

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

BERNARD C. SEIDLING,

Defendant.

ORDER

11-cr-126-bbc

Defendant Bernard C. Seidling has moved for an order staying execution of his sentence and granting his release while his case is on appeal to the Court of Appeals for the Seventh Circuit. The motion will be denied.

I agree with defendant that he is not likely to flee or pose a danger to the safety of any other person or the community, but more is required under 18 U.S.C. § 3143(b)(1) before a stay would be proper. His appeal must raise a substantial question of law likely to result in reversal, a new trial, a sentence that does not include a term of imprisonment or a reduced sentence less than the total of the time already served plus the expected duration of the appeal process. Defendant's appeal does not present a substantial question of law. The facts of his case are odd, perhaps novel, but they are covered by the provisions of the mail fraud statute, 18 U.S.C. § 1341. As the government notes, "numerous cases support the government's position that § 1341 applies to situations in which a defendant deceives a third

party as a means of defrauding a victim,” Plt.’s Br., dkt. #63, at 3 (citing Bridge v. Phoenix Bond & Indemnity Co., 553 U.S. 639 (2008); United States v. Cosentino, 869 F.2d 301 (7th Cir. 1989)), which is the factual situation in this case. Defendant sent false documents to various small claims courts with the immediate intent to deceive the courts and the ultimate intent of defrauding the persons named as defendants in the actions.

Defendant says that he has another issue for appeal. He believes that this court erred in denying him a reduction for acceptance of responsibility, despite his stipulation to all the facts that made up the elements of the charged offense and despite the agreement of the government that such a reduction was deserved. I explained at sentencing why I was denying the requested reduction. It is not impossible that the court of appeals would find that this explanation was inadequate, but it is unlikely. In any event, the court of appeals’ disagreement with this determination would not constitute a ground for a stay. It would not result in reversal, a sentence that does not include a term of imprisonment or a reduced term of imprisonment less than the time of the appeals process.

ORDER

IT IS ORDERED that defendant Bernard C. Seidling’s motion for a stay of execution

of his sentence and for release pending resolution of his appeal of his conviction and sentence is DENIED.

Entered this 9th day of May, 2013.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge