NO. _____

IN THE UNITED STATES
SUPREME COURT

ANTWON D. JENKINS,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

UNITED STATES COURT OF APPEALS FOR THE
SEVENTH CIRCUIT

Application To
Justice Brett Kavanaugh
For Bail Pending Habeas Review

Antwon D. Jenkins
Reg. No. 09778-025
P.O. Box 1000
Talladega Federal Corr. Institution
Talladega, Alabama 35160

QUESTIONS PRESENTED FOR REVIEW

(1) DOES A PETITIONER, AFTER BEING FOUND GUILTY BY A JURY, HAVE A STATUTORY DUE PROCESS RIGHT TO POST-VERDICT BAIL, AND TO BE TREATED AS A DEFENDANT BEING SENTENCED FOR THE FIRST TIME, WHEN HIS SENTENCE HAS BEEN VACATED, REMANDED, AND SET FOR RESENTENCING, PURSUANT TO THE BAIL REFORM ACT OF 1984?

(2) DOES A COURT OF APPEALS VIOLATE A PETITIONER'S RIGHT TO DUE PROCESS, BY REFUSING TO ADHERE TO CIRCUIT PRECEDENT (DOCTRINE OF STARE DECISIS), AND ALLOW AN UNAUTHORIZED STAFF MEMBER TO DENY THE PETITIONER'S MOTION TWICE?

JURISDICTION

The District Court had jurisdiction over this matter under 18 U.S.C. § 3231 (offense against the United States). The Court of Appeals filed its judgment on September 18, 2018. It denied rehearing on September 25, 2018. It denied recalling the mandate on October 25, 2018, and the reconsideration for said motion on November 6, 2018.

THE CONSTITUTIONAL AMENDMENT INVOLVED IN THIS CASE

The Fifth Amendment to the United States Constitution:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice in jeopardy of life or limb; nor be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

SUPREME COURT RULE 22 (3) AND 36 3(a)

This Court (Justice) has authority to grant bail to the Petitioner. Rule 22 permits an "application" to be "addressed to the Justice allotted to the Circuit from which the case arises." id.

Rule 36 holds "[P]ending review of a decision failing or refusing to release a prisoner ... may be endorsed on personal recognizance or bail ..."

SUMMARY OF THE PROCEEDINGS

On June 13, 2013, a grand jury charged Mr. Jenkins (and others) with Conspiracy To Distribute Cocaine in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A)(ii), and 846, and Possession With the Intent to Distribute Cocaine in violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2.

A three-day jury trial concluded on March 18, 2015 and Jenkins was found guilty of Possession With the Intent to Distribute Cocaine. The Court declared a mistrial on the Conspiracy Count and dismissed it.

The District Court sentenced Jenkins to 27 months' imprisonment, and a term of 3 years' supervised release. The Court ordered Jenkins' sentence to run consecutive to his 308 month sentence for kidnapping and using or carrying a firearm. (See, United States v. Jenkins, 12-cr-30239-DRH; United States v. Jenkins, 849 F.3d 390 (7th Cir. 2017).

The Petitioner's sentence and conviction was affirmed by the Appellate Court on March 13, 2017. (United States v. Jenkins, 18-cv-610-DRH)(Doc. 1). On March 30, 2018, Jenkins filed a motion seeking to be released on bail pending review of his 2255 petition. (Doc. 6). This motion was denied on April 12, 2018. (Doc. 7).

The Petitioner filed a timely appeal. On August 31, 2018, a three judge panel denied his motion for release pending review of his habeas petition.

On September 17, 2018, the Circuit Court denied the Petitioner's motion for rehearing, with suggestion for rehearing en banc.

A mandate in the above-referenced case was issued on September 25, 2018.

On October 19, 2018, the Petitioner filed a Motion to Recall the Mandate. On October 25, 2018, that motion was denied (by unauthorized staff).

On November 5, 2018, the Petitioner filed an objection to the denial of his motion to recall the mandate, by an unauthorized staff member. On November 6, 2018, that motion was denied by the same unauthorized staff member.

The Government did not participate in any part of litigation pertaining to the Petitioner's motion for bail pending habeas review.

REASONS FOR GRANTING THIS PETITION

(1) PETITIONER'S POST-VERDICT INTEREST IN LIBERTY

In considering what process that Mr. Jenkins was due in connection with his post-verdict bail application, this Court should apply the analysis outlined in cases such as Mathews v. Eldrige, 424 U.S. 319, 47 L.Ed 2d 18 (1976), and Morrissey v.

Brewer, 408 U.S. 471, 481, 33 L.Ed 2d 484 (1972).

This Court there explained that procedural due process is a flexible standard that can vary in different circumstances depending on "the private interest that will be affected by the official action" as compared to "the Government's asserted interest','including the function involved' and the burdens the Government would face in providing greater process." Handi v. Rumsfield, 159 L.Ed 2d 578, 124 S.Ct. 2633, 2646 (2004)(quoting) (Mathews v. Eldridge, 424 U.S. at 335). As mentioned above, the Government's interest in this matter is "nonexistent."

A court must carefully balance these competing concerns, analyzing "the risk of an erroneous deprivation' of the private interest if the process were reduced and 'probable value, if any, of additional or substitute safeguards." id. (quoting Mathew v. Eldridge, 424 U.S. at 355).

(i) THE PETITIONER'S LIBERTY INTEREST IN BAIL PENDING SENTENCING.

Once a defendant is afforded the considerable process and constitutional protections of a jury trial and found guilty beyond a reasonable doubt, the substantive interest in avoiding punitive detention essentially disappears, and any continued expectation of liberty pending formal sentencing depends largely on statute. See, United States v. Abuhamra, 389 F.3d 309, 319 (2nd Cir. 2004); see also, United States v. Salerno, 481 U.S. 739, 749, 95 L.Ed 2d 697, 107 S.Ct. 2095 (1987).

The statute relevant to Mr. Jenkins' case is the Bail Reform Act of 1984. To secure release on bail after a guilty verdict, a defendant must rebut the presumption of detention, with clear and convincing evidence that he is not a risk of flight or a danger to any person or the community. see, 18 U.S.C. § 3143(a); see also S. Rep. No. 225, 98th Cong., 1st Sess, 26 (1983), reprinted in 1984 U.S. Code Cong. and Admin. News 3182, 3209.

The Committee "intends that in overcoming the presumption in favor of detention [in 3143(a)], the burden of proof rests with defendant.") id. S. Rep. 225, supra at, 27 reprinted in 1984 U.S. Code Cong. and Admin. News at 3210.

While this burden is plainly substantial, if a defendant can make the required evidentiary showing, "the statute establishes a right to liberty that is not simply discretionary but mandatory: the judge "shall order the release of the person in accordance with Section 3142(b) or (c)." Abuhamra, 389 F.3d at 319 (quoting) Rep. 225, supra, at 27 reprinted in 1984 U.S. Code Cong. and Admin. News at 3210 (emphasis added).

In sum, even though a guilty verdict greatly reduces a defendant's expectation in continued liberty, it does not extinguish that interest. id. at 319. ("The language of § 3143(a) confers a sufficient liberty interest in continued release (on satisfaction of the specified conditions) to warrant some measure of due process protection." See, generally, Wolff v. McDonnell, 418 U.S. 539, 557, 41 L.Ed 2d 935 (1974)(holding that even in

the case of sentenced prisoners, statutes creating rights in good-time credits give rise to an individual interest" sufficiently embraced within the Fourteenth Amendment "liberty" to require due process protection with respect to any disciplinary denial); Morrissey v. Brewer, 408 U.S. at 483 (noting parole liberty, though "indeterminate, "cannot be terminated without due process protection"); Coralluzzo v. New York State Parole Bd., 556 F.2d 375 (2nd Cir. 1977)(observing that, where issue in dispute is conditional freedom versus incarceration, a liberty interest is at stake warranting due process protection).

(ii) THE PETITIONER'S DUE PROCESS RIGHT TO A HEARING AT WHICH HE CAN DEMONSTRATE THAT HE SATISFIES THE STATUTORY REQUIREMENTS FOR BAIL UNDER § 3143(a).

In balancing the post-verdict interest to determine the process due to a defendant who seeks bail release pending sentencing, this Court should be mindful that Congress has itself weighted the procedural balance quite decidely in favor of detention.

As already noted, 18 U.S.C. § 3143(a)(1) creates a presumption in favor of detention, it places the burden on the defendant to defeat the presumption; it requires the defendant to carry that burden by clear and convincing evidence, not by a mere preponderance.

Only "if a defendant clears these high procedural hurdles is he entitled to release pending sentencing. From this statutory structure, however, we can conclude that the minimal

process due a post-verdict defendant who seeks continued release pending sentencing is the opportunity to demonstrate that he satisfies the burden of proof established by § 3143(a)(1)." Abuhamra, 389 F.3d at 321.

In short, the Petitioner is entitled to "some kind of hearing" at which this issue can be fairly resolved. See, Henry J. Friendly, Some Kind of Hearing, 123 U. Pa. L. Rev. 1267, 1296 (1975)(quoting Wolff v. McDonnell, 94 S.Ct. at 2975).

The Petitioner argues that the same basic procedural safeguards that are statutorily mandated with respect to a pre-trial bail hearing will also apply to post-verdict hearings, although § 3143 is silent on this point. See, 18 U.S.C. § 3142 (f)(2)(B)(stating that, at a pretrial detention hearing, a defendant has the right to be represented by retained or appointed counsel, the right to testify, the right to call witnesses, and the right to cross-examine witnesses called by the Government. Abuhamra, 389 F.3d at n.7 ("Because the government does not urge otherwise, for purposes of this appeal, we too will assume that the procedures applicable for pre-trial detention hearings also generally obtain post-verdict.").

Throughout this entire proceeding, Mr. Jenkins has argued relentlessly that he satisfied the conditions set forth in § 3142 and § 3143.

The District Court must provide him with "some kind of hearing" pursuant to the statutory language of the Bail Reform

Act and the Due Process Clause of the U.S. Constitution.

The Seventh Circuit and the Fifth Circuit are the only circuits to address the question of whether a defendant, whose conviction was affirmed, but sentence vacated, is permitted to seek bail pending resentencing pursuant to § 3143(a). See, United States v. Olis, 450 F.3d 583 (5th Cir. 2006)("The only circuit court to address subsection [§ 3143] in relation to a pending resentencing has explained it applies only "where a defendant is waiting sentencing the first time.")(quoting) United States v. Holzer, 848 F.2d 822, 824 (7th Cir. 1988).

It is without saying that the Seventh Circuit statutory interpretation of § 3143(a) is, the leading case.

In the context of stare decisis, a statutory interpretation "carries special force." Suesz v. Med-1 Solutions, 757 F.3d at 659 (Flawm and Kanne J., dissent)(quoting) John R. Sand and Gravel v. United States, 552 U.S. 130, 139, 128 S.Ct. 750, 169 L.Ed 2d 591 (2008); also see Nat'l Cable and Telecoms. Ass'n v. Brand X Internet Serv's, 545 U.S. 967, 125 S.Ct. 2688, 162 L.Ed 2d 820 (2005)(stating that stare decisis cannot privilege circuit precedent over an agency interpretation unless the statutory language unambiguously forecloses that interpretation.")

The Appellant argues that since § 3143(a) does not specify whether a defendant qualifies under subsection (a) or (b), (along with the precedent of the Seventh Circuit), the rule of lenity weighs in favor of the Petitioner.

The venerable rule" of lenity flows in large part from "the fundamental principal that no citizen should be ... subjected to punishment that is not clearly proscribed." United States v. Santos, 553 U.S. 507, 514, 128 S.Ct. 2020, 170 L.Ed 2d 912 (2008).

This "canon of strict construction" has constitutional underpinnings in both the accused's Fifth Amendment right to due process and the legislative branch's executive Article 1 "power to define crimes and their punishment." United States v. Lanier, 520 U.S. 259, 137 L.Ed 2d 432, and n.5 (1997); see also, United States v. Wiltberger, 18 U.S. (5 Wheat) 76, 95, 5 L.Ed 37 (1820) (Marshall C.J.)("It is founded on the tenderness of the law for the rights of individuals", and "is perhaps not much less old than construction itself.").

Courts have long held that pro-se defendants fact an uphill battle against the United States Government, which has an abundance of resources. See, United States v. Parker, 762 F.3d 801 (8th Cir. 2014)("The rule of lenity requires us to err on the side of the comparatively powerless defendant, not the government - "the richest, most powerful, and best represented litigant to appear before us.")(citing)(Greenlaw v. United States, 554 U.S. 237, 244, 128 S.Ct. 2559, 171 L.Ed 2d 399 (2008)(quoting) United States v. Samuels, 808 F.2d 1298, 1301 (8th Cir. 1997) (R.S. Arnold, concurring in denial of reh'g en banc).

(2). STARE DECISIS

This Court has repeatedly expressed the importance of the doctrine of stare decisis. The Petitioner asks this Court to

force the Seventh Circuit Court of Appeals to adhere to the doctrine thereof.

Adherence to prior decisions "promotes the evenhanded, practicable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to an actual and perceived integrity of the judicial process." Pearson v. Callahan, 555 U.S. 223, 233, 129 S.Ct. 808, 172 L.Ed 2d 565 (2009)(quoting) Tennessee v. Payne, 501 U.S. 808, 827, 111 S.Ct. 2597, 115 L.Ed 2d 720 (1991); see also id. Tennessee v. Payne, 501 U.S. at 827 ("Adhering to precedent" is usually the wise policy, because in most matters it is more important that the applicable rule of law be settled than it be settled right.")(quoting) Burnet v. Coronado Oil and Gas Co., , 285 U.S. 393, 406, 76 L.Ed 815, 52 S.Ct. 443 (1932)(Brandeis J. dissent).

Justice Sotomayer recently held "[R]especting stare decisis means sticking to some wrong decisions." Janus v. AFS CME, 138 S.Ct. 2448 (June 27, 2018)(dissent joined by Kagan J.)(quoting) Kimble v. Marvel Entertainment, LLC, 576 U.S., 135 S.Ct. 2401, 192 L.Ed 2d 463, 471 (2015).

In other words, this Court "employs stare decisis, normally as a "tool of restraint, to reaffirm a clear case of judicial overreach.") id. Kimble, 135 U.S. at 2416 (Alito J. dissent).

As argued infra, the Seventh Circuit is the leading case on the statutory interpretation of 18 U.S.C. § 3143(a).

Therefore, "stare decisis carries enhanced force." Ibid.

That is true regardless whether the Court's decision focuses

only on statutory text or also relied on the policies and purposes animating the law. Indeed, the Court applies statutory stare decisis even when a decision has announced a judicially created doctrine designed to implement a federal statute. id.

B. The Doctrine of State Decisis in the Seventh Circuit

The petitioner argues that the judges of Appellate Court are "bound by the doctrine of stare decisis." Bhd. of Locomotive Eng'rs and Trainment v. Union Pac. R.R. Co., 719 F.3d 801 (7th Cir. 2013)(quoting) Trainment v. Union Pac. RR. Co., 522 F.3d 746 (7th Cir. 2008); see also, Buchmeier v. United States, 581 F.3d 561 (7th Cir. 2008)(Skyes, Minion, Evans, and Tinder J. dissent)("I take the force of stare decisis seriously ...").

The principal of stare decisis "does not require" this Court "to refuse to correct" its "mistakes." S. Ill. Power Coup. v. EPA, 863 F.3d 666, 674 (7th Cir. 2017); Mid-Am, Tablewares, 100 F.3d 1553, 1564 (7th Cir. 1996)("Stare decisis is of fundamental importance to the rule of law.").

In the Petitioner's brief for rehearing, with the suggestion of rehearing en banc, he argued that the facts of his case were identical to: United States v. Swanquist, 125 F.3d 573 (7th Cir. 1997); United States v. Hooks, 811 F.2d 391 (7th Cir. 1987); United States v. Knlich, 178 F.3d 859 (7th Cir. 1999); and United States v. Holzer, 848 F.2d 822 (7th Cir. 1988).

These cases have been precedent in the Seventh Circuit for at least twenty (20) years or more. See, Syesz v. Med-1

Solutions, LLC, 757 F.3d 636, 659 (7th Cir. 2014)(Flaum, and Keone J. dissent)("Nearly all of the decisions that issue from this Court are panel decisions, and the principals of stare decisis still apply.").

Recently, the Appellate Court held "stare decisis and our recent precedents compel the conclusion that § 924(c)(3)(B) is unconstitutionally vague." United States v. Jackson, 865 F.3d 946, 954 (7th Cir. 2017); see also, Joy v. Penn-Harris-Madison Sch. Corp, 212 F.3d 1052, 1066-67 (7th Cir. 2000)(Under doctrine of stare decisis, panel is bound by recent precedent with substantially similar facts).

The Petitioner argues that "stare decisis is the preferred course because it promotes the evenhanced, predictable, and consistent development of legal principals, fosters reliance on judicial decisions and contributes to the actual and perceived integrity of the judicial process." id. Joy, 212 F.3d at 1065-66 (quoting) Payne v. Tennessee, 501 U.S. 808, 827, 115 L.Ed 2d 720, 111 S.Ct. 2597 (1991).

In Agostini v. Felton, 521 U.S. 203, 235, 138 L.Ed 2d 391, 117 S.Ct. 1997 (1997), Justice Powell, premised stare decisis on three basic concepts: (1) it facilitates the judical task by obviating the need to revisit each issue every time it comes before the Courts; (2) it enhances the stability in the law and establishes a predictable sea of rules on which the public may rely in shaping its behavior; and (3) it legitimates the judiciary in the eyes of the public because it shows that the courts are

not composed of unelected judges free to place their policy views in the law. Supra at n. 10 (citing) Lewis F. Powell, Jr. Stare Decisis and Judicial Restraint, 47 Wash. and Lee L. Rev. 281, 286-87 (1990).

The Petitioner points out to the court that United States v. Jackson, supra, and his unrelated kidnapping case (Appeal No. 14-2898)(the substance of this appeal), was set for oral argument on November 2, 2018. See, Cross v. United States, 2018 U.S. App. 15397 n.1 (7th Cir. June 7, 2018).

It should be noted that the Jackson panel (which included Judge Rovner - a judge from the reviewing panel) stressed that "stare decisis principles dictate that we give our prior decisions "considerable weight" unless and until other developments such as a decision of a higher court or statutory overruling undermine them." 865 F.3d 2453; see also Brunson v. Murray, 843 F.3d 698, 714 (7th Cir. 2016); see also United States v. Sykes, 598 F.3d 334, 338 (7th Cir. 2009)(Stare decisis becomes a priority "especially when those cases are directly on point.")(citing) Midlock v. Apple Vacations West, Inc, 406 F.3d 453 (7th Cir. 2005); e.g. Dickerson v. United States, 530 U.S. 833, 854-65, 147 L.Ed 2d 405 (2000); Planned Parenthood of Southern Pennsylvania v. Casey, 505 U.S. 833, 120 L.Ed 2d 674 (1992).

In the Seventh Circuit stare decisis is a "fundamental" and important "rule of law". id. Mid-Am, 100 F.3d at 1564. numerous judges (including Judge Rovner) have noted that the

principle of adhering to binding circuit precedent carries "special force." Suesa, 757 F.3d at 659 (quoting) John R. Sand and Gravel Co. v. United States, 552 U.S. 130, 139, 128 S.Ct. 750, 169 L.Ed 2d 591 (2008).

(C) Seventh Circuit Interal Operating Procedure 1(a)(1)

In a case similar to the Petitioner's, the Seventh Circuit addressed its interpretation of Seventh Circuit Operating Rule 1(a)(1).

In United States v. Warner, 507 F.3d 508 (7th Cir. 2007) (Wood J., in chambers), the defendant sought to recall the mandate and petitioned a third time for a continuation of bail.

The Appellate Court reasoned that a motion to stay or recall mandate was not determined by an en banc panel, but instead a single judge.

It reasoned this conclusion based on Seventh Circuit Internal Operating Rule 1(a)(1). That section reads as follows, in pertinent part: (1) Ordinary Practice: At least two judges shall act on request for bail, denials of certificates of appealability, and denials of leave to proceed an appeal in forma pauperis. Ordinarily three judges shall act to dismiss or otherwise finally determine an appeal or other proceeding, unless the dismissal is by stipulation or is for procedural reasons. Three judges shall also act to deny a motion to expedite an appeal when denial may result in the mooting of an appeal. All other motions shall be entertained by a single judge in accordance with the practice set forth in paragraph (e). id 507 F.3d at 509; see also Seventh Circuit IOP

1(a)(1)(emphasis added).

"While a motion to stay or recall the mandate is considered "non-routine" under our procedures, that designation simply means that the responsible staff attorney for the Court is not authorized to prepare an order (in accordance with prior instructions for the court) on behalf of the Court. Instead, the staff attorney must immediately take the motion to either the motions judge or "if necessary," the motions panel." Ibid (quoting) IOP 1(C)(3).

"An examination of the topics that require more than one judge shows that a stay of the mandate is not among them. For that reason, such a motion is one of the "other" motions that "shall be entertained by a single judge." supra.

The Petitioner argues that "[P]ublished opinions illustrate that this is the way the Court of Appeals construes that rule." Warner, 507 F.3d at 510; See e.g. Senne v. Village, 695 F.3d 617 (7th Cir. 2012)(Ripple J., in chambers); Al-Mukasey, 525 F.3d 497 (7th Cir. 2008)(Ripple J., in chambers); Boin v. Quranic Literacy Inst., 297 F.3d 542 (7th Cir. 2002)(Rovner J., in chambers); Books v. City of Elkhart, 239 F.3d 826 (7th Cir. 2001)(Ripple J., in chambers); United States v. Holland, 1 F.3d 454 (7th Cir. 1993)(Ripple J., in chambers).

Aside from ruling on the Petitioner's motion to recall mandate, a three judge panel is required to issue a separate order, regarding his renewed bail motion.

Judge Wood noted that "[T]he only action this chamber's opinion addresses is the request stay of the issuance of the mandate.

I am not taking any action as a single judge with respect to the order concerning bail that this Court has already adopted. By separate order issued today, as I noted at the outset, the panel (by a 2-1 vote) has decided not to reconsider the latter decision." Warner, 507 F.3d at 510.

As mentioned above, the Defendant's sought continuation of bail twice, before this Court ruled a third time.

The Petitioner's motion was denied by the same staff without review from a judge in chambers, pursuant to I.O.P. 1(a)(3).

D. SEVENTH CIRCUIT PRECEDENT

(a) **SWANQUIST AND HOOKS**

The Petitioner argued that the denial of his bail motion should be remanded, because the District Court failed to comply with Federal Rule of Appellate Procedure 9(b).

The Seventh Circuit held in United States v. Swanquist, 125 F.3d 573 (1997), that "the district court must state in writing or orally on the record, the reasons for an order regarding release or detention of a defendant in a criminal case."

This "requirement can be satisfied either by a written opinion or by the transcript of an oral opinion, but there must be one or the other ..." United States v. Hooks, 811 F.2d 391 (7th Cir. 1987)(per curiam).

Once again the Seventh Circuit held: "[A] statement of reasons encompasses more than a mere reiteration of the statutory language followed by nothing more than a conclusory statement that the

applicable factors have or (have not) been met." Swanquist, 125 F.3d at 575.

The Seventh Circuit remanded the defendant in Swanquist's case to the district court, directing the judge to explain why the criteria for release was not met. The Petitioner's denial of his bail motion is identical to the defendant's in Swanquist.

Thus, this Court should vacate the denial of his bail motion and remand to the district court, directing the judge to explain why 18 U.S.C. § 3143 factors were not met.

The district court and reviewing panel denied the Appellant's motion due to his "188 month sentence" in an "unrelated federal kidnapping case." (See Appendix pg). Both Courts reasoned that "[e]ven 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 ... Jenkins has been sentenced to 188 months' incarceration for the kidnapping conviction and significant time remains to be served on that sentence." id. The Appellant argues that binding caselaw from the Seventh Circuit holds otherwise.

(C) Holzer and Krilich

The Seventh Circuit held that a defendant whose conviction has been affirmed, but sentence vacated and remanded for re-sentencing, is eligible for bail. In Krilich, the defendant was serving a term of 64 months' imprisonment. This Court affirmed his conviction, but remanded for resentencing after concluding that the district court's application of the Sentencing Guidelines

was unduly favorable to Krilich. The defendant planned to file a petition for certiorari, and there was a conflict among circuits about the convictions for fraud. The Court reasoned that the Supreme Court may be willing to hear the case, but the defendant had been convicted on other counts too, and because all of his convictions had been affirmed, he cannot satisfy the requirements of 18 U.S.C. § 3143(b) for release while seeking certiorari. See, United States v. Krilich, 178 F.3d 859 (7th Cir. 1999).

In Holzer, the defendant was convicted of mail fraud and extortion and began serving his sentence. On appeal, his mail fraud conviction was vacated, but this Court upheld the extortion conviction, and remanded for resentencing. See, United States v. Holzer, 848 F.2d 822 (7th Cir. 1988).

In both cases the defendants petitioned the court for release pending their appeals pursuant to 18 U.S.C. § 3143(a), in light of their sentences being vacated. id. Krilich, 178 F.3d at 860-61; Holzer, 848 F.2d at 823-24. Held: "It is equally accurate to say that a person in Holzer and Krilich's position comes within sub-section [3143(b)]" Krilich at 861. The Krilich Court distinguished "Holzer" from the case before them, "But this difference does not call our legal conclusion into question. Quite the contrary. The remand in Holzer was likely to lead to a reduction in the sentence and the remand here to an increased." id.

As noted by the Court, Krilich's anticipation of a "longer prison term" provided ample reasons for him to "abscond." Krilich at 862. Their assumption was confirmed by his "substantial wealth"

and "stashed assets in foreign nations." id.

The Holzer court held "[T]he reason [3143(a)] has no application to a case where the defendant's conviction for extortion has been upheld and a sentence of eighteen years remanded solely to give the judge a chance to consider a possible, though doubtless modest, reduction because the court of appeals has vacated a concurrent sentence." Holzer, 848 F.3d at 824 (citing) 18 U.S.C. § 3143(a).

"But we do not think that section 3143(a) applies to a case in which the remand is functionally for the purpose of reconsideration of a valid sentence already imposed, not for the purpose of imposing a sentence de novo." id.

The defendant in Holzer remand was "technical rather than substantive." Ibid. The Petitioner's case differs from Krilich and Holzer, because his vacated sentence (in an unrelated case) was consecutive, played a major role in his overall sentence, and his remand is substantive. Thus the circumstances of this case call this Court's "legal conclusion into question." Krilich at 861.

(d) Appellant's Kidnapping Conviction , Sentence and Vacated § 924(c) Conviction

On February 24, 2017, the Seventh Circuit reversed the Petitioner's 924(c) conviction and remanded his case to the district court for resentencing. (See United States v. Jenkins) 849 F.3d 390 (7th Cir. 2017)("Here, Jenkins received a sentence

of 120 months in prison for his § 924(c) conviction, to run consecutively to his 188-month sentence for kidnapping. Therefore, this erroneous conviction directly resulted in the district court increasing Jenkins' sentence by 120 months."); see, e.g., United States v. Armour, 840 F.3d 904, 910 (plain error standard satisfied where defendant was given a consecutive seven-year mandatory minimum sentence for brandishing where there was no jury verdict finding him guilty of brandishing.").

Mr. Jenkins' case was set for resentencing but was postponed in light of Government's petition for certiorari to the Supreme Court. (See, United States v. Jenkins, 12-cr-30239-DRH, Doc. 337). The Petitioner's resentencing has been held in abeyance for more than a year. See, Krilich at 862 ("[a] judge would abuse his discretion by waiting more than 60 days to carry out the resentencing and return the (Defendant) to prison."); Holzer at 824. ("Even if our analysis of section 3143(a) is incorrect, the stay issued by Judge Marshall could not be sustained. In a case such as this, the statute would justify at most a stay of 30 to 60 days; no greater interval should be necessary for resentencing ...").

The delay for the most part falls on the Government. The Petitioner's kidnapping case was recently remanded back to the Seventh Circuit in light of Dimaya. See, United States v. Jenkins, No. 17-97, 2018 U.S. App. LEXIS 2897, 2018 WL 2186183 (May 14, 2018); United States v. Cross, 2018 U.S. App. 15397 n.2 (7th Cir. June 7, 2018)("The Supreme Court recently vacated our judgments in United States v. Jenkins ... for reconsideration in

light of Dimaya.") The fact still remains that the Appellate Court reversed the Petitioner's 924(c) conviction. It is the Government and not Mr. Jenkins fault for the unnecessary delay in his resentencing. (It should be noted that the Government's petition for rehearing en banc was recently denied).

(i) Remand

The Petitioner's kidnapping sentence was vacated and a resentencing de novo is set to take place. The Appellate court's opinion confirms that much. See, Jenkins, 849 F.3d 390. The 7th Circuit has held "[i]n a general remand, the Appellate court returns the case to the trial court for further proceedings consistent with the appellate court's decision, but consistency with that decision is the only limitation imposed by the appellate court." United States v. Simms, 721 F.3d 850 (7th Cir. 2013); see also, United States v. Lewis, 842 F.3d 467 (7th Cir. 2016) ("[i]f the case is generally remanded for resentencing, "the district court may entertain new arguments as necessary to effectuate its sentencing intent ..."); United States v. Barnes, 660 F.3d 1000 (7th Cir. 2011)("The Supreme Court" equated general remands for resentencing to an order for the de novo resentencing noting that such orders "effectively wiped the slate clean.).

When a defendant's sentence is vacated (such as in the Appellant's case), he no longer has a sentence until the district court imposes one. See, United States v. Mobley, 833 F.3d 797 (7th Cir. 2016)("When we vacate a sentence and order a full remand

the defendant has a "clean slate" - that is, there is no sentence until the district court imposes a new one.") A "previous sentence is not to be "rubber stamped, but instead a new sentencing determination" must be made. United States v. Barnes, 948 F.2d 325, 330 (7th Cir. 1991); see also, Simms, 721 F.3d at 852 ("What is true is that vacating a part of a sentence may justify or even require a new sentencing hearing rather than just subtraction of the vacated sentence from the defendant's overall sentence."); Krieger v. United States, 842 F.3d 490 (7th Cir. 2016)(vacation of a sentence results in a "clean slate and allows the district court to start from scratch.").

The Seventh Circuit holds that on remand "a district court should consider de novo any open issues." United States v. Polland, 56 F.3d 776 (7th Cir. 1995). At resentencing, the Petitioner intends to argue his post-conviction rehabilitation, and other factors that warrant a below guideline sentence. See, United States v. Smith, 860 F.3d 508 (7th Cir. 2016)(quoting) Pepper v. United States, 562 U.S. 476, 501, 131 S.Ct. 1229, 179 L.Ed 2d 196 (2011) ("The Supreme Court held that 'when a defendant's sentence has been set aside on appeal, a district court at resentencing may consider evidence of the defendant's post-sentencing rehabilitation and such evidence, in appropriate cases, support a downward variance from the now-advisory Federal Sentencing Guidelines range."); see also United States v. Young, 863 F.3d 685 (7th Cir. 2017)("[a] district court may even impose a non-guideline sentence based on disagreement with the Sentencing Commission.").

(ii) Kidnapping Sentence (3143(a) - Drug Case 2255 (3143(b)

The Holzer Court noted "bail pending the Supreme Court's action on [the defendants] latest petition for certiorari would be proper only if the condition (reguarding the substantially of the issue presented by the petition) in Section 3142(b)(2) were satisfied ..." 848 at 825; see also, Krilich 178 at 862. ("Defendant) cannot satisfy the criteria of that section 3143(b)")

"Holzer dealt with the proper classification of a person who meets both [3143(a) and (b)" id. 178 at 862). Section 3143 does not specify what happens when both subsections read on the situation. The Kilich panel held "Application of both at [3143(a) and (b)] once is impossible; they prescribe different standards." 178 at 861-62. The Court reasoned, "How is the tie to be broken? The different functions of the different rules enable a court to choose ..." id.

For the purpose of this argument (or arguendo) § 3143 applies to the Petitioner's 2255 motion. See Exhibit B, p.2 ("The district court did not need to conduct a detailed analysis of whether Jenkins' 2255 motion raises a substantial question of law ... because it determined that release was not appropriate even if Jenkins succeeded on the pending § 2255.").

The Petitioner will address his (vacated) kidnapping sentence first. As mentioned above, Mr. Jenkins does not have a sentence for the kidnapping conviction until the district court imposed a new one. supra, Mobley, 833 F.3d 797. The Kilich panel concluded "that § 3143(a)" has reference to the situation where a

defendant is awaiting sentencing for the first time." 178 at 861 (quoting) Holzer 848 at 824. "That is the law of this Circuit and the district judge was obligated to follow Holzer ..." id; see also Holzer 848 at 824 ("Section 3143(a) ... does not apply where the defendant is awaiting resentencing not because there was an infirmity in the original sentence but because of the vacation of a concurrent sentence might lead the sentencing judge to reconsider a sentence vacated."); id at 824 ("[W]e assume that Section 3143(a) even applies to cases where the defendant is convicted.").

Granted, a rule (especially a statutory rule) and its rationale are not always perfectly extensive." Holzer, 848 at 824-25. The principal of lenity -- that statutory ambiguities must be resolved in favor of the defendant -- demands results. See, Bifulco v. United States, 447 U.S. 381, 65 L.Ed 2d 205 (1980)(Principal of lenity "applies not only to ... substantive criminal prohibitions but also penalties they impose."). See also, Sarah Newman, Statutory Construction and the New Rule of Lenity, 29 Harv. Cr. Cl. L. Rev. 197, 228 (1994)("The rule of lenity should serve both to inform the practice of interpretation and resolve ... ambiguities in particular instances of statutory interpretation.").

The Petitioner argues that "[T]he legislative history of § 3143(a) indicates that it is intended to allow a convicted defendant who is not appealing to be released "in appropriate circumstances for a short period of time ... for such matters as getting his affairs in order prior to surrendering for service of sentence." United States v. Thompson, 787 F.2d 1084, 1085 (7th Cir. 1986).

(quoting) S. Rep, No. 225, 98th Cong., 1st Sess. at 26, reprinted in 1984, U.S. Code Cong. and Ad. News 3182, 3209. The Court went on to say "Once an appeal has been filed, a defendant may remain at large only if all of the findings required by § 3143(b) have been made." id.

Assuming arguendo (but not conceding) that Mr. Jenkins vacated sentence qualifies under § 3143(b). The Government's appeal meets the substantial question prong. "An appeal raises a "substantial question" if it presents "close question or one that very well could be decided the other." United States v. Eaken, 995 F.2d 740 (7th Cir. 1993)(quoting) United States v. Shoffner, 791 F.2d 586, 589 (7th Cir. 1986); See also United States v. Bilanzich, 771 F.2d 292 (7th Cir. 1985).

In this case, Mr. Jenkins continued release would be predicated on § 3143(a), not (b). This subsection provides that when a defendant is the subject of a governmental appeal, upon showing that he is not a flight risk or poses a danger to the community, release is appropriate. id.

To hold otherwise would ignore the meaning of "vacate" both in plain usage and as it has been explicated in the case law of the Seventh Circuit and consistent application of the remand order issued by the Court of Appeals requires the defendant whose sentence has been vacated be treated as if he or she were unsentenced. The petitioner conflates the instant 2255 (drug case) arguments and their applicability to 3143(b), with his last argument.

(iii) **The Petitioner is entitled to bail pending habeas review pursuant to Cherek.**

The reviewing panel (and en banc panel) disregarded the Petitioner's argument regarding the ambiguous ruling in Cherek v. United States, 767 F.2d 335 (7th Cir. 1985).

In Cherek, the Seventh Circuit held that district court judges have "abundant authority" in "habeas corpus and 2255 proceedings" to admit applicants to bail "pending the decision of their cases," but it is "a power to be exercised very sparingly." id.

This decision has been precedent for almost three (3) and a half decades. See, Kramer v. Jenkins, 800 F.2d 708 (7th Cir. 1986); Christie v. Switala, 195 U.S. App. LEXIS 9809, n.2 (7th Cir. 1995); Kitterman v. Dennison, 2017 U.S. App. LEXIS 27626 (7th Cir. 2017).

The reviewing panel cited Cherek in their denial. The Petitioner pointed out in his original brief (and petition for rehearing, with suggestion for rehearing en banc) the ambiguities in the Cherek decision. The district judge (in Cherek) ordered the defendant detained pending the disposition of his 2255 petition. The judge did so on the ground that "it was no longer clear and convincing that the motion raised a substantial question of law or fact likely to result in an order for new trial. id. 767 F.2d at 336.

The words quoted by the judge are taken from 18 U.S.C. § 3143 (b). Later in that opinion, that panel held that § 3143(b) was

"inapplicable" to release pending habeas review. id at 337-38.

The Court went on to say that a defendant who cannot bring himself within its terms [3143(b)] is not entitled to bail." supra.

As mentioned above, the reviewing panel conceded that 3143 (b) applies. Therefore, the Petitioner must satisfy the statutory requirements of the Bail Reform Act.

(iv) <u>The Petitioner Satisfies the Statutory Requirements of § 3143(b).</u>

The Petitioner's claims raised in his 2255 petition challenges the district court's denial of his pro-se motion for substitution of counsel, his attorney's failure to properly argue a suppression motion, failure to investigate exculpatory evidence, failure to file a motion to quash the indictment, and failure to request a hearing on the grounds mentioned above.

Two months after the Petitioner filed his 2255 brief (but before the response) this court issued its ruling in McCoy v. Louisiana, 138 S.Ct. 1500, 200 L.Ed 2d 821 (May 14, 2018). This Court ruled that "The defendant does not surrender control entirely to counsel, for the Sixth Amendment, in "grant[ing] to the accused personally the right to make his defense", "speaks of the 'assistance' of counsel, and an assistant, however expert, is still an assistant."

In McCoy the defendant "vociferously" insisted that his lawyer should not admit to any guilt in the crime that he was charged with.

Instead, the lawyer overruled his objection and conceded guilt in order to gain favor from the jury in a death penalty trial. This Court reversed his conviction and held that "autonomy to decide" the objective of a defense belongs to the defendant. And a violation of a defendant's "autonomy right" is ranked as "structural error" that is not subject to harmless error analysis. Ibid. See, Imani v. Pollerd, 826 F.3d 939 (7th Cir. 2016)("The denial of that right [autonomy] is not subject to harmless error analysis).

The Petitioner's former attorney argued that Mr. Jenkins did write him letters and send him case law, but they were not relevant to his opinion. Mr. Jenkins' former attorney also admitted that he did not believe that the officer that conducted the traffic stop (in which is the basis for Mr. Jenkins' conviction) was truthful, regarding the reasons for the stop.

With that in mind, the Petitioner's former attorney, still conceded to the facts of the traffic stop on more than one occasion.

The Appellant argues that his 2255 petition will result in (1) reversal, (2) a new trial, or (3) a reduced sentence. See, § 3143(B).

Thus, Mr. Jenkins has met the statutory requirement and has satisfied the runing in Cherek. This Court is permitted to remand this case back to the district court and allow Mr. Jenkins to seek bail in both cases. See, In Re Shuttlesworth, 309 U.S. 35, 7 L.Ed 2d 548 (1962).

CONCLUSION

Wherefore, the Petitioner argues that he has a statutory due process right to post-verdict bail pending resentencing, pursuant to 18 U.S.C. § 3143(a). He asks this Court to release him on bail pending habeas review. In the alternative, he asks this Court to remand his case to the Court of Appeals, instructing them to apply the doctrine of stare decisis.

DECLARATION OF DEPOSIT

I hereby affirm under the penalty of perjury, pursuant to Title 28 U.S.C. § 1746, that the Petitioner's Motion for Release Pending Habeas Review, which pursuant to Houston v. Lack, 487 U.S. 266, 276, 108 S.Ct. 2379, 101 L.Ed 2d 245 (1988), is deemed to be filed at the time it was delivered to prison authority for forwarding to the Court.

I placed the above-referenced material in a sealed envelope with First-Class postage affixed, and deposited the envelope in the proper authority's hand to be delivered for collection and mailed via the U.S. Postal Service, on this 7th day of January 2015

Respectfully submitted,

/s/ _____

Antwon D. Jenkins
Fed. Reg. 09778-025

CERTIFICATE OF SERVICE

I mailed this Petition to all parties of record by enclosing same in an envelope with first-class or priority U.S. postage, addressed to:

Solicitor General of United States
Room 5614
Department of Justice
950 Pennsylvania Avenue N.W.
Washington, DC 20534-0001

and deposited in the U.S. Mail the 7th day of January 2019

/s/ Antwon D. Jenkins, pro-se
Reg. No. 09778-025
P.O. Box 1000
Talladega Federal Corr. Institution
Talladega, Alabama 35160

Antwon D. Jenkins
#09778-025
FCI Talladega
PMB 1000
Talladega, AL 35160

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.

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.

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
www.ca7.uscourts.gov

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

- over -

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,

v.

UNITED STATES OF AMERICA,
Respondent-Appellee.

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

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.

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
Room 2722 - 219 S. Dearborn Street
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www.ca7.uscourts.gov

ORDER

October 25, 2018

By the Court:

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	

Upon consideration of the **PETITION FOR RECALL OF MANDATE**, filed on October 19, 2018, by the pro se appellant,

IT IS ORDERED that the petition for recall of mandate is **DENIED**.

form name: **c7_Order_BTC**(form ID: **178**)

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
www.ca7.uscourts.gov

ORDER

November 6, 2018

By the Court:

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	

The following is before the court: **MOTION FOR RECONSIDERATION/OBJECTION TO THE DENIAL OF MOTION TO RECALL MANDATE BY UNAUTHORIZED STAFF ATTORNEY**, filed on November 5, 2018, by the pro se appellant.

The appellant's motion to recall the mandate was ruled on by a judge in accordance with the court's operating procedures. Accordingly, the motion to reconsider is **DENIED.**

form name: **c7_Order_BTC**(form ID: **178**)