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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

v.

WALTER ANDERSON,
aka Mark Roth,
Defendant.

Criminal No. 05-66 (PLF)

FILED

MAR 07 2005

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

DETENTION MEMORANDUM

The Defendant, Walter Anderson, has been charged in a twelve count indictment with tax evasion (26 U.S.C. § 7201), obstruction of the due administration of the internal revenue laws (26 U.S.C. § 7212 (a)), and fraud (22 D.C. Code § 3221 (a)). The government requested a detention hearing which began on February 28, 2005 and concluded on March 3, 2005. At the conclusion of the hearing, the Court found that the Defendant should be held without bond. This memorandum is submitted to comply with the statutory obligation that "the judicial officer shall include written findings of fact and a written statement of the reasons for the detention." 18 U.S.C. § 3142(i)(1).

Findings of Fact

According to the grand jury indictment, the Defendant has been engaged in a systematic course of conduct the purpose of which was to evade assessment and payment of income taxes to

both the United States and the District of Columbia. To the Federal government the Defendant is said to owe \$170,000,000. To the District of Columbia government the Defendant is said to owe \$40,000,000.

According to the government, and as is common knowledge, citizens of the United States, and residents of the District of Columbia, are required to report their annual earnings and to pay the concomitant income taxes on those earnings.

Discussion

The Court can hold a criminal defendant pre-trial if it finds, by a preponderance of the evidence, that the defendant poses a flight risk, *See United States v. Xulam*, 84 F.3d 441, 442 (D.C. Cir. 1996), or if the Court finds by clear and convincing evidence that the Defendant poses a danger to the community. *United States v. Simpkins*, 826 F.2d 94, 96 (D.C. Cir. 1987).

The government argues that the Court should find that this Defendant poses both a flight risk and a danger to the community. The Court finds no evidentiary support for the government's position that Mr. Anderson poses a danger to the community.

Therefore, the Court will only consider whether this Defendant is likely to abide by any conditions of release and whether there exist conditions or a combination of conditions that would assure his presence at all future court appearances.

In determining whether there are conditions of release which will reasonably assure the Defendant's future presence in court or assure the safety of any other person and the community, the judicial officer shall take into account the available information concerning (1) the nature and

circumstances of the offense charged; (2) the weight of the evidence against the Defendant; (3) the Defendant's history and characteristics, including the Defendant's ties to the community; and (4) the nature and seriousness of the danger to any person or to the community which would be posed by the Defendant's release. See 18 U.S.C. § 3142(g).

As previously mentioned above, the Court does not find any evidence to support a finding that the Defendant would be a danger to any person or the community if released, in that conditions could be fashioned to prevent the obstruction of justice, a potential threat posited by the government. The weight of the evidence against the Defendant, namely the strength of the government's case rests solely on the proffer that the Defendant has earned millions of dollars of taxable income, not paid his taxes, and secreted the funds. The Defendant strenuously denies the allegation. Thus without conducting a hearing on the merits of the allegations this judicial officer cannot assess the strength of the government's case.

Thus, the two factors relevant to this case are the nature of the pending charges and the history and characteristics of this Defendant.

The charges pending before this Defendant are serious. Although, as the Defendant points out, the charges do not involve dangerousness as such, or drugs, they present the possibility that he could spend the remainder of his life incarcerated. Thus, to this Defendant, the charges before him are most serious, and increase the temptation to avoid the jurisdictional reach of the United States. Were the Defendant to be released pending trial, he would no doubt weigh the importance of his word and promise to this Court to return for all future appearances and the personal sacrifices that he would endure by fleeing, against the potential personal benefit of forever evading prosecution. Given the prospect of a total of 83 years in prison, it is not difficult to contemplate the temptation

that would imbrue Mr. Anderson should this Court release him.

If this Defendant had a wife and children in this area, or even in the United States, or had other significant ties to the community, the undersigned would weigh the potential sacrifices in assessing the risks of the Defendant fleeing the jurisdiction. The facts and circumstances here are markedly different. Mr. Anderson has limited or no ties to either this jurisdiction or indeed the United States. According to the government, he owns no real or personal property in this area but owns substantial real and personal property and has numerous 'girlfriends' internationally, including, as the government emphasized, a six million dollar mansion. Thus the potential of a period of incarceration, if found guilty, creates an extraordinary temptation to flee which this Court cannot ignore.

The second factor for the Court to consider is the history and characteristics of the Defendant. There is indication that he has both complied with all prior orders of the courts and that he had prior knowledge of an investigation against him, and a possible indictment, and returned several times to the United States regardless. As Magistrate Judge Facciola has said, "there can be no better evidence bearing on whether the defendant will appear when required than whether he has appeared when required in the past." *United States v. Battle*, 59 F.Supp.2d 17 (D.C. Cir. 1999). Further, when a criminal Defendant has not fled the jurisdiction with knowledge of a likely indictment, "there is no greater risk that he will flee [post-indictment]" than pre-indictment. *United States v. Motamedi*, 767 F.2d 1403, 1408 (9th Cir. 1985). Past history of a defendant's compliance, coupled with strong ties to the community should be considered in considering the risk of flight.

The factors referenced by the government in their proffer, when viewed against the backdrop of the pending charges in the indictment, the potential consequences of a conviction and his ability

to decamp and assume different identities and resist extradition, afford this Court little confidence that Mr. Anderson would abide by any conditions of release. Defense counsel's eloquent argument that Mr. Anderson is anxious to refute the charges and that he has established a record of reporting when summoned prior to the indictment ring hollow when measured against his use of aliases and attempt to establish citizenship in Grenada . Today a press badge and British Guiana passport, tomorrow a Spanish passport. The pending charges are a far cry from his prior drug charge in Superior Court and his compliance with the directives of that court are not an accurate proxy for future compliance under the changed circumstances he faces in this Court. To compare Mr. Anderson with a defendant who has spent most of their life in the community with a spouse and /or children would be ill founded.

This Defendant is highly intelligent, sophisticated and wealthy. He has the ability and financial wherewithal to create fraudulent documentation and create a new identity for himself, and has demonstrated his willingness to use this knowledge and skill. It is unquestionable that he is conversant with methods of hiding his identity. His statement to this Court that he has an affinity for books teaching methods of concealing ones identity and covering ones tracks offers little comfort to the Court in assessing his likelihood for appearing at trial. The government alleges that Mr. Anderson has been circumnavigating the globe in his effort to fraudulently conceal his assets from judgment creditors and evade paying taxes. His financial manipulations over the past decade according to the government belie his professed assurances to comply with any release conditions that could be set by the Court, notwithstanding proffers by defense counsel that Mr. Anderson has acted as a paragon of virtue and archetype for others to follow in how to conduct their business affairs and how to submit willingly to judicial directives. It is not for this Court to determine

whether he is guilty of the charges in the indictment. The grand jury has found probable cause and without conducting a mini trial, this Court cannot close its eyes to the factors noted above which in the considered judgment of this judicial officer raise serious concerns that Mr. Anderson would fully comply with release conditions.

Considering all the factors presented to this Court and weighing all the lesser restrictive alternatives to pretrial detention, the undersigned finds by a preponderance of the evidence that the government has met its burden that Mr. Anderson poses a serious risk of flight and should not be released prior to trial.

Conclusion

Based upon consideration of all the evidence and the factors set forth in § 3142(e), this Court concludes by a preponderance of the evidence that the evidence establishes that there exist no conditions nor combination of conditions which would assure the return of this Defendant to all future court appearances. Therefore, the government's motion for pretrial detention is granted.

Dated: March 7th, 2005


ALAN KAY
UNITED STATES MAGISTRATE JUDGE