No. 13-3183

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Jul 24, 2013
DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff-Appellee,	)	
	)	
V.	)	O R D E R
	)	
ANNA MILLER,	)	
	)	
Defendant-Appellant.	)	

Before: GUY, BOGGS, and DONALD, Circuit Judges.

Defendant-Appellant, Anna Miller, moves for release on bond pending the appeal of her convictions of conspiracy to commit a hate crime and committing a hate crime involving kidnaping. The district court denied Miller's release pending appeal on March 6, 2013. Miller reported to begin her twelve-month and one-day sentence on April 12, 2013. In her motion for release pending appeal, Miller makes two over-arching arguments: (1) she is not likely to flee nor does she pose a danger to the community; and (2) her appeal is not for purposes of delay, but instead raises substantial questions of law based on a Commerce Clause analysis and the definition of kidnaping used at trial.

Because Miller was convicted of a crime of violence for which the maximum sentence is life imprisonment, she is subject to the mandatory-detention provision of 18 U.S.C. § 3143(b)(2). Consequently, to overcome mandatory detention, Miller must establish the existence of exceptional reasons that make detention inappropriate, as well as make two showings pursuant to § 3143(b)(1): (A) by clear and convincing evidence, that she is not likely to flee or pose a threat to the safety of any other person or the community; and (B) that her appeal is not for delay and raises a substantial

question of law or fact likely to result in reversal, a new trial, a sentence that does not include a prison term, or a sentence of a prison term less than the time she has served plus the expected duration of the appeal. 18 U.S.C. § 3143(b)(1)(A)-(B); *see also United States v. Chilingirian*, 280 F.3d 704, 709 (6th Cir. 2002). Section 3143(b)(1) creates a presumption against release pending appeal. *Chilingirian*, 280 F.3d at 709.

Miller asserts several "exceptional reasons" why she should be released pending appeal: (1) her case raises substantial questions of law and fact based on a Commerce Clause analysis and the definition of kidnaping used at trial; (2) she may serve the entirety of her sentence before her appeal is exhausted; and (3) her family circumstances warrant release because she is the primary caregiver for her six minor children.

Upon review, Miller's arguments are unexceptional. First, Miller's Commerce Clause and kidnaping-definition arguments are premised on facial invalidity, yet Miller cites scant case law to back her claims. Miller primarily relies on *United States v. Morrison*, 529 U.S. 598 (2000), a case that found the civil-damages provision of the Violence Against Women Act unconstitutional, as proof that the Hate Crime Act, 18 U.S.C. § 249, under which she was convicted is also unconstitutional under the Commerce Clause. Yet, Miller cites no precedent holding that the Hate Crime Act is facially invalid. Furthermore, Miller argues for a new jury instruction regarding the definition of kidnaping, which, if adopted, would make Miller's maximum term of imprisonment ten years. Miller speculates that, were this instruction used, she would receive a reduced sentence, but offers no concrete evidence to support this assertion. Consequently, Miller has failed to show that the new sentence she could potentially receive–a maximum of ten years–would be less than the amount of time she has already served plus the duration of the appeal process.

Second, although courts have held that the possibility that a defendant may serve the entirety of his or her sentence before an appeal is exhausted can constitute an exceptional reason for release, *United States v. Garcia*, 340 F.3d 1013, 1019 (9th Cir. 2003), § 3143 creates a presumption against release that is not overcome in this case. 18 U.S.C. § 3143(b)(1); *see also Chilingirian*, 280 F.3d at 709. Third, when mothers are convicted of crimes and sent to prison, family circumstances inevitably become more difficult, but such is always the case when incarceration is the end result for commission of a crime. *United States v. Rodriguez*, 50 F. Supp. 2d 717, 722 (N.D. Ohio 1999) (finding that "family hardship is not an unordinary consequence of incarceration").

Miller also fails to meet the second of the § 3143(b)(1) conditions. First, Miller has shown that she is not likely to flee and that she will not pose a danger to anyone in her community. Due to the fact that Miller does not have a passport, driver's license, or automobile, and practices her faith pursuant to strict Amish traditions, she is unlikely to flee. Moreover, although convicted of a hate crime, Miller also arguably meets the burden that she will not be a danger to the safety of any other person or her community. Prior to voluntarily entering prison, Miller was released without bond during her trial and sentencing and lived in her Amish community without incident during that time. She also has no prior criminal history.

Second, Miller's appeal is likely not for purposes of delaying her sentence, which is one year and one day, but to raise substantial questions of law. However, Miller's appeal does not likely raise a substantial question of law or fact that would shift the tide in her favor. As stated above, Miller cites no precedent holding that the statutes in question are facially invalid and provides no concrete evidence that she would receive a sentence less than the amount of time already served plus the duration of the appeal process, should a different jury instruction on kidnaping be given.

In sum, we conclude that Miller has not demonstrated any exceptional reasons warranting her release pending appeal and has not met the second condition set forth in 18 U.S.C. § 3143(b)(1). Accordingly, her motion for release on bail pending appeal is **DENIED**.

ENTERED BY ORDER OF THE COURT

Clerk