FILED
Jul 24, 2013
DEBORAH S. HUNT, Clerk

No. 13-3205

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff-Appellee,	)	
	)	
V.	)	O R D E R
	)	
SAMUEL MULLET, SR.,	)	
	)	
Defendant-Appellant.	)	

Before: GUY, BOGGS, and DONALD, Circuit Judges.

Defendant-Appellant, Samuel Mullet, Sr., moves for release on bond pending the appeal of his convictions of conspiracy, violation of the Hate Crime Act, obstruction of justice, and false statements. The government opposes the motion for release. The district court denied Mullet's release pending appeal on April 9, 2013. Mullet reported to begin his fifteen-year sentence on February 15, 2013. In his motion for release pending appeal, Miller makes four over-arching arguments: (1) he is not likely to flee nor does he pose a danger to the community; (2) his appeal raises a substantial legal issue as to the constitutionality of his prosecution under the Commerce Clause; (3) his appeal raises a substantial legal issue with regards to the jury instructions on religious motivations; and (4) his appeal raises a substantial legal issue as to the definition of kidnapping used at trial.

Because Mullet was convicted of a crime of violence for which the maximum sentence is life imprisonment, he is subject to the mandatory-detention provision of 18 U.S.C. § 3143(b)(2). Consequently, to overcome mandatory detention, Mullet must establish the presence of exceptional

reasons that make detention inappropriate, as well as make two showings pursuant to § 3143(b)(1): (A) by clear and convincing evidence, that he is not likely to flee or pose a threat to the safety of any other person or the community; and (B) that his appeal is not for delay and raises a substantial question of law or fact likely to result in reversal, a new trial, a sentence that does not include a prison term, or a sentence of a prison term less than the time he has served plus the expected duration of the appeal. 18 U.S.C. § 3143(b)(1)(A)-(B); *see also United States v. Chilingirian*, 280 F.3d 704, 709 (6th Cir. 2002). Section 3143(b)(1) creates a presumption against release pending appeal. *Chilingirian*, 280 F.3d at 709.

Mullet asserts several "exceptional reasons" why he should be released pending appeal: (1) his prosecution was an unconstitutional exercise of federal judicial power under the Commerce Clause; (2) the district court's jury instruction of "religiously motivated" was erroneous; and (3) the definition of kidnaping used at trial was erroneous.

Upon review, Mullet's arguments are unexceptional. First, Mullet's Commerce Clause argument primarily relies on *National Federation of Independent Business v. Sebelius*, 132 S. Ct. 2566 (2012), *United States v. Morrison*, 529 U.S. 598 (2000), and *United States v. Lopez*, 514 U.S. 549 (1995), for the proposition that his federal prosecution was unconstitutional. He asserts that the federal government had no jurisdiction to prosecute him because he was not engaged in interstate commerce. Yet, the Hate Crimes Act, 18 U.S.C. § 249, under which Mullet was convicted expressly provides jurisdiction when the illegal conduct involves a "weapon that has traveled in interstate or foreign commerce." 18 U.S.C. § 249(a)(2)(B)(iii). Here, shears and scissors that had traveled from out-of-state into Ohio were used as weapons of hate and religious animus, thus providing jurisdiction for Mullet's prosecution.

Second, Mullet argues for a new jury instruction stating that if he were only partially

motivated by prejudice, but still would have committed the act regardless of that prejudice, he cannot be found guilty. He contends that the acts in question were merely domestic-violence incidents with no religious undertones and that the prosecution failed to prove religious animus as a result. Such an argument is meritless. The victims in this situation had their hair and beards cut because of their unwillingness to abide by Mullet's commands as Bishop of the Bergholz Amish community.

Third, Mullet argues that the definition of kidnaping used at trial was erroneous because "Congress [never intended to] subject someone who failed to stop others from cutting beards and hair to the same punishment as someone who heartlessly takes human life." Assuming, *arguendo*, that Mullet is correct, Mullet has failed to present concrete evidence that a new sentence he would receive after a trial with his proposed instruction would be less than the total of the time already served plus the expected duration of the appeal process. Even if Mullet received a jury instruction with a more lenient kidnaping definition, he could still receive a maximum sentence of ten years of imprisonment pursuant to 18 U.S.C. § 249(a)(2)(A)(i). Thus, the sentence he could receive is potentially not less than the total time already served plus the expected duration of the appeal process.

Mullet also fails to meet both of the § 3143(b)(1) conditions. First, Mullet does not meet the burden that he will not pose a danger to the community. Whether or not Mullet is likely to flee, he has not proven by clear and convincing evidence that he will not be a danger to his community upon returning. He is the leader and exercises control over the members of his community, as evidenced by the actions of the fifteen other co-defendants in this hair- and beard-cutting crime.

Second, Mullet has presented sufficient evidence of arguable issues of law such that his appeal is not for purposes of delay. However, the legal issues Mullet presents are not likely to result in reversal, a new trial, a sentence that does not include a term of imprisonment, or a reduced

sentence less than the total time he has already served, plus the duration of his appeal.

In sum, we conclude that Mullet has not demonstrated any exceptional reasons warranting his release pending appeal and has not met the conditions set forth in 18 U.S.C. § 3143(b)(1). Accordingly, his motion for release on bail pending appeal is **DENIED**.

ENTERED BY ORDER OF THE COURT

Clerk