

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
Asheville Division**

**FILED
ASHEVILLE, N.C.
OCT -3 2008
U.S. DISTRICT COURT
W. DIST. OF N.C.**

UNITED STATES OF AMERICA)	
)	
v.)	Criminal No. 1:07cr122
)	
BOBBY LEE MEDFORD)	

ORDER

The matter is before the Court on defendant Medford's October 2, 2008 motion to continue the sentencing hearing currently scheduled for 10:30 a.m., Monday, October 6, 2008 (doc. 235). Defendant's motion in this regard is based primarily on (i) his current medical condition and alleged need to undergo back surgery on October 13, 2008, which surgery his insurance company just recently agreed to cover following an appeal filed by defendant's surgeon, and (ii) his alleged inability to have "any meaningful discussions with counsel" concerning the Presentence Investigation Report (PSIR) or to "participate in a sentencing hearing" on October 6, 2008, given his current medical condition. Mot. at 3. The government has today filed an opposition to defendant's motion to continue, noting that the Bureau of Prisons has adequate facilities to address defendant's various medical needs during any term of imprisonment.

Contrary to defendant's contentions, the record reflects that both defendant and his counsel have had ample opportunity to review the PSIR and to prepare objections to the same. Indeed, the draft PSIR was filed electronically nearly two months ago, on August 8, 2008. Thereafter, following two motions for an extension of time in which to file his objections — both of which were granted — defendant, by counsel, ultimately filed 97 objections to the PSIR on September 15, 2008. The final PSIR incorporating and addressing these 97 objections was later filed electronically on

September 26, 2008, and a copy of the final report was also mailed to defendant at his residence on September 29, 2008.

Significantly, at no time in the course of these proceedings prior to this motion has counsel indicated to either the Probation Officer or to the Court that he has had any difficulty communicating with his client or that defendant has been unable to participate in his own defense, including specifically the PSIR review and objection process. Yet now, just days before the scheduled sentencing hearing, counsel contends that a continuance is warranted due to defendant's current medical condition, stating that "it has been increasingly difficult — in fact almost impossible — for [defendant] to meet with counsel to discuss the PSR, objections, sentencing memorandum and sentencing hearing." Mot. at 2. Counsel further contends that due to defendant's "unstable condition over the last several months counsel is not assured that Mr. Medford adequately understands the PSR or that he can adequately participate in a sentencing hearing on October 6, 2008." Mot. at 3.

In the circumstances, counsel's allegations pertaining to his client's alleged inability to understand the sentencing proceedings and to assist in his defense are neither plausible, nor persuasive. Indeed, defendant and his counsel had more than a month to review the draft PSIR together and to prepare objections thereto. Moreover, a review of the nearly 100 objections ultimately filed in this case reflects that much of the information set forth in the objections originated from defendant himself, thus making clear that defendant has, in fact, adequately participated in the PSIR review and objection process. And, most significantly, the Probation Officer has advised that defendant appeared lucid and coherent, as always, during a recent home visit on September 25, 2008. Indeed, the Probation Officer reports that defendant appeared to him, during the course of the home visit, to be "just as he [defendant] had all along" throughout the period of supervision.

The allegations in the motion concerning defendant's mobility also appear to be somewhat overstated. There is no reason to doubt that defendant is in substantial pain and that his mobility is significantly impaired. But this does not mean that defendant cannot appear for sentencing. Moreover, it is worth noting that the Probation Officer reports that he did not observe during the September 25, 2008 home visit, as stated in the motion, that defendant is "non-ambulatory, is confined to his bed, and has lost a significant amount of weight since their last visit." Mot. at 2. Instead, the Probation Officer reports to the Court that he noted simply that defendant happened to be sitting up in his bed on this occasion, watching television and eating a sandwich, activities not inconsistent with defendant's previous conduct during several earlier home visits. The Probation Officer also notes (i) that defendant was able to walk outside with him during a home visit in August 2008, and (ii) that defendant drove in a vehicle approximately 20 miles each way to and from a doctor's appointment on September 30, 2008, being away from his residence for approximately two hours. Finally, the Probation Officer advises that defendant's weight does not appear to have changed significantly since the commencement of these proceedings; this observation is supported by the fact that defendant's GPS ankle transmitter has not required any adjustments since its initial application.

Accordingly, following discussions with the Probation Officer and based on a review of the current record, it appears clear that defendant's motion to continue the sentencing hearing is without merit. Specifically, both defendant and his counsel have had ample time to review the PSIR and to prepare objections thereto, which they ultimately did — indeed more objections were filed in this instance than the Probation Officer has ever been confronted with in one case. The record also does not support counsel's contention that defendant either has been, or is currently without the mental

or physical ability to understand the sentencing proceedings or to assist in his defense.¹

For these reasons, and because there is no good cause to do so,

It is hereby **ORDERED** that defendant's motion to continue the October 6, 2008 sentencing hearing is **DENIED**.²

The Clerk is directed to send a copy of the Order to all counsel of record.

/s/

Alexandria, VA
October 3, 2008

T. S. Ellis, III
United States District Judge

¹ Defendant has not filed a competency motion pursuant to 18 U.S.C. § 4241 in this instance and, in any event, there appears to be no basis at this time for the Court to find by a preponderance of the evidence that defendant "may presenting be suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist in his defense." 18 U.S.C. § 4241(a). Were the Court to be presented with such a motion, however, the Court would consider remanding defendant immediately to FMC Butner for a prompt competency evaluation.

² Defendant will, of course, be permitted to attend the October 6, 2008 sentencing hearing in a wheelchair or other comfort device, if necessary, and to remain seated throughout the proceedings. Moreover, the Court will consider at the time of sentencing whether defendant should be permitted to remain on release in order to undergo his scheduled surgery on October 13, 2008.