

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : CRIMINAL NO. 97-214
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DAVID E. NAPIER :

MEMORANDUM

J. M. KELLY, J.

August 3, 1998

This opinion is filed pursuant to Rule 3.1 of the Local Appellate Rules of the United States Court of Appeals for the Third Circuit. Local Rule 3.1 states that, within 15 days of the filing of a notice of appeal, "the trial judge may file and mail to the parties a written opinion or a written amplification of a prior written or oral recorded ruling or opinion."

In May, 1997, a grand jury in the Eastern District of Pennsylvania returned an indictment charging David E. Napier ("Napier") with four counts of bank fraud. The indictment alleged that Napier used a fake social security number and fake credit history documents to obtain bank loans that were never repaid. Napier pled not guilty and was released on bail pending trial. On October 28, 1997, after jury selection began, Napier decided to plead guilty to all charges.

Sentencing in this matter was originally scheduled for February 10, 1998, but was rescheduled several times. On March 25, 1998, the Court granted the Defendant's second request for a continuance, scheduled sentencing for June 8, 1998, and warned that no further continuances would be granted.

The Probation Department prepared a Presentence Investigation Report. The presentence report stated that Napier was convicted of three similar offenses in 1991 and 1992 in federal and state court in New Jersey. (¶¶ 32-39).¹ He was sentenced to five months incarceration, five months at a Community Treatment Center and three years supervised release for the federal conviction. (¶ 33). While at the Community Treatment Center, Napier was charged with lying and violating a number of rules. (¶ 33). While he was on supervised release, the FBI received several complaints regarding fraudulent practices by Napier and his employer. (¶ 33). The court eventually had to order Napier to find new employment that could be verified by the Probation Department. (¶ 33).

Just as the Probation Department had difficulty verifying Napier's employment in 1992, they were unable to verify much of the employment history reported in connection with the presentence report. (¶ 55). In fact, Napier reported the same employment information to the Probation Department that he had used on his fraudulent loan applications. (¶ 55). After investigating, the Probation Officer concluded that much of the information was probably either fictitious or exaggerated.(¶ 55).

¹ References are to paragraphs in the Presentence Investigation Report.

In connection with the presentence report, and at a prior hearing in this Court, Napier stated that he had no income and that he was supported by his paramour. Several months later, I directed Napier to complete a financial affidavit in connection with court appointment of an attorney. He claimed that he currently earns \$9,500 a month working for a company called "Voyager General." Napier refused to provide the Probation Department with information on this company. (¶ 54).

On June 7, 1998, Napier faxed a letter to the Court. He claimed that he and his attorney had an "irreparable breakdown in communication" and requested a continuance so that he could retain a new attorney. I allowed Napier to dismiss his attorney and granted a continuance. Based on the information in the presentence report, however, I determined that Napier was a danger to the community and I revoked his bail.

On June 24, 1998, Napier's new attorney requested reconsideration of the revocation of bail. All parties agree that since Napier pled guilty, he had the burden of proving, by clear and convincing evidence, that he is not a flight risk or a danger to the community. The applicable law states:

(a) Release or detention pending sentence. -- (1) . . . the judicial officer shall order that a person who has been found guilty of an offense and who is awaiting imposition or execution of sentence . . . be detained, unless the judicial officer finds by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community.

18 U.S.C. § 3143.

A hearing was held on July 16, 1998. Napier's attorney presented argument, but did not present any evidence or rebut any of the statements in the presentence report. Counsel suggested that the Court can protect the community by placing conditions on Napier's bail. He suggested restrictions on financial transactions and travel, or even house arrest.

Napier did not prove, by clear and convincing evidence, that he is not a danger to the community. Napier has a history of fraud and dishonesty. His dealings with the Probation Department, both in 1992 and 1997, show that he continues to lie with impunity. I am not convinced that there are any conditions that will adequately protect the community. Napier previously ignored rules and conditions while he was at a Community Treatment Center and while he was on supervised release. It is extremely difficult to prevent fraud. If Napier has free access to telephones, mail and other means of communicating with financial institutions and potential investors, he is a danger to the community.

BY THE COURT:

JAMES MCGIRR KELLY, J.