

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CASE NO. 21-377 (BAH)

ANTHONY WILLIAMS,

Defendant.

REPLY TO OPPOSITION TO MOTION FOR BOND PENDING APPEAL

In opposing Anthony Williams’s motion for bond pending appeal, the government does not dispute that he “is not likely to flee or pose a danger to the safety of any person or the community if released,” as required to meet the first prong of the test for release pending appeal under 18 U.S.C. § 3143(b)(1)(A). (*See* Dkt 136, Resp., at 4.) Mr. Williams has fully complied with his bond conditions during the entire pendency of this case.

The government instead solely argues that Mr. Williams’s appeal will not raise a substantial question of law or fact likely to result in reversal a reduced sentence to a term of imprisonment less than the total of the time already served plus the expected duration of the appeal process. (*Id.*, 18 U.S.C. § 3143(b)(1)(B).) This argument should not carry the day. As the government acknowledges, an appeal raises a substantial question if it could ““very well be decided the other way.”” (*Id.*,

quoting *United States v. Perholtz*, 836 F.2d 554, 561 (D.C. Cir. 1987).) Here, this Court need not speculate whether the question about the scope of 18 U.S.C. § 1512(c)(2) that Mr. Williams intends to raise on appeal could be decided the other way: A judge on this Court *has* decided the issue to the contrary, in four separately prosecuted cases, and the question is currently pending on appeal before the D.C. Circuit. See *United States v. Miller*, Case No. 1:21-CR-00119 (CJN), 2022 WL 823070 (D.D.C. Mar. 7, 2022), *appeal docketed*, No. 22-3041 (D.C. Cir. June 28, 2022). Even though the other judges on this Court have rejected the argument, it is clear it could be decided the other way based on Judge Nichols's decision and denial of reconsideration in *Miller*. The appellate briefing in *Miller* is substantial, with the government's opening and reply brief just barely coming in under the word limit. Mr. Williams should be allowed to remain on bond while this issue is pending resolution.

The government also argues that, even if Mr. Williams's prevails on his § 1512(c)(2) argument, he is not likely to serve over the time it will take to resolve the *Miller* appeal given his misdemeanor convictions. That is not clear. Oral argument is not yet scheduled in *Miller*. According to the judiciary's annual report on time intervals for resolutions of appeals, the D.C. Circuit's *median* time from the filing of the appellee brief until oral argument is 3.5 months, and from oral argument to final order is 3.8 months, for a total median time of over 7 months. U.S. COURTS,

JUDICIAL BUSINESS, TABLE B-4A (2022). The *Miller* appellee brief was filed in mid-September, so there is a substantial likelihood that the D.C. Circuit may not resolve the appeal until after the time Mr. Williams must serve on his misdemeanor convictions.

Mr. Williams asks for bond pending appeal.

Respectfully submitted,

s/ Benton C. Martin

s/James R. Gerometta

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Date: October 14, 2022