

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

-----

UNITED STATES OF AMERICA,

Plaintiff,

No. 1:22-cr-114

vs.

Hon. JANE M. BECKERING  
U.S. District Judge

GERALD BENNETT,

Defendant.

\_\_\_\_\_ /

UNOPPOSED MOTION TO DISMISS

Pursuant to Rule 48(a) of the Federal Rules of Criminal Procedure, the United States Attorney for the Western District of Michigan hereby moves to dismiss the charges in the Indictment and Superseding Indictment for the reason that the Gerald Bennett died on or about November 13, 2023.

On November 7, 2023, the government was advised that Bennett was admitted to a hospital for cancer treatment. On November 8, 2023, his condition declined substantially, and he was placed on life support. On November 9, 2023, the Court granted the defense's emergency motion for bond while Bennett was in the hospital. The United States Marshals Service continued to monitor his status. On November 13, 2023, the hospital advised the U.S. Marshals Service that Bennett had died at 6:59 a.m. The U.S. Marshals Service received written confirmation via email from Chief Investigator Michelle A. Fox, from the Office of the Medical Examiner. The government requested a copy of the death certificate. Chief Investigator Fox advised that a copy should be

available after it is filed with the county clerk in two weeks. The government has advised the victim's family of Bennett's death.

Federal Rule of Criminal Procedure 48(a) provides that the "government may, with leave of court, dismiss an indictment, information, or complaint." Fed. R. Crim. P. 48(a). The "principal object of the 'leave of court' requirement is apparently to protect a defendant against prosecutorial harassment, e.g., charging, dismissing, and recharging when the Government moves to dismiss an indictment over the defendant's objection." *Rinaldi v. United States*, 434 U.S. 22, 29 n. 15 (1977). In other words, the danger to be guarded against is the risk that prosecutors "enter a *nolle prosequi* before jeopardy attaches and then proceed to reindict the defendant on basically the same charges and evidence." *United States v. Palomares*, 119 F.3d 556, 558 (7th Cir. 1997).

Because this risk is typically low, a "court is generally required to grant a prosecutor's Rule 48(a) motion to dismiss unless dismissal is clearly contrary to manifest public interest." *United States v. Carrigan*, 778 F.2d 1454, 1463 (10th Cir. 1985). A "court must grant the government's Rule 48(a) motion unless the court concludes that to grant it would be clearly contrary to manifest public interest, determined by whether the prosecutor's motion to dismiss was made in bad faith." *United States v. Goodson*, 204 F.3d 508, 512 (4th Cir. 2000).

Here, defendant Gerald Bennett is deceased. He was the sole defendant in this matter and prosecution is no longer possible. The government has conferred with defense counsel, and they do not object to this motion to dismiss. Accordingly, the government

asks this Court to grant the unopposed motion to dismiss all charges against Gerald Bennett.

Respectfully submitted,

MARK A. TOTTEN  
United States Attorney

Dated: November 14, 2023

/s/ Austin J. Hakes  
AUSTIN J. HAKES  
DANIEL Y. MEKARU  
Assistant United States Attorneys  
P.O. Box 208  
Grand Rapids, Michigan 49501-0208  
(616) 456-2404