

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 93-2788
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

RICHARD SYLVESTER COLLINS,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
(CR-H-93-193-7)

(November 29, 1993)

Before DAVIS, JONES and DUHÉ, Circuit Judges.

PER CURIAM:¹

Richard Sylvester Collins seeks review of the district court's order denying his pretrial release. Because the district court did not abuse its discretion in denying this relief to Collins, we affirm.

I.

Collins and ten others were indicted in this case for drug conspiracy and other crimes. Count 1 of the indictment charges

¹Local Rule 47.5 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Collins with conspiracy to possess with intent to distribute cocaine and marijuana, including the act of loading a pickup truck with 61 pounds of marijuana. Count 5 charges Collins with possessing the 61 pounds with the intent to distribute. Count 11 charges Collins with using a telephone to facilitate drug trafficking. The alleged conspiracy involved hundreds of pounds of marijuana and hundreds of kilograms of cocaine, for which the minimum prison sentence is 10 years, and the maximum is life.

Following a detention hearing concerning Collins and three co-defendants, the magistrate judge ordered Collins detained pending trial. The magistrate judge entered the following findings in support of his ruling: (1) probable cause exists that Collins committed an offense that is punishable by imprisonment for ten years or more; (2) no conditions will reasonably assure his appearance and the community's safety; and (3) he is a serious flight risk.

The magistrate judge explained that Collins was implicated in a conspiracy involving large quantities of marijuana and cocaine, that he recently traveled to Belize, that he was on probation for the aggravated sexual assault of a child, that the instant offense violated conditions of that probation, and that the state planned to institute proceedings to revoke his probation. Thus, the magistrate judge denied his pretrial release, concluding that the evidence "demonstrates an inability or unwillingness on the part of Collins to comply with conditions of release."

Before the district court, Collins moved for revocation of the magistrate judge's detention order, and the district court denied the motion. Collins, whose trial is set for November 29, 1993, now seeks review of the district court's order.

II.

In an appeal of a pretrial detention, "[a]bsent an error of law, we must uphold a district court order if it is supported by the proceedings below, a deferential standard of review that we equate to the abuse-of-discretion standard. On appeal, the question becomes whether the evidence as a whole supports the conclusions of the proceedings below." **United States v. Rueben**, 974 F.2d 580, 586 (5th Cir. 1992), **cert. denied**, 113 S.Ct. 1336 (1993) (citations and internal quotation omitted).

Probable cause to believe that the defendant has committed a controlled substance offense for which the maximum prison term is at least ten years creates a rebuttable presumption that no conditions of release will "reasonably assure the appearance of the person as required and the safety of the community." 18 U.S.C. § 3142(e); **Rueben**, 974 F.2d at 586. A defendant who fails to rebut either the appearance or the safety element may not be released. **Rueben**, 974 F.2d at 586.

We have held that a defendant can rebut the presumption of flight by presenting "considerable evidence of his longstanding ties to the locality in which he faces trial." **Id.** We also have held that the "risk of continued narcotics trafficking on bail does constitute a risk to the community." **Id.** However, in making its

ultimate determination, "the court may still consider the finding by Congress that drug offenders pose a special risk of flight and dangerousness to society." **Id.**

In this case, the government concedes that the risk that Collins will flee before trial is slight. Collins is 74 years old, suffers from heart disease, and was hospitalized while in custody. In addition, he has been married for 47 years and has lived in the community for 30 years.

Pretermitted Collins's argument that he is not a flight risk, the district court's order is fully supported on the alternate ground that he is a risk to the community. Collins had served only two years of a ten-year probated sentence when he was arrested in the instant case. Moreover, he has made no showing that he is not a danger to the community, except counsel's assertion that the girl whom he sexually assaulted no longer lives in the area. The district court therefore correctly concluded that Collins failed to demonstrate that he would not continue to engage in narcotics distribution, and thereby constitute a risk to the community. **See Rueben**, 974 F.2d at 586.

AFFIRMED.