Thus, the plaintiff's motion is **granted in part and denied in part**. The time period for the defendant's evaluation is extended to **May 7, 2007**. The warden has requested three weeks from the date the evaluation is completed to prepare and file the report from the evaluation. The request is granted; the report pursuant to 18 U.S.C. § 4247(c) must be filed by **May 21, 2007**.

IT IS SO ORDERED.

DATED this 29th day of March, 2007.

Handwritten signature of Paul A. Zoss in black ink.

PAUL A. ZOSS
CHIEF MAGISTRATE JUDGE
UNITED STATES DISTRICT COURT