

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 03 2010

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

LANCE KEVIN KOLESAR,

Defendant - Appellant.

No. 09-30238

D.C. No. 6:08-cr-00005-DWM-1

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Donald W. Molloy, District Judge, Presiding

Argued and Submitted February 5, 2010
Seattle, Washington

Before: ALARCÓN, W. FLETCHER and RAWLINSON, Circuit Judges.

Defendant Lance Kevin Kolesar appeals from the district court's June 8, 2009 order recommitting him to the custody of the Attorney General for the purpose of conducting a dangerousness evaluation pursuant to 18 U.S.C. § 4246(b). A magistrate judge had previously determined under § 4241(d) that

*This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Kolesar's condition had not so improved as to permit the proceedings to go forward and recommended that the district court find that he be subject to the provisions of § 4246.

The district court order from which Kolesar appeals is not an appealable order for the purposes of 28 U.S.C. § 1291. In *United States v. Ohnick*, 803 F.2d 1485 (9th Cir. 1985), we held that “[o]nly after [a § 4246(a)] dangerousness hearing does a commitment order under section 4246 become final. At that point, review is available under 28 U.S.C. § 1291.” *Id.* at 1486.

Here, the director of the medical facility where Kolesar is hospitalized has already issued a dangerousness certificate as required by § 4246(a). Furthermore, the district court for the Western District of Missouri, the district where Kolesar is presently confined, has already held a § 4246(a) dangerousness hearing on which it has yet to rule. Thus, the Missouri district court's determination pursuant to that dangerousness hearing will be a final order from which Kolesar can appeal.

DISMISSED.

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U.S. v. Kolesar, Case No. 09-30238
Rawlinson, Circuit Judge, concurring:

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I concur in the determination that this case should be dismissed.