

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

OPINION & ORDER

RICHARD GEASLAND,

15-cr-132-jdp

Defendant.

Defendant Richard Geasland is charged with one count of possession of child pornography, contrary to 18 U.S.C. § 2252(a)(4)(B), with a related forfeiture count. Dkt. 10. Defendant seeks to dismiss the indictment because after his arrest by Cuba City police officers, he was held in the Grant County Jail for 21 days without charge, without access to counsel, without appearing before a judge, and in conditions that were inhumane. Dkt. 15. Defendant concedes that he cannot show exactly who or what is responsible for this, so he sought a hearing at which he could establish the circumstances that lead to his improper detention. The government opposed the hearing, Dkt. 25, and the Magistrate Judge denied the request after a telephonic hearing. Dkt. 26 and Dkt. 28 (transcript of telephonic hearing). Defendant objected to the denial of his request for a hearing, Dkt. 32, which presents the issue to me.

Technically the question before me is whether defendant should get a hearing on his motion to dismiss, but if I deny the request for a hearing, his motion to dismiss will fail as a result. Make no mistake: defendant alleges that he was held in Grant County under appalling conditions. If defendant's allegations are true, he may well have a 42 U.S.C. § 1983 claim for the violation of his constitutional rights. But this circuit does not recognize "outrageous

government conduct” as a basis for dismissing an indictment. *United States v. Stallworth*, 656 F.3d 721, 730 (7th Cir. 2011) (“Outrageous government conduct is not a defense in this circuit.”). Thus, with a hearing or without, defendant’s motion to dismiss the indictment is doomed.

Defendant contends that the Seventh Circuit has left the door open, however slightly, to an outrageous conduct defense, and that the government conduct here is so far beyond the pale that this case merits consideration of such a defense. I am not persuaded for two reasons. First, Seventh Circuit cases do not leave the door open even slightly: “[T]his circuit clearly and consistently has refused to recognize any defense based on either ‘sentencing manipulation’ or on asserting ‘outrageous government conduct.’” *United States v. White*, 519 F.3d 342, 346 (7th Cir. 2008). There are a few statements in Seventh Circuit cases that explain why, even if the circuit were to recognize the defense, the case at hand would not warrant it. *See, e.g., United States v. Westmoreland*, 712 F.3d 1066, 1072 (7th Cir. 2013). But these extra words of explanation do not leave the door open to the defense even in an extreme case.

The second reason I am not persuaded is that the objectionable conduct alleged here, even if outrageous, did not fundamentally corrupt the prosecution itself. As the Seventh Circuit explained in *Westmoreland*, where other circuits have recognized the outrageous conduct defense, they did so where the government created a criminal enterprise that did not exist, and induced the defendant to commit the crime by unreasonable means. *Id.* In *Westmoreland*, an investigator’s illicit affair with a witness (the defendant’s wife, no less) tainted the investigation, but even that was not enough to warrant application of the outrageous conduct doctrine because the illicit affair did not play any role in the crime itself.

Id. The outrageous conduct doctrine, even where it is recognized, is extremely limited: it does not give a district court free-floating authority to dismiss an indictment as a sanction for government conduct whenever it violates the rights of a defendant.

Defendant's case here does not go even as far as *Westmoreland*. The abuse of defendant's rights while initially incarcerated played no role in the crime itself, as in *Westmoreland*. But defendant here has not even suggested that the alleged outrageous conduct somehow tainted the investigation, as the affair did in *Westmoreland*. Thus, even if the conduct of the Cuba City and Grant County officials was outrageous, it simply did not affect defendant's crime or the investigation itself.

Section 1983 provides the appropriate remedy for the alleged violation of defendant's civil rights as a detainee. But the violation of those rights does not provide a basis for dismissal of the indictment.

ORDER

IT IS ORDERED that:

1. Defendant's objection, Dkt. 32, to the magistrate judge's ruling on defendant's motion for a hearing is overruled.
2. Defendant's motion to dismiss the indictment, Dkt. 15, is denied.

Entered February 1, 2016.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge