

UNITED STATES DISTRICT COURTSOUTHERN DISTRICT OF FLORIDA

CASE NO.: 99-8125-CR-HURLEY

UNITED STATES OF AMERICA,

Plaintiff,

v.

GARY J. PIERCE,

Defendant.

ORDER AFFIRMING MAGISTRATE JUDGE'S DETENTION

ORDER AND DENYING DEFENDANT'S MOTION

TO DISMISS FIRST SUPERCEDING INDICTMENT OR IN THE

ALTERNATIVE FOR RELEASE. SEVERANCE, AND IMMEDIATE TRIAL

THIS MATTER is before the court upon defendant's appeal of Magistrate Judge Linnea

Johnson's pretrial detention order and upon defendant's motion to dismiss the first
superseding

indictment or, in the alternative, for his immediate release, severance and trial [DE #
180].

I

The court reviews the pretrial detention order de novo, exercising independent consideration of all the facts properly before it. United States v. Hurtado, 779 F.2d 1467, 1480-81 (11th Cir. 1985). Magistrate Johnson determined that no condition or combination of conditions will reasonably assure the appearance of the defendant and the safety of any other person and the community. Upon review of the government's and

defendant's memorandum of law, and the transcript of the proceedings before Magistrate Johnson, the court affirms the magistrate's order.

Defendant, Pierce, is alleged to have participated in a conspiracy to commit mail and wire fraud. He is the CEO of a Bahamian corporation which he values at a "billion" dollars. During the crime, wire transfers to the Bahamas totaling five million dollars were made to defendant's company, CSIAG. Defendant has no ties to the Southern District of Florida. His family resides in Indiana while he lives with his girlfriend in her home in California. He has traveled extensively throughout the world, including a trip to the Bahamas immediately prior to his arrest. When arrested, defendant was staying in a hotel in Ft. Lauderdale under a different name. In addition' at the time of his arrest the following items were found in defendant's briefcase: (1) proof of foreign bank accounts; (2) documents to apply for permanent residence in the Bahamas; (3) documents showing that he was in the process of purchasing homes in the Bahamas and Great Britain; and (4) documents indicating that he was in the process of purchasing a 4.5 million dollar ocean vessel located in Australia which was to be registered in the Bahamas. In addition defendant has a prior felony conviction for assault, armed robbery, and false imprisonment that involved a million dollar armored car robbery.

Based upon the previous facts, the court concurs that no condition or combination of conditions will reasonably assure the appearance of the defendant and the safety of any other person and the community, and thus affirms Magistrate Johnson's detention order.

II

Defendant also filed a motion to dismiss the first superseding indictment, or in the alternative, for immediate release, severance, and trial. Defendant argues that the Speedy Trial Act has been violated as the time began to run when he was indicted on September 20, 1999, and that his trial should have commenced on or before November 29, 1999. While he agreed to start the trial on January 3, 2000, the case has been continued to February 2000. Defendant additionally argues for dismissal as he has been continuously incarcerated for over 90 days without a trial. See 18 U.S.C. §3164 (b).

Defendant's calculation incorrect as the time has been tolled. In calculating the deadline prescribed by the Speedy Trial Act, certain periods of time must be excluded. See 18 U.S.C. § 31 61(h); see also 18 U.S.C. § 31 64(b). Included in the exclusion is "a reasonable period of delay when the defendant is joined for trial with a co defendant as to whom the time for trial has not run and no motion for severance has been granted." 18 U.S.C. § 3161 (h)(7). In addition, the time is tolled for any period of delay resulting from a continuance granted by the court on its own motion or at the request of a defendant or the government provided that the ends of justice are served. 18 U.S.C. § 3161 (h)(8)(A). In the interest of justice, the court has granted two continuances at the request of co defendants and the government. The nature of the case is complex as it involves eight defendants, a scheme to defraud through the sale of viatical insurance policies, and voluminous documents. In addition, one co defendant was a fugitive for a short period of time, which also tolls the calculation of time. See United States v. Tobin, 840 F.2d 867 (

11th (: in 1988) (holding that the reasonable delay attributable to the fugitive status of a co-indictee is excludable as to those defendants awaiting trial).

As for severance, there is a strong preference for trying co defendants together as it promotes judicial efficiency by avoiding successive trials involving the same evidence. United States v. Khourv, 901 F.2d 948, 972 (11th Cir. 1990).

Because the time for calculating speedy trial rights has been tolled, defendant's motion must be denied.

ORDERED and ADJUDGED that:

- (1) Magistrate Johnson's detention order is AFFIRMED.
- (2) Defendant's motion for hearing on appeal [DE # 26] is DENIED.
- (3) Defendant's motion to dismiss first superseding indictment, or in the alternative, for severance, immediate release, and trial [DE # 180] is DENIED.

DONE and SIGNED in Chambers at West Palm Beach, Florida this day of January, 2000.

Daniel T. K. Hurley United States District, Judge

Copies provided to:

United States Magistrate Judge Linnea R. Johnson

Neil G. Taylor, Esq.

Ellen Cohen, AUSA

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