

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

UNITED STATES OF AMERICA,)	Criminal No. 7:03cr00007
v.)	<u>MEMORANDUM OPINION</u>
STEVEN MARK MACKIE,)	By: Samuel G. Wilson,
Defendant.)	Chief United States District Judge

Steven Mark Mackie appeared before this court to plead guilty to one count of possession of stolen firearms, and during the hearing, substantial questions about Mackie’s competency arose. Pursuant to 18 U.S.C. § 4241, the court ordered federal mental health experts to evaluate Mackie. Following their evaluation, the court held a hearing on February 19, 2004, in which two mental health experts testified that Mackie was currently incompetent and that with medication he could be restored to competency within a reasonable time. Finding that the United States has an important government interest in proceeding to a timely and fair trial and that medication is appropriate and necessary to further the government’s interest, the court orders Mackie to take medication as directed by his mental health physicians. Should Mackie refuse medication, the Federal Bureau of Prisons is directed to administer forced or involuntary medication to Mackie.

I.

Following an indictment, Mackie indicated his desire to plead guilty to one count of possession of stolen firearms in violation of 18 U.S.C. § 922(j). On March 27, 2003, Mackie appeared before the court to plead guilty, and after questioning him about his competency, the court found reasonable cause to believe Mackie was “unable to understand the nature and consequences of the proceedings

against him or to assist properly in his defense,” 18 U.S.C. § 4241(a), and the court ordered a psychiatrist to evaluate Mackie. After a thorough psychiatric evaluation and Mackie’s steadfast refusal to take medication, the court found that it was more likely than not that Mackie was incompetent to stand trial and committed him to the custody of the Attorney General for treatment and a determination of whether he could attain the capacity to proceed with his defense.

Pursuant to the court’s order, physicians and mental health professionals at the U.S. Medical Center for Federal Prisoners evaluated Mackie, and on February 19, 2004, the court held a hearing to review their findings. During the hearing, Dr. Wiener, a staff psychologist at the Federal Bureau of Prisons, testified that after extensive interviews and testing she had determined Mackie to be incompetent to stand trial. She also noted that Mackie had refused to participate in group therapy exercises and that even if he cooperated, therapy alone would not restore him to competency. Dr. Wiener concluded that Mackie required medication to restore his competency. Further, although incompetent, Dr. Wiener testified that Mackie did not pose a danger to himself or others.

Dr. Sarrazin, a staff psychiatrist at the Federal Bureau of Prisons, also testified at the hearing. Dr. Sarrazin diagnosed Mackie as having a psychotic disorder, most likely schizophrenia, as incompetent to stand trial, and as “very unlikely to improve” without medication. Dr. Sarrazin recommended multiple oral, “atypical antipsychotic” medications, such as Seroquel or Risperdal, and identified injectable medicines that could be used should Mackie refuse to take the oral medication. With medication, Dr. Sarrazin testified, there is a substantial probability that Mackie could be restored to competency, most likely within four to five months. Dr. Sarrazin also testified about potential side effects of the medications, classifying the most common as “nuisance side effects,” such as upset

stomach, dry mouth, and constipation, that tended to go away in a short amount of time as one's body adjusted to the medication. Dr. Sarrazin did indicate the potential for more serious side effects, such as tardive dyskinesia, which is characterized by involuntary muscle movements, but indicated that such side effects were "very rare." Dr. Sarrazin indicated that injectable medications, should they be needed, present a slightly higher risk of side effects, but indicated that the risk was still rare and somewhat lessened because patients usually agree to take the oral medication after only a few doses of the injectable medicine. Finally, he, like Dr. Wiener, indicated that Mackie posed no danger to himself or others as a result of his mental disorder.

After both Dr. Wiener and Dr. Sarrazin testified, the court heard testimony from Mackie. Mackie indicated his belief that medicine was poison and that it could cause him substantial bodily harm. When questioned by the court, Mackie indicated that he would refuse oral medication, even if ordered by the court to take it.

After hearing the testimony of Dr. Wiener and Dr. Sarrazin and after considering Mackie's wishes, the court makes the following findings of fact.

1. Mackie is presently suffering from a mental disease rendering him incompetent to the extent that he is unable to assist properly in his defense.
2. While incompetent, Mackie does not pose an increased risk of danger to himself or others because of his mental disorder.
3. With atypical antipsychotic and/or other appropriate medication, there is a substantial likelihood that Mackie can be restored to competency within a reasonable time.
4. Although there is a small probability, the proposed medication is not substantially likely

to cause any serious side effects or any side effects that could interfere significantly with Mackie's ability to assist in his defense.

5. Atypical antipsychotic and, if needed, alternative forms of medication are medically appropriate.
6. Less intrusive means of treatment, such as group or individual therapy, are unlikely to restore Mackie to competency.

II.

In Sell v. U.S., 123 S.Ct. 2174 (2003), the Supreme Court announced a four-part test courts must apply when approving forced medication for the sole purpose of restoring a defendant's competency. First, a court must find that important government interests are at stake in restoring one to competency. Id. at 2185. Second, involuntary medication must significantly further those state interests. Id. Third, a court must conclude that involuntary medication is necessary to further the significant government interests. Id. Fourth, the involuntary medication must be medically appropriate. Id.

After considering Sell and this court's findings of fact, the court makes the following conclusions of law.

1. Mackie is accused of a serious crime, and the United States government has an important interest in bringing him to trial. Restoring Mackie's competency also will advance an important government interest by assuring a fair trial. It is unlikely that any civil commitment or other future confinement will lessen the government's interests.
2. Medication, even if administered involuntarily, will significantly further the government's

interests in proceeding to a fair and timely trial. Also, the potential side effects of the proposed medications are rare and are substantially unlikely to interfere with Mackie's ability to assist counsel in his defense.

3. Involuntary medication is necessary to further the government's interests, and less intrusive treatments, such as group therapy, are unlikely to restore Mackie to competency.
4. The proposed medications are medically appropriate and are substantially likely to restore Mackie to competency with minimal, if any, side effects.

IV.

For the reasons stated, this court concludes that Mackie is incompetent to stand trial at this time and that appropriate medication is necessary and substantially likely to restore Mackie to competency within a reasonable time. Should Mackie refuse medication, the court authorizes the use of involuntary or forced medication for the purpose of restoring Mackie to competency.

ENTER: This ____ day of February, 2004.

Chief United States District Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
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UNITED STATES OF AMERICA,)	Criminal No. 7:03cr00007
v.)	<u>ORDER</u>
STEVEN MARK MACKIE,)	By: Samuel G. Wilson,
Defendant.)	Chief United States District Judge

In accordance with the written Memorandum Opinion entered this day, it is hereby **ORDERED** and **ADJUDGED** that Steven Mark Mackie be directed to take atypical antipsychotic medication. Should he refuse, the Federal Bureau of Prisons is authorized to administer forced or involuntary atypical antipsychotic and/or other medically appropriate medication to Mackie.

The Clerk of the Court is directed to send certified copies of this Order and the accompanying Memorandum Opinion to the counsel of record for the United States and the defendant.

ENTER: This ____ day of February, 2004.

Chief United States District Judge