

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

September 10, 2021

FOR THE TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MICHELE VINCENT GATTI,

Defendant - Appellant.

No. 19-4088
(D.C. No. 2:19-CR-00093-TC-BCW-12)
(D. Utah)

ORDER AND JUDGMENT*

Before **MORITZ, KELLY, and CARSON**, Circuit Judges.

Defendant Michele Vincent Gatti appeals the district court’s denial of his motion to vacate the magistrate judge’s order detaining him pending trial. Mr. Gatti was among twenty-seven individuals charged by criminal complaint with conspiracy to distribute controlled substances. After a hearing, a magistrate judge determined Mr. Gatti was subject to the rebuttable presumption of detention in 18 U.S.C. § 3142(e)(3) and ordered him detained based on the presumption of detention, the

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

danger he posed to the community in light of his criminal history, and the nature of the charges and evidence against him. Shortly after that, Mr. Gatti was indicted on the violations that had been charged by complaint.

Two months after his detention hearing, Mr. Gatti filed a motion to revoke the detention order, arguing that the rebuttable presumption of detention in § 3142(e)(3) did not apply to him when he was charged by complaint. The district court held a hearing and denied the motion to revoke detention as moot because Mr. Gatti was eventually indicted on the same criminal charges that were originally lodged by complaint and because he was not seeking release and did not dispute that his detention at that point was proper. The court emphasized at the hearing that Mr. Gatti was specifically disclaiming that he was seeking release, that he conceded the presumption of detention applied now that he was indicted, and that he conceded he could not rebut the presumption of detention. The court repeatedly offered to hold a new detention hearing to reconsider Mr. Gatti's detention, but Mr. Gatti consistently represented that was not the relief he sought and that he recognized he would be detained even if a new hearing were held. Under the circumstances, the district court determined that his motion for revocation of detention was moot: Mr. Gatti was not actually asking the court to review his detention status, and he was not seeking release. Therefore, deciding the issue Mr. Gatti urged—whether the presumption of detention applied when he was charged only by complaint—would redress no injury and have no effect in the real world. *See Brown v. Buhman*,

822 F.3d 1151, 1165-66 (10th Cir. 2016). The court also analyzed and rejected Mr. Gatti's claim that his situation fell within an exception to the mootness doctrine.

We agree with the district court that Mr. Gatti's motion to revoke his order of detention was moot under the circumstances, which would normally lead us to affirm the district court's order. But because this appeal is now doubly moot, we dismiss it rather than affirm. After the appeal was filed, Mr. Gatti changed his plea; he pleaded guilty to the felony information against him and has now been sentenced. Both the authority for Mr. Gatti's detention and his motion for revocation of that detention were pursuant to 18 U.S.C. § 3142, which governs release or detention pending trial. Now that he has pleaded guilty and been sentenced, that section of the Bail Reform Act no longer governs his release or detention. Statutory authority for release or detention pending sentencing or appeal is found in § 3143, which entails different standards. Because Mr. Gatti's detention is no longer pursuant to § 3142 or subject to the standards set forth in that section, there is no longer a live controversy regarding whether the district court was correct to deny as moot his motion to revoke detention under § 3142. In other words, the question of whether the district court was correct to deny the motion for revocation of detention under § 3142 is moot. Accordingly, we dismiss the appeal.¹

Entered for the Court
Per Curiam

¹ The motion for argument is denied as moot.