

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

S)))))))))Q  
No. 94-30720  
Summary Calendar  
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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

THOMAS S. MACKIE, JR.,

Defendant-Appellant.

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Appeal from the United States District Court for the  
Eastern District of Louisiana  
(CR-93-485-S)  
S)))))))))Q  
(January 13, 1995)

Before GARWOOD, HIGGINBOTHAM and DAVIS, Circuit Judges.\*

PER CURIAM:

Defendant-appellant Thomas S. Mackie (Mackie), pursuant to 18 U.S.C. § 3145(b) and Fed. R. App. P. 9(a), appeals a pretrial detention order. We grant Mackie's motion to expedite the appeal, deny his request for release on bond pending our determination of the appeal, and affirm.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Mackie was indicted on December 9, 1993, on a four-count indictment for wire fraud, conducting unlawful financial transactions, and money laundering. On December 30, 1993, Mackie was released pending trial on a \$150,000 surety bond and under several conditions, including that he not violate any federal, state, or local laws. On December 1, 1994, Mackie was arrested and remanded to custody for inducement to travel in execution of a scheme to defraud. On December 2, 1994, bail was set at \$300,000. The following day, Mackie filed a motion to clarify the amount of bond. On December 8, 1994, a superseding indictment was handed down that alleged that Mackie had committed the travel inducement felony offense on March 4, 1994. On December 12, 1994, the government filed an opposition to Mackie's motion, in which it moved that Mackie's release pending trial be revoked. Following a hearing on December 14, 1994, the magistrate judge revoked Mackie's release. The magistrate judge determined that Mackie posed a danger to the community, had committed the same type of offense while released on bond as that for which he had been originally arrested, and Mackie had stated that he would perfect bond by "hook or crook."

Mackie appealed to the district court, which held a *de novo* hearing December 16, 1994, at which Mackie presented no evidence. The district court refused to overturn the magistrate judge's order. The court determined that the magistrate judge had correctly revoked Mackie's bond and ordered him remanded to custody under 18 U.S.C. § 3148 because, based on the December 8, 1994, superseding indictment, there was probable cause to believe Mackie

had committed a felony while on release and therefore, under section 3148, there was a presumption, which Mackie did not rebut, that no condition or combination of conditions would assure that he would not pose a danger to the safety of any other person or the community. Mackie now brings this appeal.

This Court will sustain a district court's order revoking pretrial release if it is supported by the proceedings below. *United States v. Aron*, 904 F.2d 221, 223 (5th Cir. 1990). The factual basis of the decision is reviewed under the "clearly erroneous" standard. *Id.*

Mackie argues that the government did not affirmatively move to revoke his bond under section 3148(b). Therefore, he argues, his detention must have been ordered under 18 U.S.C. § 3142(f), and not under section 3148(b). This argument is without adequate factual basis. Section 3148(a) expressly provides that a person who has been released under section 3142 and has violated a condition of his release is subject to revocation of release and an order of detention. A proceeding for revocation may be initiated by government motion. Section 3148(b). In its opposition to Mackie's motion to clarify his bail, the government moved that the clarification motion be denied *and* that Mackie's bond be revoked because he had committed another scheme to defraud while released on bail, although it did not cite section 3148 or any other statute.

Mackie argues that the district court affirmed the magistrate judge's ruling that Mackie be detained without bond pending trial in violation of section 3142(f). Mackie erroneously argues that a

district court may not detain a person without bond under either section 3142 or section 3148 "unless it finds dangerousness as defined by the six circumstances listed in [§] 3142(f)."

Section 3148(b) does not require such a finding or refer to section 3142(f). Section 3148(b) provides in pertinent part:

"The judicial officer shall enter an order of revocation and detention if, after a hearing, the judicial officerSQ(1) finds that there isSQ(A) probable cause to believe that the person has committed a Federal, State, or local crime while on release; . . . and (2) finds thatSQ(A) based on the factors set forth in section 3142(g) . . . there is no condition or combination of conditions of release that will assure that the person will not . . . pose a danger to the safety of any other person or the community."

To fulfill the probable cause requirement, "the facts available to the judicial officer must warrant a man of reasonable caution in the belief that the defendant has committed a crime while on bail." *Aron*, 904 F.2d at 224 (internal quotation and citation omitted). The superseding indictment handed down by the grand jury was sufficientSQespecially here where there was no contrary evidenceSQto warrant a reasonable belief that Mackie induced travel in execution of a scheme to defraud in violation of 18 U.S.C. § 2314 while released on bail. See *United States v. Valenzuela-Verdigo*, 815 F.2d 1011, 1012 (5th Cir. 1987); *United States v. Trosper*, 809 F.2d 1107, 1110 (5th Cir. 1987). Cf. *Gerstein v. Pugh*, 95 S.Ct. 854, 865 n.19 (1975).

"If there is probable cause to believe that, while on release, the person committed a Federal . . . felony, a rebuttable presumption arises that no condition or combination of conditions will assure that the person will not pose a danger to the safety of

any other or the community." Section 3148(b). If the person rebuts the presumption and the judicial officer finds that there are conditions that will assure that the person will not flee or pose a danger to the safety of others or the community and the person will abide by those conditions, then the judicial officer must treat the person in accordance with the provisions of section 3142 and may amend the conditions of release. *Id.*

Mackie was charged with violating while on bail section 2314, a federal felony offense that carries a maximum sentence of ten years. Mackie has not shown that he rebutted the presumption that he posed a danger to the community. The district court's order revoking pretrial release is supported by the proceedings below and should be affirmed. *See Aron*, 904 F.2d at 223.

*United States v. Byrd*, 969 F.2d 106 (5th Cir. 1992), relied on by Mackie, is not on point. The defendant in *Byrd* did not commit any offense while on pretrial release, or otherwise violate the conditions of his release, and his challenged detention was pursuant to section 3142, not section 3148. The remarks in *Byrd*, 969 F.2d at 110, concerning subsequent orders are directed to section 3142(c)(3) and to the last sentence of section 3142(f). *Byrd* does not purport to limit the express terms of section 3148.

Mackie argues that the magistrate judge's finding that Mackie had previously said that he would perfect bond by "hook or crook" is erroneous, as this statement was made by a friend of Mackie's and was innocuous use of an idiom. However, this statement has no substantial relevance to the inquiry under section 3148(b) and it is clear that any error in this connection is harmless and did not

influence the ultimate result below.

Accordingly, the challenged order of the district court is

AFFIRMED.