

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

AUG 11 2009

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DANIEL C. CHUDY,

Defendant - Appellant.

No. 08-30433

D.C. No. 6:05-cr-00016-CCL

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Charles C. Lovell, District Judge, Presiding

Submitted August 4, 2009**
Seattle, Washington

Before: PREGERSON, BEA, and M. SMITH, Circuit Judges.

Defendant Daniel C. Chudy appeals the district court's denial of his conditional release from federal custody at a mental health facility. Specifically, the district court determined that Chudy has failed to prove "by clear and

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

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

convincing evidence that his release [from federal custody] would not create a substantial risk of bodily injury to another person or serious damage of property of another due to a present mental disease or defect,” 18 U.S.C. § 4243(d). We affirm.

The district court’s factual findings in a release hearing pursuant to 18 U.S.C. § 4243 are reviewed for “clear error.” *See United States v. Phelps*, 955 F.2d 1258, 1267 (9th Cir. 1992). The district court did not clearly err after considering the evidence presented at the release hearing in concluding that Chudy failed to meet his burden of proof.

AFFIRMED.