

No. 18-30228

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

WINSTON SHROUT,

Defendant-Appellant.

GOVERNMENT'S MOTION TO DISMISS APPEAL
OF FUGITIVE DEFENDANT

The United States moves to dismiss this appeal because defendant is currently a fugitive, having failed to surrender to the Bureau of Prisons.

Procedural History

A jury convicted defendant Winston Shroust on 13 counts of producing, passing, and transmitting fictitious financial obligations, in violation of 18 U.S.C. § 514, and six counts of failing to file tax returns, in violation of 26 U.S.C. § 7203, in April 2017. (Docket No. 109.) The district court sentenced him to a total of ten years in prison, to be followed by five years of supervised release, in October 2018. (Docket No. 161.) Defendant

filed a motion for release pending appeal (Docket No. 179), which the district court denied on December 17, 2018. (Docket No. 181.)

Defendant then filed a motion asking this Court for release pending appeal on December 20, 2018. The government opposed defendant's motion. This Court remanded the case to the district court for the limited purpose of stating its reasons for denying defendant's release pending appeal. The district court did so on January 30, 2019, finding that defendant "could pose a danger to the safety of others in the community if he remains on release," that his appeal was for purposes of delay, and that his appeal did not raise any substantial questions of law or fact. (Docket No. 185.) This Court denied defendant's motion on March 1, 2019.

According to the terms of the district court's order, defendant was obligated to surrender to FCI Sheridan on the first Monday following the denial – that is, on March 4, 2019. (Docket No. 183.) Defendant failed to surrender as ordered. *See* www.bop.gov/inmateloc (as of March 20, 2019, Winston Shrout is not in custody). On March 5, 2019, the district court issued an arrest warrant. (Docket No. 189 (sealed document.)) Defendant was therefore a fugitive when he filed his opening brief on March 18, 2019.

Defense counsel acknowledges both this Court's denial of defendant's motion for release pending appeal and the district court's order directing defendant to surrender, but does not expressly inform the Court that defendant is a fugitive. Counsel notes only that the Bureau of Prisons' web site "currently indicates that Mr. Shrout is 'not in BOP

custody.’” (Br. 4.) Defense counsel does not provide any information that would excuse defendant’s failure to surrender as ordered.

This Court Should Dismiss the Appeal Because Defendant is a Fugitive

The fugitive disentitlement doctrine permits this Court to “dismiss the appeal of a defendant who is a fugitive from justice during the pendency of his appeal.” *Ortega-Rodriguez v. United States*, 507 U.S. 234, 239 (1993); *see also Parretti v. United States*, 143 F.3d 508, 510 (9th Cir. 1998) (en banc). Flight is “inconsistent with the pursuit of judicial remedies” and constitutes a voluntary waiver of “any pending judicial review of a criminal conviction.” *United States v. Murguia-Oliveros*, 421 F.3d 951, 954 (9th Cir. 2005). This longstanding equitable rule serves several purposes: it punishes and deters flight, advances an “efficient, dignified appellate practice,” protects the adversarial character of criminal litigation, and ensures that the Court’s decisions are enforceable. *Parretti*, 143 F.3d at 511; *see also Antonio-Martinez v. INS*, 317 F.3d 1089 (9th Cir. 2003). The rule prevents a defendant who refuses to submit to judicial authority from calling upon the Court’s resources to resolve his claims. “One may not invoke the power of judicial review only thereafter to obey or disobey the lower court’s mandate as he sees fit.” *United States v. Freelove*, 816 F.2d 479, 479 (9th Cir. 1987) (dismissing appeal with prejudice unless defendant self-surrendered); *see also United v. Cooper*, 95 Fed. Appx. 231, 231 (9th Cir. 2004) (unpub.) (dismissing appeal because defendant was arrested and did not self-surrender).

As the district court found, defendant has repeatedly attempted to delay serving his sentence. (Docket No. 185.) Having exhausted those efforts, defendant has now chosen to defy the court. This is precisely the kind of “heads I win, tails you lose” gaming of the system that the fugitive disentitlement doctrine is intended to prevent. *See Antonio-Martinez*, 317 F.3d at 1093. As this Court has noted, “Those who invoke our appellate jurisdiction must take the bitter with the sweet. They cannot ask us to overturn adverse judgments while insulating themselves from the consequences of an unfavorable result.” *Id.*

Because defendant has forfeited his right to seek review of his convictions by flouting the court’s authority and becoming a fugitive, this Court should dismiss his appeal with prejudice.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This response complies with the page-length limitation of Ninth Circuit Rule 27-1(d) because it is four pages in length and has been prepared in a 14-point, proportionally spaced typeface (Book Antiqua) using Microsoft Word 2016.

/s/ Katie Bagley
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