

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 05-7509

UNITED STATES OF AMERICA,

Petitioner - Appellee,

versus

STEPHEN R. KIRKPATRICK,

Respondent - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. W. Earl Britt, Senior District Judge. (HC-05-142)

Submitted: August 23, 2006

Decided: September 28, 2006

Before MICHAEL and KING, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Thomas P. McNamara, Federal Public Defender, Jane E. Pearce, Assistant Federal Public Defender, Raleigh, North Carolina, for Appellant. Frank D. Whitney, United States Attorney, Anne M. Hayes, Assistant United States Attorney, Michelle T. Fuseyamore, Special Assistant United States Attorney, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Stephen Russell Kirkpatrick appeals the district court's order committing him to the custody of the Attorney General under 18 U.S.C. § 4246 (2000). The district court found by clear and convincing evidence that Kirkpatrick "is presently suffering from a mental disease or defect as a result of which his release would create a substantial risk of bodily injury to another person or serious damage to property of another." 18 U.S.C. § 4246(d) (2000).

We review the district court's determination for clear error. United States v. Cox, 964 F.2d 1431, 1433 (4th Cir. 1992). A factual finding is clearly erroneous when the reviewing court is "left with the definite and firm conviction that a mistake has been committed." Anderson v. City of Bessemer City, 470 U.S. 564, 573 (1985) (internal quotation marks and citation omitted).

We have reviewed the record, the district court's conclusion, and the briefs of the parties, and find that the district court's determination is supported by the record and is not clearly erroneous. Kirkpatrick's contention that he has not acted on his threats or delusions, and thus does not pose a danger, is unpersuasive, particularly in light of his expressed desire to obtain a firearm, his history of threats, and the likelihood that he would not continue treatment for his mental illness if released. Accordingly, we affirm the order of the district court. We

dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED