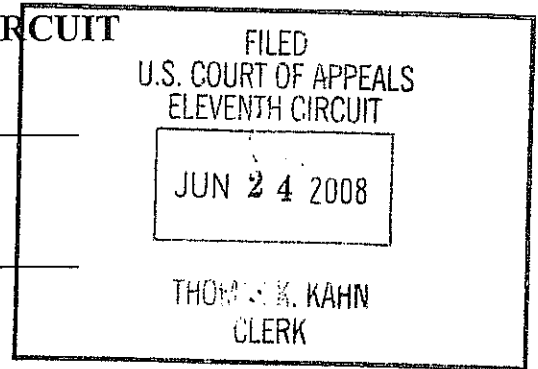


IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

07-13163-B

UNITED STATES OF AMERICA,



Plaintiff-Appellee-
Cross-Appellant,

versus

DON EUGENE SIEGELMAN,
RICHARD SCRUSHY,

Defendants-Appellants-
Cross-Appellees.

On Appeal from the United States District Court for the
Middle District of Alabama

BEFORE: TJOFLAT and ANDERSON, Circuit Judges.

BY THE COURT:

Now before the Court is Appellant Scrushy's renewed motion for release on bond pending appeal. Scrushy argues that, notwithstanding our January 7, 2008, denial of his motion for release on bond and our March 27, 2008, refusal to reconsider that denial, the Court's decision to grant Appellant Siegelman's motion for release pending appeal "dramatically changes the landscape of this case" such that we

should now afford Scrusby the same relief given to his co-defendant.

Whether Scrusby has presented clear and convincing evidence that he is not a flight risk is an inquiry preliminary to and distinct from the issue of whether he has identified an outcome-determinative “substantial question,” as that term is used in 18 U.S.C. § 3143(b)(1)(B). As we explained in our January 7 order, we did not reach the question of whether Scrusby’s appeal presents a substantial question because Scrusby had not met his initial burden under 18 U.S.C. § 3143(b)(1)(A) of demonstrating by clear and convincing evidence that he is unlikely to flee if he is released pending resolution of this appeal.¹ Neither Scrusby’s previous filings nor his renewed motion for release on bond pending appeal demonstrates that the district court clearly erred in ruling that Scrusby had not satisfied § 3143(b)(1)(A)’s requirements on the flight risk issue.

Scrusby’s renewed motion for release on bond pending appeal is DENIED.

¹ In contrast, the March 27, 2008, order granting Siegelman’s motion for release included the finding that Appellant Siegelman had satisfied all of the criteria of 18 U.S.C. § 3143(b)(1)(A) and (B).