

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

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UNITED STATES OF AMERICA,

Plaintiff,

v.

SUSAN SCHEPP,

Defendant.

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ORDER

13-cr-102-bbc

Defendant Susan Schepp has moved for (1) a stay of execution of the six month sentence imposed on her on May 5, 2014; (2) release pending a decision on her appeal from her sentence; and (3) leave to proceed on appeal in forma pauperis. Her request for leave to proceed on appeal in forma pauperis will be granted, but her other two motions will be denied.

Although defendant retained counsel privately in this court, a review of her financial resources shows that she is eligible for appointed counsel on appeal. Her trial counsel is willing to accept appointment as appellate counsel and I know of no reason why he should not be appointed. Seventh Circuit Court of Appeals Rule 51(a).

Defendant's first two motions may be considered together because both depend on the probability that her sentence will be overturned on appeal. 18 U.S.C. § 3143(b) allows a sentencing court to release a person who has been found guilty of an offense and sentenced

to a term of imprisonment only if the person is not likely to flee or pose a danger to any person or to the community *and* is raising “a substantial question of law or fact likely to result in reversal, a new trial, a sentence that does not include a term of imprisonment or a reduced sentence to a lower term of imprisonment.” Defendant is not likely to flee or pose a danger to any person or to the community, but she cannot show that her case raises a substantial question of law or fact likely to result in reversal of her sentence of imprisonment.

Defendant’s counsel has argued vigorously to the contrary, insisting that the court made numerous errors in sentencing defendant: in failing to give adequate consideration to the sentencing factors set out in 18 U.S.C. § 3553(a), in speculating that defendant gambled for a longer period of time than she was willing to acknowledge, in ignoring counsel’s statistical information about defendant’s low risk of re-offending and in failing to find that defendant’s family responsibilities took her case outside the hypothetical heartland of cases. He goes on to explain that the care of defendant’s disabled son has become more complicated since defendant was sentenced, making her presence at home even more important. With the exception of this last information, all of these matters were raised and considered at sentencing. None of them, including the new information about defendant’s son, is likely to make a difference on appeal.

Defendant was sentenced at the bottom of the applicable guidelines range on her plea of guilty. Her counsel does not contend that the range was calculated improperly. As much as he disagrees with the decisions made in her sentencing, he has not suggested any reason

why the court of appeals would be likely to overturn the guideline sentence imposed on his client or explained why this case might be different from the many cases in which the court of appeals has upheld sentences imposed in similar cases. E.g., United States v. Harvey, 516 F.3d 553, 556 (7th Cir. 2008) (court of appeals presumes that within-guidelines sentences are reasonable and will overturn such a sentence only if defendant demonstrates that sentence is unreasonable in light of § 3553(a) factors); United States v. Nitch, 477 F.3d 933, 937 (7th Cir. 2007) (sentence that is properly calculated under guidelines is entitled to rebuttable presumption of reasonableness); United States v. Lopez, 430 F.3d 854, 857 (7th Cir. 2005) (role of court of appeals “is not to choose between possible sentences, but rather to review the reasonableness of the sentence imposed by the district court”).

As for the new information submitted by defendant that her son Eric will no longer be available to help with the care of her disabled son, her daughter Christina is being paid for the care she is providing her disabled brother, just as defendant was. Presumably, the same funding source can provide funding for another caregiver to assist Christina.

Under these circumstances, in which defendant is not raising a substantial question of law or fact and defendant’s sentence is entitled to a rebuttable presumption of reasonableness, I conclude that defendant does not meet the statutory requirements for release pending appeal set out in § 3143(b) or for a stay of execution of the sentence.

#### ORDER

IT IS ORDERED that defendant Susan Schoepp’s motions for (1) a stay of execution

of the six month sentence imposed on her on May 5, 2014 and (2) for release pending a decision on her appeal from her sentence are DENIED and her motion for leave to proceed on appeal in forma pauperis is GRANTED.

Entered this 30th day of May, 2014.

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