

**DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 3:19-cr-0019
	)	
THOMAS A. OLIVE, II, and THORNE A.	)	
OLIVE,	)	
	)	
Defendant.	)	
	)	

ORDER

BEFORE THE COURT are motions of Thomas A. Olive, II to release the bond obligation deposited with the Court in this matter. (ECF Nos. 96 and 101). Also before the Court is the Government's motion to apply the bond money to the payment of the special assessment and fine imposed by the Judgment against Thomas A. Olive pursuant to 28 U.S.C. § 2044. (ECF No. 98). For the reasons stated below, the Court will order the Clerk of Court to release the \$25,000 bond deposit to the sureties, LaVern Olive and Tara Olive.

On April 17, 2019, Thomas A. Olive ("Olive") appeared before the Court for purposes of his initial appearance and bond hearing. Olive was released on conditions set by the Court. (ECF No. 13). The Court ordered Olive to post a \$25,000 appearance bond. (ECF No. 16). On May 1, 2019, LaVern Olive and Tara Olive posted the appearance bond in the sum of \$25,000. (ECF No. 21).

On March 19, 2020, the Court entered a Judgment committing Olive to the custody of the Bureau of Prisons for term of ten months: four months incarceration and six months on home confinement on supervised release. (ECF No. 95). The Judgment also imposed a \$4,000 fine and \$100 special assessment. *Id.*

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On April 1, 2020, Olive filed a motion requesting exoneration of the bond posted on his behalf.

Thereafter, on April 7, 2020, the United States filed a motion pursuant to 28 U.S.C. § 2044 to apply the bond money to the payment of the special assessment and fine imposed upon Olive. Olive filed an opposition to the motion of the United States on April 10, 2020.

On May 19, 2020, Olive filed a second motion requesting exoneration of the bond posted on his behalf. Thereafter, the United States filed a response.

Rule 46 of the Federal Rules of Criminal Procedure provides in pertinent part that “[t]he court must exonerate the surety and release any bail when a bond condition has been satisfied. *See* Fed. R. Crim. P. 46(g). Nevertheless, 28 U.S.C. § 2044 in pertinent part requires the Court to order

any money belonging to and deposited by or on behalf of the defendant with the court for the purposes of a criminal appearance bail bond . . . to be held and paid over to the United States attorney to be applied to the payment of any assessment, fine, restitution, or penalty imposed upon the defendant.

28 U.S.C. § 2044. However, by its express terms, 28 U.S.C. § 2044 “shall not apply to any third party surety.” *Id.*

Here, the conditions of the bond provide that the “bond will be satisfied and the security will be released when . . . the defendant reports to serve a sentence.” *See* ECF No. 21 at 2. Olive has reported to serve his sentence. Further, the bond was posted by third-party sureties, LaVern and Tara Olive. In the Government’s response to Olive’s second motion requesting exoneration of the bond posted on his behalf, the Government admits that “[n]othing within the government’s possession disputes third party ownership of the bond money.” *See* ECF No. 103 at 2. As such, the Government concedes that “Section 2044 does not

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appear to authorize using \$4,000 of the \$25,000 bond to offset defendant's fine." *Id.* Accordingly, the Court concludes that 28 U.S.C. § 2044 does not apply to the bond posted on behalf of Olive in this matter.

The premises considered, it is hereby

ORDERED that Thomas A. Olive's motions to release the bond obligation deposited with the Court in this matter, ECF Nos. 96 and 101, are **GRANTED**; it is further

ORDERED that the Government's motion to apply the bond money to the payment of the special assessment and fine imposed by the Judgment against Thomas A. Olive, ECF No. 98, is **DENIED**; and it is further

ORDERED that the Clerk of Court shall release the \$25,000 bond deposit to the sureties, LaVern Olive and Tara Olive.

Dated: May 21, 2020

s/ Robert A. Molloy
ROBERT A. MOLLOY
District Judge