UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	No. 12 CR 124
	)	Hon. James B. Zagel
WILLIAM B. BEAVERS, et al.	)	

GOVERNMENT'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION AND MEMORANDUM OF LAW FOR RELEASE PENDING APPEAL

The United States of America, by its attorney, ZACHARY T. FARDON, United States Attorney for the Northern District of Illinois, respectfully submits the following response in opposition to defendant William Beavers' Motion and Memorandum of Law for Release Pending Appeal.

INTRODUCTION

The evidence presented at trial established that, during the years 2006, 2007, and 2008, defendant William Beavers had access to, and control over, tens of thousands of dollars in three separate campaign fund accounts, and that he repeatedly used money from those accounts as his own, spending it on personal expenses, including gambling, but concealing that personal use from the IRS. Based on this evidence, the jury convicted Beavers of corruptly endeavoring to impede the IRS in the correct identification and reporting of income and the assessment and collection of income taxes, in violation of 26 U.S.C. § 7212, and filing false income tax returns which understated his actual gross income, in violation of 26 U.S.C. § 7206(1). Defendant filed a lengthy post-trial motion for a judgment of acquittal or,

in the alternative, a new trial, in which he challenged a number of the Court's evidentiary rulings, as well as certain jury instructions and certain arguments made by the government in closing, and the Court's rejection of his claims related to the makeup of the jury. This Court denied defendant's motion in its entirety.

On September 25, 2013, this Court sentenced defendant to serve six months in the custody of the Bureau of Prisons, followed by a one-year term of supervised release, and to pay a fine of $10,000 and restitution of $30,848. Defendant filed a notice of appeal on October 4, 2013. On November 20, 2013, the defendant filed a motion for extension of time to file his opening brief in the Court of Appeals on the ground that he had not yet received transcripts. The motion did not specify the efforts made by the defendant to obtain the necessary transcripts.

DISCUSSION

I. Applicable Legal Standard

Title 18, United States Code, Section 3143(b) governs the Court's determination of whether the defendant may be granted release pending appeal. *United States v. Bilanzich*, 771 F.2d 292, 298 (7th Cir. 1985). The statute provides in pertinent part that a defendant who is not a flight risk or a danger to the community, and who has been sentenced to a term of imprisonment, "shall" be detained pending appeal, unless a court finds that the appeal "raises a substantial question of law or fact likely to result in— (i) reversal, (ii) an order for a new trial, (iii) a sentence that does not include a term of imprisonment, or (iv) a reduced term of imprisonment less than the total of the time already served plus the expected

duration of the appeal process." 18 U.S.C. § 3143(b).

An appeal is "substantial" if it "presents a close question or one that very well could be decided the other way." *United States v. Schoffner*, 791 F.2d 586, 589 (7th Cir. 1986). Even where an appeal raises such a question, the defendant must also show that, "assuming that the question is decided in the defendant's favor, the appellate court is more likely than not to reverse the conviction or order a new trial on all counts for which imprisonment has been imposed." *Bilanzich*, 771 F.2d at 298.

Congress enacted § 3143(b) for the express purpose of reversing the presumption in favor of bond that existed under the Bail Reform Act of 1966. *Id.* In § 3143(b), Congress shifted the presumption, "requir[ing] an affirmative finding that the chance for reversal is substantial," thereby "giv[ing] recognition to the basic principle that a conviction is presumed to be correct." S. Rep. No. 225, 98th Cong., 1st Sess. 27, *reprinted in* U.S. Code Cong. & Ad. News 3182, 3209-10. Rather than permitting defendants who appeal their convictions to be released on bond as a routine matter, the new statute requires the court to permit bond pending appeal only upon "an affirmative finding that the chance for reversal is substantial." *Id.* at 3210. This requirement "assure[s] that post-conviction bail is confined to those who are among the more promising candidates for ultimate exoneration." *Shoffner*, 791 F.2d at 589.

The new presumption of confinement pending appeal "gives recognition to the basic principle that a conviction is presumed to be correct." S. Rep. No. 225, 98th

Cong., 1st Sess. 27, *reprinted in* U.S. Code Cong. & Ad. News 3182, 3209. The change in the law also reflects Congress's appreciation that "[r]elease of a criminal defendant into the community after conviction may undermine the deterrent effect of the criminal law, especially in those situations where an appeal of the conviction may drag on for many months or even years." *Id.* In other words, Congress has recognized that "harm results not only when someone is imprisoned erroneously, but also when execution of sentence is delayed because of arguments that in the end prove to be without merit." *Schoffner*, 791 F.2d at 589. Consistent with the reversal of the presumption, Congress intended "that in overcoming the presumption in favor of detention, the burden of proof [would rest] with the defendant." S. Rep. No. 225, 98th Cong., 1st Sess. 26, *reprinted in* U.S. Code Cong. & Ad. News 3182, 3210. *See also id.* at 3210, n. 86. Consequently, the defendant bears the burden of establishing both (1) that the appeal raises a substantial question, and, if so, (2) that the resolution of that question in the defendant's favor would be likely to lead to reversal or order of a new trial. *Id.*; *Bilanzich*, 771 F.2d at 298; *United States v. Eaken*, 995 F.2d 740, 741 (7th Cir. 1997).

A "substantial question" is a close question or one that very well could be decided the other way. *Shoffner,* 791 F.2d at 589. Even if a question is determined to be "substantial" within the meaning of § 3143(b), the defendant must also show, as a second step, that a resolution of that question in the defendant's favor would be likely to lead to reversal or the grant of a new trial. *See* S. Rep. No 225, 98th Cong., 1st Sess. 27, reprinted in 1984 Code Cong. & Ad. News 3182, 3210 (noting that

§ 3143 "requires an affirmative finding that the chance for reversal is substantial."). This aspect of the inquiry requires the Court to consider the potential impact of a decision in defendant's favor in light of the nature or type of question involved. *See Bilanzich*, 771 F.2d at 299 (affirming denial of motion for bond pending appeal based on purported illegally seized evidence where, not only was the question of the seizure's legality not close, but the conviction would not have been reversed in any event because none of the seized evidence was admitted at trial). Questions to which deferential standards of appellate review apply are substantially less likely to satisfy the second prong of the inquiry required by § 3143(b). *United States v. Day*, 433 F. Supp. 2d 54, 56-57 (D.D.C. 2006) (Friedman, J.) (denying motion for bond pending appeal, and noting that evidentiary rulings, which are reviewed for abuse of discretion, are less likely to result in reversal than rulings on issues of law, which are reviewed *de novo*).[1] Likewise, questions that address matters that are not "integral to the merits", even if answered in the defendant's favor, are unlikely to result in reversal or a new trial. *See*, *e.g.*, *United States v. Powell*, 761 F.2d 1227 (8th Cir. 1985)(en banc)(substantial question must be " integral to the merits").

[1] *United States v. Lane*, 194 F. Supp. 2d 758, 777, 786 (N.D. Ill. 2002) (denying motion for bond pending appeal on ground that no substantial question was raised regarding the exclusion of evidence and, "more significantly," that such exclusion could not legitimately be found to constitute an abuse of discretion), *aff'd*, 281 F.3d 638 (7th Cir. 2002); *United States v. Draiman*, 614 F. Supp. 307, 311 (N.D. Ill. 1985)(denying bond where court's restriction of cross examination was a matter of discretion).

II. Defendant's Utter Failure to Carry His Burden Precludes Bond Pending Appeal Under § 3143.

Defendant has not come close to meeting his burden of establishing that his appeal presents a substantial question of law or fact that is likely to result in a reversal or an order for a new trial. *See* 18 U.S.C. § 3143(b)(1)(B).[2] To the contrary, defendant's appellate brief has yet to be filed, and defendant fails even to identify the particular arguments he plans to raise on appeal, much less to demonstrate that those arguments are likely to prevail and lead to reversal.

This is the sum total of defendant's presentation regarding the appellate issues he claims are likely to result in reversal or a new trial:

> Beavers' post-trial motion (Dkt. 81) details the factual underpinnings of the arguments on this issue. In sum, the issues include, *inter alia*, evidentiary and admissibility rulings by the Court related to evidence and expert testimony as well as closing arguments by both sides; unconstitutional jury selection, and improper jury instruction. These issues raise questions of fundamental constitutional rights.

R. 102, at 6. This non-specific statement is insufficient even to identify the questions his appeal will present for decision.

Similarly, defendant's presentation consists of a perfunctory recitation of the applicable standard: "There is a high level of merit with regard to Beavers' appellate claims that pose "close' questions that "that very well could be decided the other way." Mot. 6 (citing *Bilanzich*, 771 F.2d at 298). This does not come close to meeting the statutory standard. This Court correctly decided all of the issues raised

[2] The government concedes that the defendant is neither a flight risk nor a danger to the community. See 18 U.S.C. § 3143(b)(1)(A). Defendant's age, although potentially relevant to these questions, is not relevant to the other statutory requirements.

in the defendant's post-trial motion. Moreover, even the minimal description provided by the defendant ("evidentiary and admissibility rulings . . . related to evidence and expert testimony", "closing arguments," and "improper jury instruction") indicates that defendant intends to raise issues to which deferential standards of review will apply. *See United States v. Simon*, 727 F.3d 682, 696 (7th Cir. 2013) (evidentiary rulings reviewed for abuse of discretion); *United States v. Simpson*, 479 F.3d 492, 503 (7th Cir. 2007), *abrogated on other grounds by United States v. Boone*, 628 F.3d 927, 933 (7th Cir. 2010) (reversal based on improper closing argument only where, in the context of the entire record, the prosecutor's remarks deprived defendant of a fair trial); *Neder v. United States*, 527 U.S. 1, 11 (no reversal based on improper jury instruction unless error is not harmless). Nothing in the defendant's presentation indicates that any of the issues he plans to raise are "integral to the merits," despite defendant's contrary assertion.

The unusual remedy of bond pending appeal may not be granted based on nothing more than a citation to the defendant's post-trial motion. Not only did the Court correctly deny relief when presented with defendant's post-trial motion, generally speaking the issues raised by the defendant in the post-trial motion had previously been raised, and rejected by the Court, in some cases multiple times. Absent any explanation of why the issues defendant plans to raise on appeal "very well could be decided either way," or any explanation of why a favorable ruling on any of the issues would likely result in reversal, defendant's request for bond is utterly unjustified.

Defendant argues that his motion should be granted based on the short length of his sentence. Mot. 3. As defendant acknowledges, the length of the sentence could provide a proper basis for obtaining an expedited appeal (*see United States v. Jackson*, 32 F.3d 1101, 1104 (7th Cir. 1994)); however, defendant has sought no such relief. Defendant's reliance on the Seventh Circuit's decision in *United States v. LaGiglio*, 384 F.3d 925 (7th Cir. 2004), is misplaced. In that case, the Court requested that the district court reconsider the issue of bond in light of new Supreme Court decisions that increased the likelihood that the defendant would be resentenced on remand to a sentence shorter than the time needed to complete the appellate process. The controlling statute makes clear that the length of sentence, standing alone, does not satisfy the requirements for obtaining bond pending appeal.

CONCLUSION

Because the defendant has not met, and cannot meet, the statutory requirements for obtaining bond pending appeal, defendant's motion should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned Assistant United States Attorney hereby certifies that the following document:

Government's Response In Opposition to Defendant's Motion and Memorandum of Law For Release Pending Appeal

Was served on November 20, 2013, in accordance with FED. R. CRIM. P. 49, FED. R. CIV. P. 5, LR 5.5, and the General Order on Electronic Case Filing (ECF) pursuant to the district court's system as to ECF filers.

Respectfully submitted,

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