

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA

v.

Criminal No. 6:21-cr-141-RBD-EJK

EMMET BOWENS

**UNITED STATES' RESPONSE IN OPPOSITION TO
DEFENDANT'S MOTION TO MODIFY RELEASE CONDITIONS**

The United States opposes the defendant's renewed motion to modify conditions of release. Doc. 40. For the forgoing reasons, the United States respectfully urges the Court to deny the defendant's motion.

BACKGROUND

On November 10, 2021, a federal grand jury returned an indictment charging the defendant with wire fraud, in violation of 18 U.S.C. § 1343 (Counts One and Two) and Money Laundering, in violation on 18 U.S.C. § 1957 (Count Three through Six). Doc. 1. The defendant was arrested on December 2, 2021, Doc. 9, when he re-entered the United States at an airport in Atlanta, Georgia after arriving on a flight from international travel.

The defendant was initially brought before a magistrate in the Northern District of Georgia, where the Court set conditions of release. Doc. 7. The conditions of release include GPS location monitoring, among other conditions. Doc. 7-2. At the defendant's In-District appearance, arraignment

and modification hearing on December 16, 2021, the defendant moved to modify his conditions of release, Doc. 10, and specifically sought the removal of his GPS monitor. The Court denied the defendant's motion on the same date. *Id.*; Doc. 15.

The defendant filed the instant motion again seeking the removal of GPS monitor on April 21, 2022. Doc. 40. In his motion the defendant argues that he was under the belief that the GPS monitor would only be required for the period between his release from Custody in the Northern District of Florida and his arrival in the Middle District of Florida. Doc. 40 at 2-3. The defendant also asserts that he finds the GPS monitor physically uncomfortable. *See* Doc. 40 at 3. Finally the defendant argues that his compliance with the conditions of release demonstrates that he does not pose a risk of flight or a danger to the community.

The Court should deny the defendant's motion. First, the defendant has failed to meet the applicable burden governing motions to reconsider. Second, the defendant's motion fails to meet the burden for modifying his release conditions under the applicable statutes. The undersigned has contacted the United States Pretrial Services Officer Charles Sweatt, who confirmed that the defendant has not had any issues with compliance.

MEMORANDUM OF LAW

I. The Defendant has not met the burden under the applicable rules governing motions to reconsider.

As indicated in the title of his motion, the defendant is renewing his previously denied motion to modify his release conditions. As such, the defendant's motion should be construed as a motion to reconsider. The defendant has not met the burden under the applicable rules governing motions to reconsider, namely, the defendant has failed to establish that there is any newly discovered evidence or manifest errors of law or fact. As such, the Court should deny the defendant's motion.

There is no rule under the Federal Rules of Criminal procedure governing motions to reconsider. Nonetheless, motions to reconsider have been permitted and evaluated by District Courts in this, and other sister districts, under the same standards used in civil cases. *See United States v. Lapin*, No. 6:20-cr-89-RBD-LRH, Doc. 129 (M.D.F.L. Jan. 22, 2021); *United States v. Sencan*, No. CRIM. 13-0117-CG, 2013 WL 6237455, at *3 (S.D. Ala. Dec. 3, 2013). In these situations, Federal Rule of Civil Procedure 59 governs. Under that rule, the grounds for granting a motion to reconsider include newly discovered evidence or manifest errors of law or fact. *Jones v. Thomas*, 605 F. App'x 813, 814 (11th Cir. 2015) (citing *Arthur v. King*, 500 F.3d 1335, 1343 (11th Cir. 2007)). The Eleventh Circuit has repeatedly held that motions to reconsider cannot be used to, "relitigate old matters, raise argument or present

evidence that could have been raised prior to the entry of judgment.” *Id.* at 814; *see also United States v. Gossett*, 671 F. App'x 748, 749 (11th Cir. 2016) (holding that the denial of a motion to reconsider was proper, in part, because the defendant’s motion did not raise any arguments that were unavailable at the time of his initial motion).

The instant motion asks the Court to reconsider the same issue that it previously ruled on, and so should be construed as a motion to reconsider. As such, Federal Rule of Civil Procedure 59 governs. Here, the defendant has failed to meet the burden for succeeding on a motion to reconsider under Rule 59. Specifically, the defendant does not allege any new evidence, nor claim any error of law or fact in his motion. Rather, the instant motion is an attempt to impermissibly relitigate old matters and raise an argument that could have been raised prior to the entry of the Court’s first order at Doc. 15.

For these reasons, the Court should deny the instant motion.

II. The defendant’s motion does not meet the burden for modifying his release conditions under the applicable statutes.

The Court should deny the defendant’s motion because none of the information alleged in the defendant’s motion is new nor material to his conditions regarding flight or dangerousness.

Under 18 U.S.C. § 3142(c)(3), “The judicial officer may at any time amend the order to impose additional or different conditions of release.” This inquiry, however, is guided by 18 U.S.C. § 3142(f). Under 18 U.S.C. § 3142(f)

the defendant must establish that information exists that was not known to him at the time of the initial detention hearing, and that this information has a material bearing on the issue of whether there are conditions of release that will reasonably assure his appearance as required and the safety of any other person and the community.

The defendant has not met his burden under the applicable statutes and his motion should be denied. The defendant has failed to establish both that this information is new and that it has a material bearing on his release conditions regarding flight or dangerousness. The “new information” relied upon by the defendant is threefold, first the defendant argues that he believed the GPS would be removed when he arrived in the Middle District of Florida, second the defendant cites the physical discomfort caused by the monitor, and third, the defendant highlights his performance under the conditions imposed by the Court.

None of the arguments put forth by the defendant qualify as “new information.” Neither, the defendant’s mistaken belief that his monitor would be removed upon arrival in the Middle District of Florida nor the the physical experience of wearing a monitor constitute new information. Additionally, the defendant’s compliance while on supervised release also does not qualify as new information. Release conditions are imposed with the presumption that the defendant will follow them. Under the statute, the conditions set by the

Court are those determined to be necessary to assure the defendant's appearance. As such, the compliance with those conditions is not "new information;" rather it is what the Court previously determined was necessary to bring about the desired result.

Even if the Court were to find that any of the information in the defendant's motion is "new information," the defendant has not established that this information has a material bearing on his release conditions regarding flight or dangerousness. It is unclear, how the defendant's mistaken belief, the physical experience of wearing the monitor, or complying with the conditions of his release—as is anticipated by the Court when it sets release conditions—has any bearing on whether the defendant poses a risk of flight or a danger to the community. If anything, the defendant's compliance indicates the Court correctly tailored the conditions of release to meet the purposes of the 18 U.S.C. § 3142.

For these reasons, the United States respectfully urges the court to deny the defendant's motion.

CONCLUSION

For the foregoing reasons, this Court should deny defendant's renewed motion to modify the conditions of his release.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 25, 2022, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following:

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