

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604



Office of the Clerk
Phone: (312) 435-5850
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ORDER

Submitted July 27, 2018

Decided July 31, 2018

Before

WILLIAM J. BAUER, *Circuit Judge*

ILANA DIAMOND ROVNER, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

No. 18-1871	ANTWON D. JENKINS, Petitioner - Appellant v. UNITED STATES OF AMERICA, Respondent - Appellee
Originating Case Information:	
District Court No: 3:18-cv-00610-DRH Southern District of Illinois District Judge David R. Herndon	

Antwon Jenkins appeals from the denial of his motion for release pending resolution of his 28 U.S.C. § 2255 motion. Jenkins complains that the district court erred in deciding his motion for release without addressing the constitutionality of his claims and the exceptional circumstances he raised. He further argues that Federal Rule of Appellate Procedure 9(b) requires a district court to state its reasons regarding the release or detention of a defendant, and the court's general order was insufficient. The district court, however, correctly reasoned that Jenkins did not establish the exceptional circumstances necessary to be released pending resolution of his § 2255 motion. After generally providing that Jenkins failed to satisfy the requirements necessary to overcome his detention under 18 U.S.C. § 3143(b), the district court denied his motion for release on bond. The court explained that Jenkins is not entitled to release because

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he still would be subject to 188 months' incarceration on an unrelated kidnapping conviction, even if he were to succeed in this § 2255 motion and were to succeed in vacating the 120-month sentence on for a firearms conviction at issue in appeal no. 14-2898. The district court did not need to conduct a detailed analysis of whether Jenkins's § 2255 motion raises a substantial question of law or fact likely to result in reversal, new trial, or a reduced sentence, because it determined that release was not appropriate *even if* Jenkins succeeded on the pending § 2255 motion. Regardless of the outcome of his pending § 2255 motion and appeal no. 14-2898, Jenkins has been sentenced to 188 months' incarceration for the kidnapping conviction and significant time remains to be served on that sentence. Although this court has inherent power to order the release of a prisoner bringing a collateral attack, that power is to be used sparingly. *Cherek v. United States*, 767 F.2d 335, 337 (7th Cir. 1985). Because Jenkins is not entitled to this extraordinary relief,

IT IS ORDERED that the district court's denial of Jenkins's motion for release is **AFFIRMED**.

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

September 17, 2018

Before

WILLIAM J. BAUER, *Circuit Judge*

ILANA DIAMOND ROVNER, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

No. 18-1871

ANTWON D. JENKINS,
Petitioner-Appellant,

Appeal from the United States
District Court for the Southern
District of Illinois.

v.

UNITED STATES OF AMERICA,
Respondent-Appellee.

No. 3:18-cv-00610-DRH

David R. Herndon,
Judge.

ORDER

On consideration of petitioner-appellant's petition for rehearing with suggestion for rehearing *en banc* filed on August 30, 2018, in connection with the above-referenced case, no judge in active service has requested a vote on the petition for rehearing *en banc*,¹ and all of the judges on the original panel have voted to DENY the petition for rehearing. It is, therefore, ORDERED that the petition for rehearing and the petition for rehearing *en banc* are DENIED.

¹ Circuit Judge Joel M. Flaum did not participate in the consideration of this petition for rehearing.

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

ANTWON D. JENKINS
a/k/a Antoine Jenkins

Petitioner,

v.

No. 3:18-cv-610-DRH

UNITED STATES OF AMERICA
Respondent.

ORDER

HERNDON, District Judge:

Before the Court is pro se petitioner Antwon Jenkins' ("petitioner") Motion for Release on Bond pending resolution of his 28 U.S.C. § 2255 petition (doc. 6). Petitioner seeks he be released on "personal recognizance, unsecured appearance bond, or any combination that [the Court] deems appropriate" while deciding his section 2255 petition, and also wishes to supplement his section 2255 petition with the same argument as his fifth ground for relief. *Id.* at 1. The Court **DENIES** both requests.

After review of the conditions set forth in 18 U.S.C. § 3143(b) [Release or Detention of a Defendant Pending Sentence or Appeal] and 18 U.S.C. § 3142, the Court finds petitioner has failed to satisfy the requirements necessary to overcome his detention. Additionally, the cases petitioner cites in support of releasing a defendant pending resolution of his or her case are not applicable here. *See* doc. 6. at 5-6. Regardless of petitioner's beliefs, if the appellate court's decision in dismissing Count 2 from petitioner's unrelated criminal case, 3:12-cr-

30239-DRH-1, is affirmed, petitioner will not be released from prison. Whatever the outcome of the government's appeal to the Supreme Court of the United States, petitioner will still be serving a term of imprisonment for his kidnapping conviction (Count 1), in which he was sentenced to 188 months to run consecutively to the count under review, Using or Carrying a Firearm to Commit a Federal Crime of Violence. *See id.* at doc 258.¹ Even further, after petitioner's term of imprisonment for kidnapping expires, petitioner is to serve an additional 27 months imprisonment to run consecutively to the term sentenced in 3:12-cr-30239-DRH-1, for his drug-related conviction in case 3:13-cr-30125-DRH-11. *See id.* doc. 539. Clearly, the dismissal of one count from petitioner's 2012 criminal case does not warrant petitioner's release on bond.

Finally, the Court **DENIES** petitioner's request to supplement his section 2255 motion with the bond argument as ground for relief #5, as the nature of the argument is unrelated to his 2013 criminal case, which is the underlying case for petitioner's section 2255 motion.

IT IS SO ORDERED.

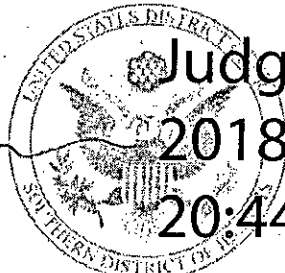
  Judge Herndon
2018.04.11
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United States District Judge

¹ If the dismissal of Count 2 is affirmed, petitioner will be re-sentenced for Count 1, Kidnapping. *See* 3:12-cr-30239-DRH-1, doc. 337.

30239-DRH-1, is affirmed, petitioner will not be released from prison. Whatever the outcome of the government's appeal to the Supreme Court of the United States, petitioner will still be serving a term of imprisonment for his kidnapping conviction (Count 1), in which he was sentenced to 188 months to run consecutively to the count under review, Using or Carrying a Firearm to Commit a Federal Crime of Violence. *See id.* at doc 258.¹ Even further, after petitioner's term of imprisonment for kidnapping expires, petitioner is to serve an additional 27 months imprisonment to run consecutively to the term sentenced in 3:12-cr-30239-DRH-1, for his drug-related conviction in case 3:13-cr-30125-DRH-11. *See id.* doc. 539. Clearly, the dismissal of one count from petitioner's 2012 criminal case does not warrant petitioner's release on bond.

Finally, the Court **DENIES** petitioner's request to supplement his section 2255 motion with the bond argument as ground for relief #5, as the nature of the argument is unrelated to his 2013 criminal case, which is the underlying case for petitioner's section 2255 motion.

IT IS SO ORDERED.

David R. Herndon
 Judge Herndon
2018.04.11
20:44:10 -05'00'
United States District Judge

¹ If the dismissal of Count 2 is affirmed, petitioner will be re-sentenced for Count 1, Kidnapping. *See* 3:12-cr-30239-DRH-1, doc. 337.