

NO.

IN THE

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2020

JAMES M. JOHNSON

PETITIONER,

v.

UNITED STATES OF AMERICA

RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

I. Whether the Fourth Circuit erred by failing to find that the District Court erred in denying Mr. Johnson's Motion for Release on Bond pending appeal?

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RULE 14.1(b) STATEMENT

There are no parties in addition to those listed in the caption.

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit is attached hereto as Appendix I. The opinion of the United States District Court for the Eastern District of Virginia is attached hereto as Appendix II.

JURISDICTION

The Judgment of the United States Court of Appeals for the

Fourth Circuit was entered on June 3, 2021. This Court's jurisdiction is invoked under 28 U.S.C. Sec. 1254(1).

STATEMENT OF THE CASE

I. PROCEDURAL HISTORY OF THE CASE.

On February 18, 2020, a Superseding Indictment was filed charging Mr. Johnson and two co-defendants, charging Mr. Johnson with: Conspiracy to Commit Wire Fraud, in violation of 18 U.S.C. Sec. 1349 (Count 1); Wire Fraud and Aiding and Abetting, in violation of 18 U.S.C. Sec. 1343 and 18 U.S.C. Sec. 2 (Counts 2, 3, 4, 5, 6, 7); and Conspiracy to Launder Money Instruments, in violation of 18 U.S.C. Sec. 1956(h). (Presentence Report, Paras. 1-10 ("PSR"); District Court Doc. 101.)

On October 23 and 29, 2020, the Government filed motions to dismiss Count 5 and Count 2, respectively, of the Superseding Indictment against Mr. Johnson. (PSR, Para. 11; District Court Doc. 101.)

A trial was conducted in the United States District Court for the Eastern District of Virginia, before the Honorable Henry E. Hudson, from October 26-30, 2020 (Criminal Case No. 3:19CR00117-HEH-002). On October 30, 2020, the jury returned a verdict of guilty against Mr. Johnson on Counts 1,3,4,6,7 and 8. (PSR, Para. 12; District Court Doc. 101.)

Mr. Johnson was sentenced on March 5, 2021 to 97 months of

incarceration. He filed a timely Notice of Appeal on March 15, 2021. Briefing in the underlying appeal in the Fourth Circuit is pending.

Mr. Johnson reported to FCI Petersburg Low on April 22, 2021.

On April 25, 2021, Mr. Johnson filed a Motion for Bond Pending Appeal, or to Stay Execution of Sentence. (District Court Doc. 124.) The Government filed a Response to the Motion on May 7, 2021. (District Court Doc. 127.) On May 12, 2021, the District Court issued an Order denying Mr. Johnson's Motion. (District Court Doc. 128, Attachment 1.) Mr. Johnson filed a timely Notice of Appeal on May 13, 2021. (District Court Doc. 129.)

SUMMARY OF ARGUMENT

Based on his age, medical condition, and COVID-19, Mr. Johnson should be granted release on bond, pending his appeal in the Fourth Circuit.

II. MR. JOHNSON SHOULD BE GRANTED BOND PENDING APPEAL.

Mr. Johnson is 69 years old. (PSR, p. 3.) Prior to the case in this District Court, and now on appeal in this Court, Mr. Johnson had no prior convictions (adult or juvenile), and virtually no prior contact with the criminal justice system. (PSR, Paras. 51-56, pp. 11-12.)

On March 5, 2021, Mr. Johnson was sentenced in the District Court to 97 months of incarceration, following his conviction in a jury trial on multiple counts of wire fraud, conspiracy to commit

wire fraud, and conspiracy to launder monetary instruments. (PSR, p. 1.)

Following his arrest in the underlying case, Mr. Johnson was on bond with pretrial release, from December 17, 2019 through April 22, 2021. "Mr. Johnson has been compliant with the conditions of release, and there have been no reported violations of his bond." (PSR, Para. 14.)

For just cause and compelling reasons, Mr. Johnson moves this Court to issue an Order reversing the Fourth Circuit and remanding the case for the purpose of staying execution of his sentence and/or setting a Bond allowing release during the pendency of this appeal before the Fourth Circuit.

Mr. Johnson's overall health is poor. He suffers from high blood pressure, high cholesterol, a kidney disorder, neuropathy, and he has a history of gout. He takes several medications, including Rosuvastatin (for cholesterol), and Lopressor (for high blood pressure). (PSR, Para. 79, p. 15.)

Mr. Johnson has been seen by a doctor for precancerous actinic keratoses ("Aks") and superficial basal skin cell cancers. He was prescribed Efudex 5% External Cream for treatment. (PSR, Para. 80, p. 15.)

Mr. Johnson suffers from depression, anxiety, and Post-Traumatic Stress Disorder. He has received treatment for these

conditions. (PSR, Paras. 81-82, p. 16.)

Further, Mr. Johnson is the primary care giver to his 89 year old mother, Lola E. Johnson. She lives in Midlothian, Virginia. She suffers from arthritis, congestive heart failure, swelling in her legs. (PSR, Para. 60, p. 12.)

Mr. Johnson has serious and challenging medical issues. He also has the responsibility for caring for his ill, 89 year old mother.

Mr. Johnson has no prior convictions. He was responsible while on Pretrial Release in the District Court. The record is clear that he is not a risk of flight (satisfactory compliance while on pretrial release), and he is not a danger to the community (these were not crimes of violence). See 18 USC Sec. 3143(b)(1)(A).

Further, as the world struggles with COVID-19 and the Pandemic, and FCIs in particular are struggling to keep their institutions and inmates safe, it is a particularly important moment to consider the health danger to Mr. Johnson by being incarcerated.

This Court should understand; Mr. Johnson is not a 25 year old healthy young man. He is a 69 year old very ill man, and therefore, even where he has received the vaccine, he is still highly vulnerable to the deadly virus and COVID-19.

Finally, undersigned counsel is new to the case, and is

learning about the record. There may well be substantial issues on appeal to the Fourth Circuit. The appeal is not intended to cause delay. See 18 USC Sec. 3143(b)(1)(B).

III. CONCLUSION.

For any and all of these reasons, Mr. Johnson moves the Court to enter an Order directing the Fourth Circuit to Stay Execution of his Sentence and/or for Bond, pending his Appeal in this Court.

Respectfully submitted,

/S/
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ATTACHMENT 1

FILED: June 3, 2021

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-4239
(3:19-cr-00117-HEH-2)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

JAMES MICHAEL JOHNSON

Defendant - Appellant

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

FILED: June 3, 2021

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-4239
(3:19-cr-00117-HEH-2)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

JAMES MICHAEL JOHNSON

Defendant - Appellant

O R D E R

Upon review of memoranda relative to this bail appeal, the court affirms the district court's order regarding release.

Entered at the direction of Judge Floyd with the concurrence of Judge Niemeyer and Judge Motz.

For the Court

/s/ Patricia S. Connor, Clerk

ATTACHMENT 2

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

UNITED STATES OF AMERICA)	
)	
v.)	Case No. 3:19CR117-02-HEH
)	
JAMES MICHAEL JOHNSON,)	
)	
Defendant.)	

ORDER

(Denying Motion to Stay Execution of Sentence and/or for Bond Pending Appeal)

THIS MATTER is before the Court on Defendant James Michael Johnson's Motion to Stay Execution of Sentence and/or for Bond Pending Appeal.¹ (ECF No. 124.) Following Defendant's convictions of one count of Conspiracy to Commit Wire Fraud, four counts of Wire Fraud, and one count of Conspiracy to Launder Monetary Instruments, this Court sentenced him to a term of 97 months of confinement on each count to be served concurrently. The Court further allowed Defendant to self-report for service of his sentence at the institution designated by the Bureau of Prisons by 2:00 p.m. on April 22, 2021. Defendant is currently serving his sentence at FCI Petersburg Low. His appellate counsel filed the instant Motion on Defendant's behalf on April 25, 2021, seeking his release pending appeal of his convictions.

¹ Defendant cites only 18 U.S.C. § 3143(b) as legal support for his Motion. That statute governs release or detention of a defendant pending sentence or appeal. Defendant does not make any argument specific to his motion to stay execution of his sentence or provide any legal support for such a request. Federal Rule of Criminal Procedure 38 requires the court to "stay a sentence of imprisonment" *if* a defendant is released pending appeal. As the Court will deny Defendant's Motion and will not release him pending his appeal, the Court will also deny his Motion regarding his request for a stay of his sentence.

The district court's discretion to allow a defendant to remain on bond pending appeal is narrow. The decision is informed and constrained by 18 U.S.C. § 3143(b), which provides that:

the judicial officer shall order that a person who has been found guilty of an offense and sentenced to a term of imprisonment, and who has filed an appeal or a petition for a writ of certiorari, be detained, unless the judicial officer finds--

- (A) by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community . . . ; and
- (B) that the appeal is not for the purpose of delay and 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 sentence to a 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)(2).

This Court has carefully reviewed the record, the parties' arguments, and the Presentence Report in this case. As a threshold matter, Defendant has not demonstrated by clear and convincing evidence that he is not a flight risk or a danger to the public. He correctly notes that his convictions are for non-violent offenses, but he may have the financial resources to flee given his employment history and the nature of his offenses. Furthermore, this Court sentenced Defendant to a lengthy prison sentence, increasing his incentive to flee. Defendant argues that his age, health conditions, compliance with the conditions of his pre-trial release, and role as a caregiver for his mother all demonstrate that he is not a flight risk. The Court acknowledges Defendant's personal characteristics


and ties to the community, but finds that he fails to establish by clear and convincing evidence that he is not a flight risk.

However, even if Defendant did not pose as a flight risk, the Motion would still be denied because the Court finds that he fails to meet the second prong enunciated in § 3143(b)(2)(B). There is no evidence that Defendant's appeal is taken for purposes of delay, but neither is there evidence that his appeal "raises a substantial question of law or fact likely to result in" a reversal, new trial, or new sentence. § 3143(b)(2)(B). Defendant filed no pre-trial motions and made no significant objections or motions during or after his jury trial. According to the Government, the only issue raised on appeal is the sufficiency of the evidence. On this point Defendant states only that "[t]here may well be substantial issues on appeal." (Mot. at 3.) Defendant's generic sufficiency appeal presents no substantial question of law or fact likely to result in a reversal or a change in his sentence.

Therefore, based on the foregoing reasons, Defendant's Motion is DENIED.

The Clerk is directed to send a copy of this Order to all counsel of record.

It is so ORDERED.

 /s/
Henry E. Hudson
Senior United States District Judge

Date: May 12, 2021
Richmond, VA