

United States District Court
for the
Southern District of Florida

United States of America,)
Plaintiff)
)
v.) Criminal Case No. 16-20549-CR-
) Scola
)
Philip Esformes,)
Defendant.)

Order on Defendant’s Expedited Motion for Release Pending Appeal

There are various circumstances where a Court should release inmates from prison, and this Court has not hesitated to do so where appropriate. See *United States v. Kahn*, Case No. 11-cr-20331 (S.D. Fla. Oct. 11, 2019) (Scola, J.); *United States v. Oreste*, Case No. 14-cr-20349 (S.D. Fla. Apr. 6, 2020). But this is **not** one of those cases.

Esformes was convicted after a jury trial of twenty healthcare-related crimes and was recently sentenced to 240 months in prison (Am. Judgment, ECF No. 1459). The jury was unable to reach a verdict on several counts, including the main charge of conspiracy to commit health care fraud and wire fraud. Those counts remain pending against him and have not yet been rescheduled for trial.¹ Even if it were appropriate for the Court to release Esformes on the counts currently on appeal before the Eleventh Circuit (but it is not for all the reasons set forth in the Government’s response, ECF No. 1490), he still would need to move for and obtain pretrial release on the counts that have not yet been set for retrial.

Esformes has previously been denied pretrial release by United States Magistrate Judge Torres (Detention Order, ECF No. 68), which was then approved by United States District Court Judge Lenard (Order, ECF No.133), and which was affirmed by the Eleventh Circuit (Order of Dismissal, ECF No. 700).

One of the main grounds for Esformes’s pre-trial detention was an allegation that Esformes obstructed justice by attempting to pay for a co-conspirator to flee the jurisdiction. Esformes has now been convicted of that

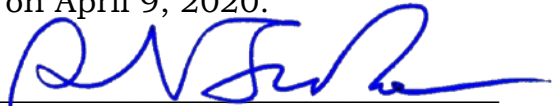
¹ On July 17, 2020, this matter is scheduled for a hearing to determine a date to schedule the remaining counts for a jury trial. (Order to Continue, ECF No. 1470.)

crime. Thus, if anything, the grounds for the continued detention of Esformes are stronger now than they were in 2016 at the time of his original detention hearing.

The only additional ground for his current release is the COVID-19 pandemic and Esformes's claim of a pre-existing condition which makes him more vulnerable to the virus. As the government points out in its response, Esformes's asthma is not at an acute level warranting his release after serving less than 25% of his sentence. Virtually every person over the age of 50 has some health condition that could conceivably put that person at a greater risk of succumbing to the coronavirus, but this does not entitle every inmate over 50 to be released. Attorney General William Barr's memo urging the release of particularly vulnerable inmates is not a get-out-of-jail-free card for every incarcerated person. *See* Memorandum from the Attorney General (Apr. 3, 2020).

Therefore, for the reasons set forth above, after considering the 18 U.S.C. § 3553 factors, and for all the reasons cited in the Government's response, the Court **denies** Esformes's motion for release on conditions pending appeal (**ECF No. 1482**).

Done and ordered at Miami, Florida, on April 9, 2020.



Robert N. Scola, Jr.
United States District Judge