

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

3/28/2011

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 UNITED STATES OF AMERICA, : 10 Cr. 096 (DLC)
 :
 -v- : MEMORANDUM OPINION
 : & ORDER
 :
 SERGEY ALEJNIKOV, :
 : Defendant. :
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 DENISE COTE, District Judge:

Following his sentencing on March 18, 2011, Sergey Aleynikov ("Aleynikov") moved for bail pending appeal. The application is denied.

Aleynikov was convicted by a jury of two violations of federal law on December 10, 2010. On February 23, 2011, the Government requested a review of Aleynikov's bail conditions. Aleynikov's bail was revoked on February 24, and the Court of Appeals affirmed that decision on March 9. On March 16, Aleynikov's post-trial motions were denied, United States v. Aleynikov, 10 Cr. 96 (DLC), 2011 WL 939754 (S.D.N.Y. Mar. 16, 2011) ("March Opinion"), and he was sentenced principally to 97 months' imprisonment on March 18. Immediately following his sentencing, Aleynikov filed a motion for bail pending appeal.

The standard for bail pending appeal is set forth in 18 U.S.C. § 3143(b), and requires inter alia a finding by clear and convincing evidence that the defendant is not likely to flee if released and a finding that the appeal raises a substantial

question of law or fact likely to result in a reversal, a new trial, or a sentence that will be less than the total time already served prior to and during the pendency of the appeal. 18 U.S.C. § 3143(b). Aleynikov has not shown that either factor is present here.

The facts that caused Aleynikov's remand prior to his sentencing have not changed. Aleynikov has not shown that this Court's determination at that time, or the affirmance by the appellate court, were in error. Now that Aleynikov has been sentenced he faces an even a higher threshold for obtaining bail pending appeal. His sentence of roughly eight years' imprisonment substantially increases his incentive to flee and he has not shown by clear and convincing evidence that he is not likely to do so. Nor has he shown a substantial question of law or fact likely to result in a reversal, new trial or reduced sentence.

Several of the legal issues that Aleynikov discusses in his bail motion were first addressed in this Court's ruling on his pre-trial motion to dismiss. United States v. Aleynikov, 737 F. Supp. 2d 173 (S.D.N.Y. 2011) ("September Opinion"). When those issues were raised again in Aleynikov's post-trial motion he failed to show how the reasoning in the September Opinion was flawed, relying almost exclusively on the arguments he had made in his underlying motion papers and ignoring the September

Opinion. He has largely followed the same strategy here. Similarly, with respect to the few additional legal or evidentiary issues to which he points in his bail motion, he does not engage at all with the analysis in the March Opinion.

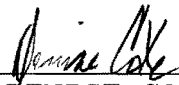
Finally, Aleynikov attempts no showing that a sentence of 97 months' imprisonment will be reduced on appeal. At the sentencing proceeding he largely conceded that the amount of loss was properly calculated at over \$7 million. While he did contest that he had used sophisticated means to commit the offense, his argument was altogether unpersuasive. Therefore, the sentence of 97 months was at the lowest end of his sentencing guidelines range. Nor does Aleynikov point to any way in which the Court failed to consider the Section 3553(a) factors in arriving at a determination of his sentence. Instead, Aleynikov continues to argue in his motion for bail, as he has throughout these proceedings, that the acts in which he engaged do not constitute violations of federal criminal statutes.

Conclusion

Aleynikov's March 18 motion for release pending appeal is denied.

SO ORDERED:

Dated: New York, New York
March 28, 2011



DENISE COTE
United States District Judge