

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION AT LEXINGTON
CRIMINAL MINUTES – GENERAL

Case No. 15-87-DCR-REW-1 At Lexington Date January 13, 2017

USA vs Samuel Girod x present x custody bond OR Age

PRESENT: HON. ROBERT E. WIER, UNITED STATES MAGISTRATE JUDGE

<u>Susan Conner</u> Deputy Clerk	<u>Audio File</u> Court Reporter	<u>Kate Smith</u> Assistant U.S. Attorney
-------------------------------------	-------------------------------------	--

Standby Counsel for Defendant Michael Fox x present retained x appointed

I, Susan Conner, Deputy Clerk, CERTIFY the official record of this proceeding is an audio file
KYED-LEX__5-15-cr-87-DCR-REW-1_20170113_141349.

PROCEEDINGS: **BOND VIOLATION HEARING**

Pursuant to 18 U.S.C. § 3148, the parties appeared for proceedings on alleged bond violation for failure to appear at the August 26, 2016, status conference before Judge Reeves. The Court advised Defendant of his constitutional right to silence. The Court reviewed the process and standards used to resolve the allegations.

The Court heard the sworn testimony of USPO Glenn Collins and Deputy U.S. Marshal Gary Heiden. The Court further heard argument and proffer by counsel and *pro se* Defendant.

The Court **ORDERS** as follows, for the reasons stated more fully on the record:

1. The Court **FINDS** that the Government proved by clear and convincing evidence that Girod failed to appear for the August 26, 2016, status conference in violation of condition 4, *see* DE #12, at 1. *See* 18 U.S.C. § 3148(b)(1)(B). The record clearly shows that Girod did not appear at the hearing. *See* DE #79 (Minute Entry). The Court specifically and unequivocally advised Girod during his initial appearance on November 2, 2015, that he must appear personally for any hearing held in his case. *See* DE #11 (Minute Entry) (“The Court released Defendant on the conditions *announced* and set out in the Order Setting Conditions of Release.” (emphasis added)), *and* (Official Electronic Recording), at 1:59:48 – 2:00:05 PM (“You do have to be here in court anytime we’re having a court event in your case. I’ve announced the trial schedule to you. There may be other hearings that occur. If there’s a hearing in your case, you have to be here in person for that hearing in order to stay in compliance with your conditions.”). Further, Deputy Heiden testified to Girod’s conduct following his failure to appear, which indicated knowledge of the pending arrest warrant and attempts to evade arrest. Such conduct belies any argument by Girod that his failure to appear was innocent or a mere misunderstanding. All told, the facts clearly establish that Girod failed to appear for a scheduled hearing in this case while on bond, thus violating his conditions of release.
2. The Court then turned to the effect of these violations. The Court evaluated the § 3142(g) factors, the bond report, all evidence at the hearing, and the entire record. For the following reasons and those stated on the record, the Court **REVOKES** Defendant’s bond and orders him detained pending trial.

The statute requires, to avoid revocation, that conditions “will assure” that Defendant will not flee.¹ 18 U.S.C. § 3148(b)(2)(A). This is a higher standard than the initial inquiry. *Id.* § 3142(e) (“will reasonably assure”). Considering the full § 3142(g) factors, the Court finds, by a preponderance, that conditions will not assure that Girod will not flee. The warrant issued for Girod’s arrest following his failure appear was outstanding for nearly five months, and the record demonstrates Girod’s awareness of the warrant almost immediately following issuance. Further, the extent and nature of the efforts of the USMS to find Girod show active avoidance and convince the Court that conditions will not assure Girod’s future appearance in the case. For the same reasons, the Court finds, by a preponderance, that Girod “is unlikely to abide by any condition or combination of conditions of release.” *Id.* § 3148(b)(2)(B). Girod’s conduct in evading authorities for nearly five months demonstrates an unwillingness to abide by court rules and instructions designed to bring him before the Court.

3. The Court thus **REMANDS** Defendant to USMS custody pending further Court order.
4. Defendant may seek review per § 3145.
5. The Court further assigns this matter for **JURY TRIAL** on **Monday, February 27, 2017, at 9:30 a.m.** before Judge Reeves in Lexington. Counsel and parties shall be present at 9:00 a.m. The United States indicates four (4) days will be needed for trial.

To ensure record clarity, the Court analyzes the Speedy Trial Act’s requirements as applied to this case and the new trial date of February 27, 2017. As an initial matter, the original trial date of January 5, 2016, complied with the STA. It was 64 days after Defendant’s initial appearance in the case.

The Court **FINDS** the period between the November 6, 2015, filing of Defendant’s RFRA motion (DE #14) and the December 9, 2015, hearing on said motion (DE #32) excludable under 18 U.S.C. § 3161(h)(1)(D) (“delay resulting from any pretrial motion, from the filing of the motion through the conclusion of the hearing on . . . such motion”). The Court further **FINDS** the period between same December 9, 2015, hearing and the Court’s disposition of the RFRA motion (DE #31) excludable under § 3161(h)(1)(H) (“delay reasonably attributable to any period, not to exceed thirty days, during which any proceeding the defendant is actually under advisement by the court”).

Judge Reeves previously found the following periods excludable under § 3161(h)(7)(A) (“Any period of delay resulting from a continuance granted by any judge . . . if the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.”): between January 5, 2016, and March 29, 2016, *see* DE #21 (Order); between April 12, 2016, and June 13, 2016, *see* DE #37 (Order); and between June 13, 2016, and July 19, 2016, *see* DE #41 (Order). Further, Judge Reeves found the period between July 7, 2016, and the prompt resolution of Girod’s interlocutory appeal to the Sixth Circuit (DE #71) excludable under § 3161(h)(1)(C) (“delay resulting from any interlocutory appeal”).²

¹ The Court does not revoke on risk of danger to the safety of any other person or the community. Risk of flight, however, is quite a different matter.

² Said interlocutory appeal technically still pends in the Sixth Circuit. *United States v. Girod*, No. 16-6070. However, in an October 27, 2016, order denying a later filed writ of mandamus by Girod, the Sixth Circuit acknowledged that it lacked jurisdiction over the original interlocutory appeal. *In re Samuel Girod*, No. 16-

Finally, the Court **FINDS** the period between August 26, 2016, when Girod failed to appear for the status conference before Judge Reeves, and January 13, 2017, when Girod appeared in court following his apprehension on the failure to appear warrant, excludable under § 3161(h)(3)(A) (“Any period of delay resulting from the absence or unavailability of the defendant[.]”). As outlined above, Girod’s whereabouts were unknown and, with knowledge of the outstanding warrant, he attempted to evade apprehension. *See* § 3161(h)(3)(B). Accordingly, this period is excludable. Excluding all these identified excludable periods, sixty-four days of the seventy-day STA time period will have elapsed on February 27, 2017, the current scheduled trial start date. Thus, the February trial date is STA compliant.

Any party may file any motion objecting to the above STA calculation and findings under Rule 59(a) and/or the STA. Such objection shall be filed within 14 days.

Copies: COR, USP, USM, D, JC
Initials of Deputy Clerk stc
TIC: /26



Signed By:

Robert E. Wier *REW*

United States Magistrate Judge

6301, DE # 7. At a minimum, the period between July 7, 2016, and October 27, 2016, is excludable per § 3161(h)(1)(C).