

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DEC 30 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee/
Cross-Appellant,

v.

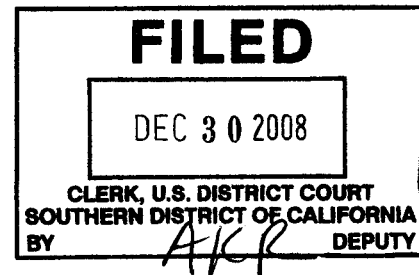
BRENT ROGER WILKES,

Defendant - Appellant/
Cross-Appellee.

Nos. 08-50063, 08-50164

D.C. No. 07-cr-00330-LAB
Southern District of California,
San Diego

ORDER



Before: T.G. NELSON and TASHIMA, Circuit Judges.

Appellant Brent Roger Wilkes moves this court to enforce its March 27, 2008 granting Wilkes' motion for bail pending appeal. We grant the motion and order Wilkes released pursuant to the non-economic conditions of release set forth by the district court on April 4, 2008, and pursuant to a personal appearance bond secured by the three properties identified during the district court's June 2, 2008 hearing and in this motion to enforce.

On March 27, 2008, we granted Wilkes' motion for bail pending appeal and remanded to the district court for the limited purpose of establishing appropriate conditions of release. On April 4, 2008, the district court established conditions of release pending appeal, including that Wilkes must execute a personal appearance

bond secured by \$1.4 million in property or assets. Following an April 18, 2008 hearing, the district court concluded that Wilkes had made an insufficient showing regarding security for the bond. Thereafter, Wilkes filed an emergency motion to enforce this court's order granting bail pending appeal. On May 1, 2008, we concluded that the district court must still resolve certain issues regarding security for the bond and denied Wilkes' motion to enforce without prejudice. The district court held further hearings on May 9, 2008 and June 2, 2008, but to date has not resolved the issue of security for the personal appearance bond.

Wilkes now files a renewed motion to enforce this court's order granting bail pending appeal.

The purpose for imposing conditions of release on Wilkes during the pendency of this appeal is to reasonably assure the safety of any other person or the community and to assure the appearance of Wilkes as required. *See* 18 U.S.C. §§ 3142, 3143. The non-economic conditions of release set by the district court on April 4, 2008, are sufficient to address the safety issue. Further, a bond secured by the three properties identified at Wilkes' June 2, 2008 hearing in the district court and in this motion to enforce, is sufficient to assure Wilkes' appearance as required. As relevant, neither the district court nor this court found that Wilkes' poses a flight risk, and this court found that Wilkes does not poses a danger to any

other person or the community if released pending appeal, subject to appropriate conditions of release. Prior to sentencing, Wilkes was released by the district court on bond. Since his sentencing on February 22, 2008, Wilkes has remained in custody at a federal corrections institution, apparently without incident. While the district court has concluded that a personal appearance bond secured by \$1.4 million in property or assets is required during the pendency of this appeal, we conclude that given changed market conditions which have resulted in a decline in the value of real property, Wilkes' pledge of three properties subject to forfeiture is sufficient to assure his appearance during the pending of this appeal.

The government's motion to reconsider the December 5, 2008 order of the Appellate Commissioner is denied.

We remand to the district court for the limited purpose of establishing any other necessary conditions of release consistent with this order.