

NO. 07-60751

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

PAUL S. MINOR,

Defendant-Appellant.

U.S. COURT OF APPEALS

FILED

APR 06 2009

CHARLES R. FULBRUGE III
CLERK

On Appeal from the United States District Court for the
Southern District of Mississippi, Jackson Division
C.A. No. 3:03-CR-00120 (HTW)

**EMERGENCY MOTION BY PAUL S. MINOR FOR RELEASE PENDING
APPEAL**

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CERTIFICATE OF INTERESTED PARTIES

Pursuant to Fifth Circuit Rule 28.2.1, the undersigned counsel of record for Defendant-Appellant Paul S. Minor certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Judges of this Court may evaluate possible disqualification or recusal.

Parties:

1. Plaintiff-Appellee: United States of America
2. Defendant-Appellant: Paul S. Minor

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Other Interested Parties:

12. United States Fidelity & Guaranty Company ("USF&G")
13. The People's Bank
14. Archie Marks
15. Diamond Offshore Company

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16. Patrick Buchanan and the law firm of Brown, Watt & Buchanan P.A.
17. Wayne Drinkwater and the law firm of Bradley, Arant, Rose & White LLP

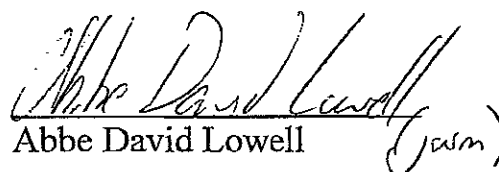
Attorneys for Diamond Offshore Drilling Company:

18. Richard Salloum and the law firm of Franke Rainey & Salloum

Co-Defendants and Their Counsel:

19. Mr. Minor's Co-Defendant Walter W. "Wes" Teel
20. Mr. Minor's Co-Defendant John H. Whitfield
21. Michael Crosby, Esq., Trial Counsel for John H. Whitfield
22. George Lucas, Esq., Trial Counsel for Walter W. "Wes" Teel

Respectfully submitted,


Abbe David Lowell (asm)

INTRODUCTION

Pursuant to the federal bail provisions of 18 U.S.C. § 3143(b)(1), Paul S. Minor respectfully seeks immediate release pending appeal in order that he may be with Sylvia, his wife of 41 years, as she goes through the final stage of her long battle with terminal brain cancer.¹ An April 4, 2009 letter from Mrs. Minor's oncologist, Dr. Sandy M. Bezet, highlights the urgency of this situation:

Her condition is terminal and her demise is imminent. As stated in my previous report, Mrs. Minor requests the presence of her husband during this last part of her life. If Mr. Minor is allowed to be present with her, it is urgent that this occur immediately due to her rapidly deteriorating condition.

Exh.1.

The straight-forward bail provisions of Section 3143 are easily satisfied in this case. Mr. Minor's appeal plainly raises "substantial questions" under section 3143, and conditions for Mr. Minor's bail pending appeal can be easily crafted to address any concerns the Court may have regarding his immediate emergency release.

THE LEGAL STANDARD FOR RELEASE PENDING APPEAL

Release pending appeal under Section 3143(b)(1) is mandatory if the Court finds: (1) Mr. Minor's appeal raises a "substantial question" of law or fact likely to result in reversal, an order for a new trial, or a reduced sentence to a term of

¹ Pursuant to Fifth Circuit Rule 27.4, counsel states that the government has been contacted regarding this motion.

imprisonment less than the total of the time already served plus the expected duration of the appeal process, and (2) Mr. Minor is not likely to flee or pose a danger to any other person or the community.

Mr. Minor need not prove that his conviction actually will be reversed to meet the "substantial question" standard for release pending appeal. U.S. v. Valera-Elizondo, 761 F.2d 1020, 1022 (5th Cir. 1985). In reviewing the likelihood-of-fleeing or danger-to-the-community standards of Section 3143(b)(1), the courts have granted release pending appeal where, as here, there are "changed circumstances" since the district court previously revoked pretrial release. See United States v. Davis, 826 F. Supp. 404, 405-06 (D. Utah 1993). (recognizing that "the court may review the release in light of changed circumstances"); United States v. Moss, 522 F. Supp. 1033, 1035 (E.D. Pa. 1981) (recognizing that where, as here, bail pending trial was revoked under 18 U.S.C. § 3148, the court may order release pending appeal if the "circumstances have since changed"). Furthermore, the courts have found that strong "family ties" weigh heavily in considering whether there are conditions of release that will reasonably assure that the person is not a danger to the community. See 18 U.S.C. §§ 3142(c) & (g); 3143(b)(1); see also United States v. Majors, 932 F. Supp. 853, 856-58 (E.D. Tex. 1996).

ARGUMENT

I. THIS APPEAL PLAINLY RAISES “SUBSTANTIAL QUESTIONS” THAT ENTITLE MR. MINOR TO RELEASE PENDING APPEAL.

As the briefs and oral argument in this case clearly demonstrate, Mr. Minor’s appeal raises several “substantial questions” which meet the test for relief pending appeal. For instance, the district court did not provide jury instructions requiring *any quid pro quo*, much less jury instructions requiring the *explicit quid pro quo* proof necessary to support the government’s charges that Mr. Minor’s campaign fundraising constituted bribery. The Supreme Court and other courts have required the government to prove a quid pro quo for public corruption bribery charges—even when the bribery charges are in the non-campaign context. United States v. Sun-Diamond Growers, 525 U.S. 398, 404-05 (1999). In Mr. Minor’s case, the faulty bribery instructions affected every count of his indictment. And, although Mr. Minor proposed instructions that would have properly instructed the jury on bribery, the district court rejected those proposed instructions. These issues, and many others briefed in this appeal,² plainly constitute “substantial questions” entitling Mr. Minor to mandatory release pending appeal.

² The other questions involve an improper instruction that simply adopted state law, the application of 18 U.S.C. § 666, a sentence that was outside any guideline rule or precedent, numerous erroneous evidentiary rulings, and other trial errors.

II. MR. MINOR IS NEITHER A FLIGHT RISK NOR A DANGER TO THE COMMUNITY.

On August 15, 2008, the Honorable Priscilla Owen, the panel judge that has now recused herself from this case, denied Mr. Minor's motion for release pending appeal on the sole basis that Mr. Minor had failed to show by clear and convincing evidence that he is no longer a danger to the community. Exh. 2. But this panel can grant Mr. Minor his requested relief without concern for Judge Owen's prior decision for several reasons.

First, Judge Owen issued her decision before this case was fully brief and argued. As briefing and argument have now presented even more examples of substantial questions warranting reversal, this panel can grant Mr. Minor's release on that ground alone.

Second, the 2006 pre-trial circumstances upon which Judge Owen apparently based her decision have clearly changed. At the sentencing hearing in 2007, John Owen, a certified addiction expert with more than 25-years experience, testified that since attending an alcohol rehabilitation program Mr. Minor's "prognosis is very good" and that his likelihood for remaining sober is "excellent." (8/2/07 Tr. 77, 79). Mr. Owen's prognosis has since been borne out, as evidenced by the attached report of Mr. Minor's current prison counselor, Stephen D. Meriweather. Exh. 3. Mr. Meriweather, the alcohol and drug treatment specialist at the Pensacola Federal Prison Camp recently filed a report indicating that Mr.


Minor has completed a 40 hour Nonresidential Drug Abuse Treatment program. The report also indicates that Mr. Minor regularly attends weekly "AA" meetings and is "doing an outstanding job in maintaining his sobriety." Id. Courts have routinely granted release pending appeal where, as here, there are "changed circumstances" since pre-trial rulings revoking bail. Davis, 826 F. Supp. at 405-06; Moss, 522 F. Supp. at 1035.

But the most significant changed circumstance in this case is the impending death of Sylvia, Mr. Minor's wife of 41 years. Exh. 1. Mr. Minor's deep desire to be there to offer love, comfort, and support to his wife and family in her last days is clearly sufficient in itself to motivate him not to violate any conditions of release this Court chooses to impose. This Court can easily craft conditions of release such as a condition that Mr. Minor not drive, if there are any remaining concerns about the 2006 pre-trial alcohol-related danger-to-the-community finding.

CONCLUSION

Mr. Minor respectfully moves this Honorable Court to take swift action granting him release pending appeal in order that he can be with his wife in her last days. Having been incarcerated for two and one-half years, Mr. Minor realizes the importance of abiding by the terms of any conditions of bail set by this Court.

Respectfully submitted,


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