

No. 23-1227

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

Jun 8, 2023

DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA,)
)
Plaintiff-Appellee,)
)
v.)
)
KAYLIN ERIC JOHNSON,)
)
Defendant-Appellant.)

O R D E R

Before: NORRIS, SILER, and MURPHY, Circuit Judges.

Defendant Kaylin Eric Johnson appeals a magistrate judge's May 17, 2022, order detaining him pending trial. The government moves to dismiss Johnson's appeal, which he filed on March 7, 2023, as untimely and for lack of jurisdiction.

Johnson had fourteen days from the entry of his detention order in which to file a timely notice of appeal. Fed. R. App. P. 4(b)(1)(A)(i). Thus, his notice of appeal—filed more than nine months after his pretrial detention order—is untimely. Although we have held that Rule 4(b) is a non-jurisdictional claims-processing rule, we are “required to dismiss late-filed criminal appeals [where] the government has raised the issue.” *United States v. Gaytan-Garza*, 652 F.3d 680, 681 (6th Cir. 2011) (order) (per curiam). Additionally, a defendant may not appeal a magistrate judge's ruling to this court without first seeking review of the ruling in the district court. *See Hoven v. Walgreen Co.*, 751 F.3d 778, 782 (6th Cir. 2014) (holding that where a magistrate judge is not given plenary jurisdiction, the court of appeals lacks jurisdiction to review the ruling if the parties

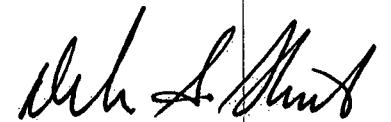
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did not first seek review in the district court); *see also United States v. Howard*, 944 F.2d 906, 1991 WL 186658, at *1 (6th Cir. Sept. 23, 1991) (table) (order).

Accordingly, the motion to dismiss is **GRANTED**.

ENTERED BY ORDER OF THE COURT



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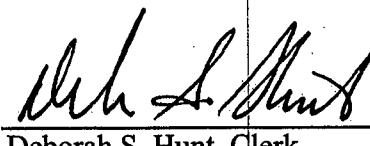
JUDGMENT

On Appeal from the United States District Court
for the Eastern District of Michigan at Flint.

THIS MATTER was heard on the record and the pleadings without oral argument. In accordance with the order entered on this date and incorporated herein,

IT IS HEREBY ORDERED that the motion to dismiss is GRANTED, and that this matter is DISMISSED.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

UNITED STATES DISTRICT COURT
for the
Eastern District of Michigan

United States of America)
v.)
) Case No. 22-30228
Kaylin Eric Johnson)
Defendant)

ORDER OF DETENTION PENDING TRIAL

Part I - Eligibility for Detention

Upon the

Motion of the Government attorney pursuant to 18 U.S.C. § 3142(f)(1), or
 Motion of the Government or Court's own motion pursuant to 18 U.S.C. § 3142(f)(2),

the Court held a detention hearing and found that detention is warranted. This order sets forth the Court's findings of fact and conclusions of law, as required by 18 U.S.C. § 3142(i), in addition to any other findings made at the hearing.

Part II - Findings of Fact and Law as to Presumptions under § 3142(e)

A. Rebuttable Presumption Arises Under 18 U.S.C. § 3142(e)(2) (previous violator): There is a rebuttable presumption that no condition or combination of conditions will reasonably assure the safety of any other person and the community because the following conditions have been met:

(1) the defendant is charged with one of the following crimes described in 18 U.S.C. § 3142(f)(1):

(a) a crime of violence, a violation of 18 U.S.C. § 1591, or an offense listed in 18 U.S.C. § 2332b(g)(5)(B) for which a maximum term of imprisonment of 10 years or more is prescribed; **or**

(b) an offense for which the maximum sentence is life imprisonment or death; **or**

(c) an offense for which a maximum term of imprisonment of 10 years or more is prescribed in the Controlled Substances Act (21 U.S.C. §§ 801-904), the Controlled Substances Import and Export Act (21 U.S.C. §§ 951-971), or Chapter 705 of Title 46, U.S.C. (46 U.S.C. §§ 70501-70508); **or**

(d) any felony if such person has been convicted of two or more offenses described in subparagraphs (a) through (c) of this paragraph, or two or more State or local offenses that would have been offenses described in subparagraphs (a) through (c) of this paragraph if a circumstance giving rise to Federal jurisdiction had existed, or a combination of such offenses; **or**

(e) any felony that is not otherwise a crime of violence but involves:

(i) a minor victim; **(ii) the possession of a firearm or destructive device (as defined in 18 U.S.C. § 921);** **(iii) any other dangerous weapon; or** **(iv) a failure to register under 18 U.S.C. § 2250; and**

(2) the defendant has previously been convicted of a Federal offense that is described in 18 U.S.C. § 3142(f)(1), or of a State or local offense that would have been such an offense if a circumstance giving rise to Federal jurisdiction had existed; **and**

(3) the offense described in paragraph (2) above for which the defendant has been convicted was committed while the defendant was on release pending trial for a Federal, State, or local offense; **and**

(4) a period of not more than five years has elapsed since the date of conviction, or the release of the defendant from imprisonment, for the offense described in paragraph (2) above, whichever is later.

B. Rebuttable Presumption Arises Under 18 U.S.C. § 3142(e)(3) (narcotics, firearm, other offenses): There is a rebuttable presumption that no condition or combination of conditions will reasonably assure the appearance of the defendant as required and the safety of the community because there is probable cause to believe that the defendant committed one or more of the following offenses:

- (1) an offense for which a maximum term of imprisonment of 10 years or more is prescribed in the Controlled Substances Act (21 U.S.C. §§ 801-904), the Controlled Substances Import and Export Act (21 U.S.C. §§ 951-971), or Chapter 705 of Title 46, U.S.C. (46 U.S.C. §§ 70501-70508);
- (2) an offense under 18 U.S.C. §§ 924(c), 956(a), or 2332b;
- (3) an offense listed in 18 U.S.C. § 2332b(g)(5)(B) for which a maximum term of imprisonment of 10 years or more is prescribed;
- (4) an offense under Chapter 77 of Title 18, U.S.C. (18 U.S.C. §§ 1581-1597) for which a maximum term of imprisonment of 20 years or more is prescribed; or
- (5) an offense involving a minor victim under 18 U.S.C. §§ 1201, 1591, 2241, 2242, 2244(a)(1), 2245, 2251, 2251A, 2252(a)(1), 2252(a)(2), 2252(a)(3), 2252A(a)(1), 2252A(a)(2), 2252A(a)(3), 2252A(a)(4), 2260, 2421, 2422, 2423, or 2425.

C. Conclusions Regarding Applicability of Any Presumption Established Above

The defendant has not introduced sufficient evidence to rebut the presumption above.

OR

The defendant has presented evidence sufficient to rebut the presumption, but after considering the presumption and the other factors discussed below, detention is warranted.

Part III - Analysis and Statement of the Reasons for Detention

After considering the factors set forth in 18 U.S.C. § 3142(g) and the information presented at the detention hearing, the Court concludes that the defendant must be detained pending trial because the Government has proven:

- By clear and convincing evidence that no condition or combination of conditions of release will reasonably assure the safety of any other person and the community.
- By a preponderance of evidence that no condition or combination of conditions of release will reasonably assure the defendant's appearance as required.

In addition to any findings made on the record at the hearing, the reasons for detention include the following:

- Weight of evidence against the defendant is strong
- Subject to lengthy period of incarceration if convicted
- Prior criminal history
- Participation in criminal activity while on probation, parole, or supervision
- History of violence or use of weapons
- History of alcohol or substance abuse
- Lack of stable employment
- Lack of stable residence
- Lack of financially responsible sureties
- Lack of significant community or family ties to this district

- Significant family or other ties outside the United States
- Lack of legal status in the United States
- Subject to removal or deportation after serving any period of incarceration
- Prior failure to appear in court as ordered
- Prior attempt(s) to evade law enforcement
- Use of alias(es) or false documents
- Background information unknown or unverified
- Prior violations of probation, parole, or supervised release

OTHER REASONS OR FURTHER EXPLANATION:

The Court's findings and reasons for ordering detention, including its consideration of the factors listed in 18 U.S.C. § 3142(g), were stated on the record at the May 17, 2022 hearing and are fully incorporated by this reference. At that time, the Court found: (a) by a preponderance of the evidence that there is no condition or combination of conditions which will reasonably ensure Johnson's appearance; and (b) by clear and convincing evidence that there is no condition or combination of conditions which will reasonably ensure the safety of the community. This evidence was discussed on the record in support of the Court's reasoning, and includes, but is not limited to evidence that: (1) historically, Johnson has done poorly in general under supervision; (2) Johnson's criminal history also reflects an arrest for Felony Police Officer - Fleeing - Third Degree; (3) further, the government's evidence showed that Johnson is likely involved in the illegal distribution of controlled substances and likely uses firearms to protect that illicit conduct, and (4) there is a recommendation from the pretrial service department that there are no conditions or combination of conditions that could reasonably ensure the safety of the community or reasonably ensure the appearance of Johnson if released. The combination of factors checked above and contained in this narrative leave the undersigned to conclude Kaylin Johnson presents both a serious flight risk and a danger to the community for which there is no condition or combination of conditions to reasonably ensure the safety of the community or reasonably ensure his appearance as required.

Part IV - Directions Regarding Detention

The defendant is remanded to the custody of the Attorney General or to the Attorney General's designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. The defendant must be afforded a reasonable opportunity for private consultation with defense counsel. On order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility must deliver the defendant to a United States Marshal for the purpose of an appearance in connection with a court proceeding.

Date: May 17, 2022

s/Curtis Ivy, Jr.

Judge's Signature

Curtis Ivy, Jr., U.S. Magistrate Judge

Name and Title