

IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX: KINGSHILL

GOVERNMENT OF THE VIRGIN ISLANDS,	)	
	)	
Plaintiff,	)	
	)	CRIMINAL NO. 141/1985
	)	
v.	)	
	)	POSSESSION OF A
REUBEN MADURO,	)	CONTROLLED SUBSTANCE
	)	WITH INTENT TO DISTRIBUTE
Defendant.	)	
	)	

DARRYL DEAN DONOHUE, ESQUIRE
Assistant Attorney General
Office of the Attorney General
Toro Building
Christiansted, St. Croix
U.S. Virgin Islands 00820
(809) 773-0295
(Attorney for Plaintiff)

ESZART A. WYNTER, ESQUIRE
1 Strand Street
Frederiksted, St. Croix
U.S. Virgin Islands 00840
(809) 772-1900
(Attorney for Defendant)

PETERSEN, Judge

MEMORANDUM OPINION
November 12, 1985

This matter is before this Court after defendant, Reuben Maduro, was convicted following a jury trial on two counts, of possession with intent to distribute a controlled substance. Defendant was sentenced by this Court to five (5) years supervised probation on Count I and eighteen (18) months imprisonment on Count II. Defendant now moves this Court for

GOVERNMENT v. MADURO
CRIMINAL NO. 141/1985
POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DISTRIBUTE
Page 2

a stay of execution of sentencing pending appeal. For the reasons set forth below, defendant's motion is denied.

FACTS

This matter came on for trial September 17, 1985. The jury found defendant guilty on two counts of Possession of a Controlled Substance with Intent to Distribute. Defendant subsequently filed motions for a new trial and/or acquittal; both motions were denied by this Court on November 7, 1985. Defendant was sentenced to five (5) years supervised probation on Count I and eighteen (18) months incarceration on Count II, with said sentence on Count I to run consecutively with the imposed sentence on Count II. Defendant alleges, in his motion for a stay of execution of the aforementioned sentencing pending appeal, that the issues raised by the appeal are meritorious and that his chances of prevailing are substantial.

ISSUES

This Court must determine whether the defendant meets the conditions of the Bail Reform Act of 1984, 18 U.S.C. §3143. ^{1/}

^{1/} See T.5 V.I.C. App. IV R 141(b).

DISCUSSION

Pursuant to §3141(b) of the Bail Reform Act of 1984, before a trial court can grant release pending appeal it must determine

- (1) by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any person or the community if released pursuant to §3142(b) or (c); and
- (2) that the appeal is not for purpose of delay and raises a substantial question of law or fact likely to result in reversal or an order for a new trial.

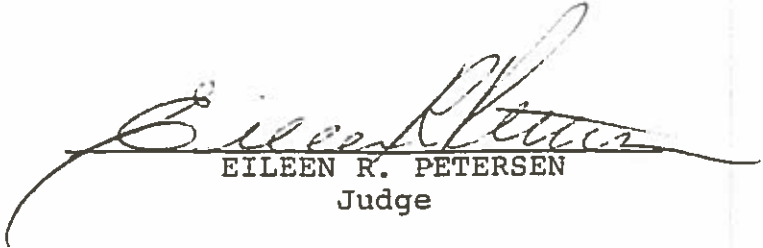
Defendant Maduro has satisfied this Court that he is not likely to flee. He appeared at all scheduled court trials and has shown that he has strong family ties to this community including his interest in the imminent birth of his first offspring. He has failed, however, to establish that if released he would not pose a danger to the community. In this case, the jury found beyond a reasonable doubt that Maduro was guilty of two counts of possession with intent to distribute a controlled substance. It is fair to conclude from the jury's findings that Defendant Maduro has the ability and inclination to distribute both hashish and marijuana and has a source of supply for said controlled substances. In addition, Defendant

GOVERNMENT v. MADURO
CRIMINAL NO. 141/1985
POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DISTRIBUTE
Page 4

Maduro has not produced evidence sufficient to convince this court under a "clear and convincing" standard that he is not presently engaged in any activities involving illegal drugs. The nature of Maduro's conviction, absent any clear and convincing evidence that he is not involved in illicit drug dealings, clearly identifies the defendant as a danger to the community. United States v. Curtis Strong No. 85-129 (3rd Cir. October 11, 1985).

After this Court makes its findings as to flight, danger and delay, it must determine that the question at issue on appeal is a substantial one; that it is so integral to the merits of the conviction that a contrary appellate holding is likely to require reversal of the conviction or a new trial. United States v. Miller Nos. 83-403-01, 83-403-2 (3rd Cir. January 15, 1985). Although the defendant has raised a number of issues which he contends are meritorious, this Court does not find that these issues or a combination of all questions at issue are substantial as defined by the Court in Miller, supra.

For the reasons set forth above the defendant's motion for release pending appeal is denied.


EILEEN R. PETERSEN
Judge