

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.) Case No. 4:02CR25DJS(MLM)
)
 SAMMIE L. LEWIS,)
)
 Defendant.)

**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

On February 11, 2002 defendant filed a Motion for an Order Directing the United States Marshal to Send Defendant to a Medical Facility in the Bureau of Prisons for an Evaluation of His Physical Condition and Physical Competence to Proceed to Trial in This Case. [doc. #13] On February 26, 2002 this court denied the Motion to send defendant to a federal medical facility but directed that the parties agree to a local physician to examine defendant and report to the court on defendant's current physical condition and whether defendant is physically competent to proceed to trial. [doc. #17, attached] On March 7, 2002 counsel for defendant presented a report by Dr. Raffi K. Krikorian. [attached] This extremely brief and less than thorough report concludes:

- This patient appears to be unstable as far as going to further trials in the court system in my opinion. He needs to be taken care of medically by assessing the need for in-hospital care because of several medical conditions that are out of control.
- I recommend tighter blood pressure control with the addition of Accupril 10 mg once a day.
- Sleep apnea treatment which may precipitate resistance to the blood pressure medication.
- Check basic blood tests, including a CBC, BMP, liver enzymes and an urinalysis and address his medical issues before any legal proceedings.

The court is unsure whether the doctor is recommending hospitalization or an assessment of the need for hospitalization. The court is also unsure whether the doctor is merely recommending Accupril or he actually prescribed it. The court is further unsure of whether the doctor is referring to defendant's "instability" with regard to a lengthy trial or trials or whether a simple hour-long

procedure would be threatening to defendant's condition. The doctor gives no indication that defendant's current condition presents any type of medical emergency.

The court has informally received information that there is a high likelihood that defendant will enter a change of plea. The court finds that if that is, in fact, the case, defendant's condition will tolerate that proceeding with appropriate breaks if defendant needs to sit down or rest. The court finds that because the report provided is sketchy and unclear, defendant needs further evaluation to determine if he is physically competent to stand the rigors of trial.

ACCORDINGLY,

IT IS HEREBY RECOMMENDED that if defendant is to enter a change of plea on or before the scheduled trial date of March 18, 2002, he be found physically competent to do so.

IT IS FURTHER RECOMMENDED that immediately following the change of plea, defendant be transported to a medical facility for federal prisoners for treatment of his medical problems while he awaits sentencing.

In the alternative, **IT IS FURTHER RECOMMENDED** that if defendant requests a trial in this case, he be transported immediately to a medical facility for federal prisoners for a full and complete evaluation of his physical competence to stand trial, that the evaluation include an assessment of whether treatment can insure defendant's competence to stand trial and how long that treatment is expected to take and that he receive appropriate treatment while in the facility.

The parties are advised that because of the March 18, 2002 trial setting, the time in which to file written objections to this report and recommendation pursuant to 28 U.S.C. §636(b)(1) must be shortened to March 15, 2002, unless an extension of time for good cause is obtained, and that failure to file timely objections may result in a waiver of the right to appeal questions of fact. See Thompson v. Nix, 897 F.2d 356 (8th Cir. 1990).

/s/ Mary Ann L. Medler
MARY ANN L. MEDLER
UNITED STATES MAGISTRATE JUDGE

Dated this 11th day of March, 2002.