

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-30482
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CHANEY L. PHILLIPS,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Louisiana
(97-CR-68-B)

June 24, 1998

Before POLITZ, Chief Judge, DUHÉ and BARKSDALE, Circuit Judges.

PER CURIAM:*

Chaney L. Phillips appeals the district court's order detaining him pending sentencing. For the reasons assigned, we affirm.

BACKGROUND

*Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

While serving as Sheriff of St. Helena Parish, Phillips was indicted by a federal grand jury on multiple counts of fraudulent activity. On April 21, 1998 the jury returned a guilty verdict on all counts of the indictment. Thereafter, the government moved to detain Phillips pending sentencing. The district court promptly conducted a hearing and found that Phillips failed to produce clear and convincing evidence that he would not pose a danger to the safety of other persons or the community and therefore ordered that Phillips be detained pending sentencing.

On May 8, 1998 Phillips filed a Motion for Reconsideration of Detention Order contending that the government had not given prior notice that it intended to move for detention. As a result, Phillips contended that he did not have an adequate opportunity to present the requisite evidence to avoid detention. After a two day hearing on the matter, the trial court again ordered that Phillips be detained pending sentencing. Phillips has appealed and the government has moved to strike a small portion of his brief on the grounds that it refers to matters that are not part of the record.

ANALYSIS

A defendant who has been convicted “shall” be detained pending sentencing “unless the judicial officer finds by clear and convincing evidence that the person

is not likely to flee or pose a danger to the safety of any other person or the community if released.”¹ Appellate review of the judicial officer’s determinations in these matters is limited, and the detention order will be sustained if the order is supported by the proceedings in the district court.² The district court’s order will not be overturned unless it is clearly erroneous.³

In his order and reasons, the district judge noted that he could not recall another pre-sentencing detention hearing where he expended as much time, or heard as much evidence, as in this matter. It is abundantly clear that the district judge carefully considered the evidence presented and did not commit error in his findings. The demanding standard imposed upon Phillips by the statute has not been met; he has not satisfied the burden of proof required to support his release from detention following conviction.⁴

Today’s ruling moots the government’s motion and it is accordingly DENIED. The district court’s denial of Phillips’ motion for release pending sentencing is AFFIRMED.

¹18 U.S.C. §3143(a).

²**United States v. Cantu-Salinas**, 789 F.2d 1145 (5th Cir 1986).

³**Id.**

⁴18 U.S.C. §3143(a).

Appellant's motion for bail pending trial is hereby DENIED as moot.