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Jeff S.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	CR. 3:91CV00138-R
)	
JAMES R. WEBSTER,)	
)	
Defendant.)	

MEMORANDUM OPINION

This matter is before the Court on defendant James R. Webster's ("Webster's") motion for a post-conviction mental examination. For the reasons discussed below, Webster's motion will be DENIED.

FACTS

The defendant pleaded guilty to a single count indictment charging him with possession of a firearm as a convicted felon, in violation of Title 18, United States Code, Section 922(g)(1). This federal indictment was directly related to a state law indictment for first degree murder and use of a firearm in the commission of a felony. The defendant also pleaded guilty to these charges, and on April 14, 1992, was sentenced to life imprisonment by the Virginia Circuit Court in Colonial Heights, Virginia.

The murder at issue occurred on August 30, 1991. The defendant walked into a Wal-Mart Store in which his estranged girl-

friend was working. After an argument between the defendant and the victim, the defendant forced the victim to her knees, placed a derringer to her head, and, despite her pleas, shot her in cold blood in a manner resembling an execution. Tragically, this is not the defendant's first incident of violence directed towards a woman with whom he has had a relationship. In addition to a number of incidents of assault and harassment, the defendant was convicted of second degree murder in connection with the strangulation of a girlfriend in August of 1974.

DISCUSSION

The defendant made a previous motion for a mental examination at the taking of his plea on January 24, 1992. That motion was considered and rejected by the Court at that time. The present motion amounts to little more than a renewal of that previous motion. The essence of Webster's motion is his assertion that a mental examination is needed in order to coordinate his treatment/incarceration in the state and federal systems to ensure that the incarceration will have a positive effect on his rehabilitation. As a legal basis, the defendant argues that 18 U.S.C. § 4244 and Fed. R. Crim. P. 32(a)(1) & (c)(2)(A), (E), & (F) effectively require a mental examination as a necessary precursor to the formulation of a proper presentence report ("PSR"). While the purposes offered by the defendant may be generally laudable, there is no basis for the requested examination under existing law.

Webster attempts to rely on section 4244(b) as a basis for

his argument that the PSR is legally inadequate absent consideration of his mental state and the sentencing options available to treat his mental problems. The defendant's argument, however, places the proverbial cart before the horse. Section 4244(b) provides:

[I]f the report includes an opinion by the examiners that the defendant is presently suffering from a mental disease or defect but that it is not such as to require his custody for care or treatment in a suitable facility, the report shall also include an opinion by the examiner concerning the sentencing alternatives that could best accord the defendant the kind of treatment he does need.

18 U.S.C. § 4244(b) (emphasis added). By the terms of section 4244(b), the rendering of the "sentencing alternatives" is not needed until it has been determined that the defendant has a mental disease or defect needing treatment. No such determination has been made in this case. Even more to the point, the examination implicit in subsection b is conducted only if the defendant satisfies the legal criteria of subsection a, and the defendant has failed to satisfy those criteria.

Subsection a provides:

The Court shall grant the motion, or at any time prior to the sentencing of the defendant shall order such a hearing on its own motion, if it is of the opinion that there is reasonable cause to believe that the defendant may presently be suffering from a mental disease or defect for the treatment of which he is in need of custody for care or treatment in a suitable facility.

18 U.S.C. § 4244(a) (emphasis added). Simply stated, the defendant has presented no evidence to suggest that there is "reasonable cause" for a mental examination in the instant case.

Webster argues that he is entitled to a mental examination

under 18 U.S.C. § 4244 because he "has exhibited what may be a pattern of conduct resulting from a psychological defect, to wit, violent aggression toward females with which he has formed emotional ties." Defendant's Motion, para. 1. This essentially amounts to an argument that a normal person would not have committed such a heinous crime and that if he does not receive treatment he may commit similar acts in the future. Unfortunately, the same can probably be said of any defendant who has committed a violent, vicious crime. While it might be socially beneficial if psychological treatment under section 4244 were the norm, that is clearly not the intent of the statute. It is intended for prisoners who cannot be assimilated into the general prison population; it is not intended to be an expansive and quite expensive program of rehabilitation.¹

The defendant also argues, on a number of bases, that a "proper" sentence cannot be determined until and unless the causes of the criminal behavior and the defendant's mental state are taken into account so as to craft a criminal sentence that optimizes the defendant's chances for rehabilitation. Again, an ideal world

¹ Defense counsel's consternation with the system is understandable--he wants to know what the system is going to do to help his client become an assimilable member of society. Unfortunately, the answer is probably that the system does little or nothing to help rehabilitate a large portion of those processed through it. The system appears to have become less concerned with rehabilitation than with punishment, deterrence, and the simple warehousing of criminals in an attempt to protect society. Regardless of the general wisdom of such a policy, it is probably appropriate in the instant case. The defendant's history clearly demonstrates that he presents a present, on-going threat to society, and there is little in that history to cause the Court to be sanguine about the prospects for rehabilitation.

might well provide for this type of inquiry as a routine part of crafting an optimal sentence. Such, however, is not the state of the world or of the law. Not surprisingly, therefore, the specific provisions cited by Webster provide weak, if any, support for his argument. At best these provisions are ambiguous, and they simply cannot be stretched to provided the type of detailed, individualized attention Webster suggests should be the norm; this is a cost that the system is at present simply unable or unwilling to bear. See, e.g., 18 U.S.C. § 3553(a)(1) (including "the nature and circumstances of the offense and the history and characteristics of the defendant" as factors to be considered in imposing a particular sentence); Fed. R. Crim. P. 32(c)(2)(A) ("The report of the presentence investigation shall contain--(A) information about the history and characteristics of the defendant, including prior criminal record, if any, financial condition, and any circumstances affecting the defendant's behavior that may be helpful in imposing sentence or in the correctional treatment of the defendant").

Let the Clerk send a copy of this Memorandum Opinion and the accompanying Order to all counsel of record.

DATE

UNITED STATES DISTRICT JUDGE