

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 23-60173-CR-WILLIAMS/GRAHAM

UNITED STATES OF AMERICA

vs.

TRACY D. WADE,

Defendant.

**UNITED STATES' RESPONSE IN OPPOSITION TO
DEFENDANT'S MOTION TO STAY JAIL SENTENCE PENDING APPEAL (DE 247)**

Introduction

The United States of America, by and through its undersigned counsel, hereby responds in opposition to the “Motion to Stay Jail Sentence Pending Appeal and Notice that Defendant Has Not Been Designated to a Prison,” filed on behalf of Defendant Tracy D. Wade (“Defendant”) on April 9, 2025, at docket entry (“DE”) 247 (the “Motion” or “Mot.”). As explained herein, the Bail Reform Act, 18 U.S.C. § 3143, requires Defendant to serve his sentence of imprisonment pending appeal of his conviction because, at a minimum, Defendant’s appeal does not raise a substantial question of law or fact that is likely to result in reversal, a new trial, or a reduced sentence. Accordingly, the United States respectfully asks the Court to: 1) deny the Motion; and 2) upon the conclusion of the hearing on the Motion, remand Defendant to the custody of the United States Marshal to begin serving his sentence consistent with the Judgment (DE 242).¹

¹ The Court specially set a hearing on the Motion for 1:00 p.m. on Monday, April 14, 2025 (DE 250). The Judgment directs Defendant to surrender for service of his sentence by 2:00 p.m. on Monday, April 14, 2025 (DE 242 at 7).

Pertinent Background

On October 23, 2024, following a 9-day trial, a jury returned a verdict finding Defendant guilty of all counts with which he was charged in the Superseding Indictment (DE 188), that is, one count of conspiracy to commit wire fraud (18 U.S.C. § 1349), two counts of wire fraud (18 U.S.C. § 1343), one count of conspiracy to make false statements to the SBA (18 U.S.C. § 371), and three counts of making false statements to the SBA (15 U.S.C. § 645(a)).²

On March 12, 2025, the Court sentenced Defendant to a total term of imprisonment of 90 days, consisting of 90 days as to each of Counts 1, 2, 3, 4, 6, 7, and 10 to run concurrently with each other. Judgement was entered on March 20, 2025 (DE 242). In the Judgment, the Court further ordered Defendant to surrender for service of sentence at the institution designated by the Bureau of Prisons before 2:00 p.m. on April 14, 2025.³

Defendant filed a Notice of Appeal on April 4, 2025 (DE 245). On April 9, Defendant filed the Motion seeking to stay his 90-day term of imprisonment until the conclusion of his appeal (DE 247 at 2). The Motion fails under the relevant statute and Eleventh Circuit precedent discussed below.

Relevant Law

As it pertains to the Motion, Section 3143(b)(1)(B) of Title 18 (the Bail Reform Act of 1984) provides as follows:

the judicial officer **shall order** that a person who has been found guilty of an offense and sentenced to a term of imprisonment, and who has filed an appeal or a petition for a writ of certiorari, **be detained**, unless the judicial officer finds—

² Defendant's co-defendant, Carolyn Wade, was also found guilty of these offenses.

³ At the sentencing hearing, the Court asked defense counsel to advise the Court if Defendant had not been so designated by the surrender date. The Motion provides such notice.

that the appeal is not for the purpose of delay and **raises a substantial question of law or fact likely to result in—**

- (i) reversal,
- (ii) an order for a new trial,
- (iii) a sentence that does not include a term of imprisonment, or
- (iv) 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.

18 U.S.C. § 3143(b)(1)(B) (emphasis added).

In *United States v. Giancola*, 754 F.2d 898 (11th Cir. 1985), the Eleventh Circuit explained that Congress intended for the 1984 Bail Reform Act to “limit” the “availability” of bail pending appeal. *Id.* at 900. Congress accomplished this by, among other things, “chang[ing] the presumption so that the conviction is presumed correct and the burden is on the convicted defendant to overcome that presumption.” *Id.* at 900-901. In that vein, the Eleventh Circuit defined a “substantial question” as “one of more substance than would be necessary to a finding that it was not frivolous. It is a ‘close’ question or one that very well could be decided the other way.” *Id.* at 901. A defendant’s failure to meet his burden with respect to the “substantial question” is fatal to his request for bail pending appeal. *United States v. Smith*, No. 23-CR-20122-Bloom, 2024 WL 4441809, at *3 (S.D. Fla. Oct. 8, 2024)

Argument

The Bail Reform Act Requires Defendant to Serve his Sentence Pending Appeal

Defendant must serve his sentence of imprisonment pending appeal because Defendant’s appeal does not raise a substantial question of law or fact, much less a substantial question of law or fact likely to result in reversal, a new trial, or a reduced sentence. Indeed, on this decisive point, the Motion merely suggests that “[t]here may be legal issues with the conduct of the trial which will be identified once undersigned counsel has reviewed the transcripts, exhibits, and other

records related to this case.” Mot. at 6. That is woefully insufficient. *See, e.g., Smith*, 2024 WL 4441809, at *3 (denying defendant’s motion for bail pending appeal where defendant “has only stated a general intention to raise pre-trial and trial issues that may involve constitutional questions.”).

Defendant also asserts, as a basis for a stay, that he intends to raise on appeal the sufficiency of the evidence regarding his intent for each offense of conviction. This issue is commonly raised on direct appeals and is not a “substantial question” in this case. Rather, the issue of whether the evidence was sufficient to support Defendant’s intent as to each count of conviction was litigated in Defendant’s oral motion (before the verdict) and written motion (after the verdict) for judgment of acquittal pursuant to Rule 29 (DEs 204 and 207). In its Order denying Defendant’s written Rule 29 motion, the Court concluded that “the evidence sufficiently established that Defendants knowingly participated in a scheme to fraudulently obtain PPP loans and acted with intent to defraud.” DE 213 at 9. Although Defendant has the right challenge the sufficiency of the evidence on direct appeal, it is not a “close question or one that very well could be decided the other way”—especially since the same legal standard applied by the Court to adjudicate (and deny) the Rule 29 motions will govern on appeal.⁴ *See, e.g., United States v. Munshani*, No. 22-CR-215 (JSR), 2023 WL 5390201, at *2 (S.D.N.Y. Aug. 21, 2023) (denying bail pending appeal where defendant raised sufficiency of the evidence as substantial question for appeal). Just like in that

⁴ As with the Rule 29 motions decided by this Court in the government’s favor before and after the verdict, on appeal, the Eleventh Circuit will consider the evidence in the light most favorable to the government, drawing all reasonable inferences and credibility choices in the government’s favor. If a reasonable jury could conclude that the evidence establishes guilt beyond a reasonable doubt, as this Court did, the Eleventh Circuit will affirm the verdict. *United States v. Browne*, 505 F.3d 1229, 1253 (11th Cir. 2007).

case, the nature and amount of evidence in the record against Defendant renders this not a close question on appeal.

Finally, to the extent that Defendant is appealing the reasonableness of the sentence imposed, it is unlikely that any decision on appeal will result in a more favorable sentence given that the term of imprisonment (90 days) was substantially below the Guidelines sentencing range of 8-14 months determined by the Court.

Because Defendant has failed to meet his burden of establishing that his appeal raises a substantial question of law or fact likely to result in reversal, a new trial, or a more favorable sentence, it unnecessary to address any of the other arguments raised in the Motion.

Conclusion

For the foregoing reasons, Defendant must serve his sentence of imprisonment pending appeal. Accordingly, the United States respectfully asks the Court to deny the Motion and, upon conclusion of the hearing on the Motion, remand Defendant to the custody of the United States Marshal to begin serving his sentence by 2:00 p.m. on April 14, 2025 consistent with the Judgment.

Respectfully submitted,

HAYDEN P. O'BYRNE
UNITED STATES ATTORNEY

By: /s/ David A. Snider
David A. Snider
Assistant United States Attorney
Court ID No. A5502260
500 E. Broward Blvd
Fort Lauderdale, FL 33394
Tel: (954) 660-5696
Fax: (954) 356-7336
Email: david.snider@usdoj.gov