

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,

Criminal No. 08-302 (PAM/FLN)

Plaintiff,

v.

ORDER

Michael Catain,

Defendant.

This matter is before the Court on Defendant's Motion to Appeal the Order of Detention. For the reasons that follow, Defendant's Motion is granted.

BACKGROUND

On October 8, 2008, Defendant pled guilty to one count of money laundering conspiracy. Defendant was released subject to the Court's October 8, 2008, Order Setting Conditions of Release as to Michael Catain (the "Order of Release"). One of the conditions of Defendant's release was that he not "commit any offense in violation of federal, state, or local law while on release in this case." On October 14, 2008, U.S. District Judge Ann Montgomery, United States District Judge, issued an Order of Preliminary Injunction, Appointment of Receiver, and Other Equitable Relief in United States v. Petters, et al., 08-5348 (D. Minn. Oct. 14, 2008) (Montgomery, J.) (the "Petters Order"). The Petters Order ordered that all of the assets held by Defendant, among others, be considered the property of the Receivership.

The Receivership took possession of the Bay Car Wash, a business previously owned and operated by Defendant. The Receiver permitted Defendant to continue to work at and manage the car wash while the Receiver attempted to sell it. From mid-November 2008 through early January 2009 Defendant used cash from the car wash to pay for personal bills and car wash expenses.

The Government moved to revoke Defendant's release based on Defendant's appropriation of money belonging to the Receiver—i.e., money from the car wash. After a hearing, the Magistrate Judge found that there was probable cause that Defendant had committed theft in violation of Minnesota Statute § 609.52, thereby violating the conditions of his release. The Magistrate Judge further found that Defendant failed to rebut the presumption (discussed below) that no set of conditions would ensure that he would not flee or pose a danger to the safety of others, and that the Defendant was unlikely to abide by any set of conditions. Pursuant to those findings, the Magistrate Judge revoked Defendant's release. Defendant filed a timely appeal, which the Government opposes.

DISCUSSION

The Court conducts a de novo review of the Magistrate Judge's decision. See 18 U.S.C. § 3145(b); United States v. Maull, 773 F.2d 1479, 1481 (8th Cir. 1985). The Court has reviewed the transcript of the hearing before the Magistrate Judge as well as the written submissions of Defendant and the Government.

Pursuant to 18 U.S.C. § 3148, a court may revoke the release of a defendant if it finds probable cause that the defendant violated a crime while on release, or clear and convincing

evidence that the defendant violated some other condition of his release. The court must also find that no set of conditions could ensure that the defendant will not flee or pose a danger to others, or that a particular defendant is unlikely to abide by any set of conditions. If the court finds probable cause that the defendant committed a crime while on release, § 3148 provides a rebuttable presumption that no set of conditions will ensure that the defendant will not flee or pose a danger to others. However, if the court finds that there is some effective set of conditions that can be imposed, and that the defendant will abide by those conditions, then the court may amend the defendant's conditions of release and need not place the defendant in custody. See 18 U.S.C. § 3148(b).

The Court agrees with the Magistrate Judge that there is probable cause to believe that Defendant committed a crime—theft, under Minnesota Statute § 609.52—and therefore also violated the condition of his release that he not commit any crimes. This finding triggers the creation of the rebuttable presumption in 18 U.S.C. § 3148(b). Based on this Court's de novo review of the record, however, the Court concludes that Defendant has overcome that presumption and that there are conditions that can be imposed to satisfy the demands of § 3148(b).

Defendant admits to taking the nearly \$14,000 from the car wash and using it in part for personal expenses. However, Defendant also used the money for car wash expenses. He has also accounted for nearly all of the money taken. There is no evidence that Defendant is likely to flee or that he poses a danger to the community if released. The car wash was sold, and the sale apparently closed in early February. Even after Defendant's offending

conduct came to light, Defendant was permitted to continue working at the car wash until his release was revoked. It does not appear that Defendant took money properly belonging to the Receiver with criminal intent or for some other nefarious purpose. Although there is evidence that Defendant has not strictly complied with all of the conditions of his release, given the nature of the matter before the Court, Defendant has substantially complied with virtually all of those requirements.

The Court concludes that the foregoing evidence and circumstances are sufficient to overcome the presumption provided by § 3148(b). The Court finds that there are conditions that can be imposed on Defendant that would satisfy the demands of § 3148, and that the Defendant will comply with those conditions.

Defendant's conditions of release are amended to include the following additional conditions:

1. Defendant shall end all involvement in the operation and management of the Bay Car Wash, unless authorized by the United States Attorney and the Receiver.
2. If Defendant is authorized to work at the Bay Car Wash, he will have no contact or involvement with the daily receipts, invoices, cash, credit cards or any other matter involving monetary issues.
3. Defendant shall compile an inventory of any liquid assets still in his possession and provide that inventory to the Receiver.
4. Defendant is subject to house arrest if deemed necessary by Pretrial Services.

Defendant shall be released immediately from custody, subject to the Order of Release as amended by this Order.

CONCLUSION

Defendant has overcome the presumption that he should be detained pending sentencing. There are additional conditions that the Court finds will prove effective to ensure Defendant's appearance at subsequent proceedings before this Court.

Accordingly, **IT IS HEREBY ORDERED** that Defendant's Motion to Appeal the Detention Order (Docket No. 22) is **GRANTED**.

Dated: Friday, March 6, 2009

s/ Paul A. Magnuson _____
Paul A. Magnuson
United States District Court Judge