

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 93-2787

(Summary Calendar)

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CARLOS GUILLEN,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
(CR-H-93-210-7)

(November 27, 1993)

Before JOLLY, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Carlos Guillen appeals from an order of the district court affirming Guillen's pretrial detention without bond under the Bail Reform Act of 1984, 18 U.S.C. § 3141 et seq. (1988). Finding the district court's order "is supported by the proceedings below," we affirm.

Guillen was charged with conspiracy to possess with intent to distribute in excess of five kilograms of cocaine and aiding and

* Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

abetting other persons in possessing with intent to distribute in excess of five kilograms of cocaine. Following a detention hearing, the magistrate judge ordered Guillen detained pending trial because: (1) probable cause existed to believe that Guillen had committed the offenses charged; (2) there existed a serious risk that Guillen would flee; and (3) the evidence established that no condition or combination of conditions would reasonably assure Guillen's appearance as required and the safety of the community. Guillen then filed a motion to revoke the detention order, which the district court denied. Guillen now appeals the district court's decision.

Guillen argues that the district court erred in denying his motion to revoke the detention order. "Absent an error of law, we must uphold a district court's pretrial detention order `if it is supported by the proceedings below,' a deferential standard of review that we equate to the abuse-of-discretion standard." *United States v. Hare*, 873 F.2d 796, 798 (5th Cir. 1989); see also *United States v. Jackson*, 845 F.2d 1262, 1263 (5th Cir. 1988). "The same standard applies to a determination in response to a motion to revoke a detention order." *Hare*, 873 F.2d at 798.

Guillen was charged with a violation of the Controlled Substances Act, 21 U.S.C. § 801 et seq., punishable by imprisonment that "may not be less than 10 years or more than life." 21 U.S.C. § 841(b)(1)(A). Under the Bail Reform Act, the existence of probable cause to believe that Guillen committed the offense charged creates a rebuttable presumption that no conditions of

release exist that would reasonably assure the appearance of the person as required and the safety of the community. 18 U.S.C. § 3142(e). The § 3142(e) presumption "shifts to the defendant only the burden of producing rebutting evidence, not the burden of persuasion; however, the mere production of evidence does not completely rebut the presumption." *United States v. Rueben*, 974 F.2d 580, 586 (5th Cir. 1992), *cert. denied*, ___ U.S. ___, 113 S. Ct. 1336, 122 L. Ed. 2d 720 (1993); *see also United States v. Barker*, 876 F.2d 475, 476 (5th Cir. 1989); *Hare*, 873 F.2d at 798-99. "In making its ultimate determination, the [district] court may still consider the finding by Congress that drug offenders pose a special risk of flight and dangerousness to society." *Id.*

In determining whether conditions of release exist that will reasonably assure the appearance of the person as required and the safety of the community, the district court must consider: (1) the nature and circumstances of the offense charged; (2) the weight of the evidence against the person; (3) the history and characteristics of the person; and (4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release. 18 U.S.C. § 3142(g); *Rueben*, 974 F.2d at 586. After reviewing the record, we conclude that the decisions of the magistrate judge and the district court are supported by the proceedings below. The district court correctly found probable cause to conclude that Guillen committed the drug offenses with which he was charged. Moreover, Guillen has not rebutted the presumption that he is not a flight risk. First, although Guillen

is a resident alien, both he and his wife are citizens of Honduras, where they maintained family ties. Second, although Guillen's wife and sister-in-law offered to sign a bond guaranteeing Guillen's appearance, neither has property to secure the bond. Similarly, because of their relationship to Guillen the district court could discredit the testimony of Guillen's wife and sister-in-law that they would notify the authorities if Guillen sought to flee. *Barker*, 876 F.2d at 476. In short, Guillen has adduced no evidence to support his position that his appearance at trial can be reasonably assured. Consequently, he has not rebutted the presumption that he is a flight risk and that no condition or combination of conditions will reasonably assure his appearance at trial. See *United States v. Valenzuela-Verdigo*, 815 F.2d 1011, 1012 (5th Cir. 1987) (upholding a detention-without-bail order where the defendant was a citizen of another country with relatives living there and had no property in the United States).

Accordingly, the district court's order is AFFIRMED.