

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

UNITED STATES OF AMERICA )  
 )  
 v. ) CR-04-07-PO  
 )  
 WILLIAM R. MCFARLAND, )  
 )  
 Defendant. )

**ORDER ON  
DEFENDANT'S MOTION TO STAY PENDING APPEAL**

On May 10, 2005, this Court issued an order pursuant to 18 U.S.C. § 3402, denying the Defendant's appeal from a decision of Magistrate Judge Kravchuk. Order on Appeal (Docket # 30). On May 16, 2005, the Defendant filed a motion for stay pending appeal (Docket # 32) and a notice of appeal to the First Circuit Court of Appeals (Docket # 31). This Court GRANTS in part and DENIES in part the motion to stay.

Magistrate Judge Kravchuk found the Defendant guilty on two counts: 1) Count I: a violation of 36 C.F.R. § 4.23(a), being in actual physical control of a motor vehicle while under the influence of alcohol; and, 2) Count II: a violation of 36 C.F.R. § 2.35(b)(2), possession of a controlled substance, marijuana. He was sentenced on Count I to serve four months in prison and to pay a fine of \$350.00, and he was sentenced on Count II to pay a fine of \$200.00. Judgment in a Criminal Case (Docket # 16). He was required to pay \$100.00 in court costs, and a mandatory special assessment of \$20.00 was imposed. *Id.*

In his appeal to this Court, the Defendant challenged the conviction under Count I, but not under Count II. He has now moved this Court to stay his sentence under Count I on the ground that he would likely serve his entire four-month term of imprisonment before the

resolution of his appeal to the First Circuit. However, he has not challenged the conviction and sentence under Count II. The Government has no objection to a stay of sentence pending appeal on Count I, so long as the current bail condition, which prohibits the Defendant from operating a motor vehicle, remains in place pending appeal.

Although this Court has some reservations about whether the Defendant's motion for stay meets the standards in 18 U.S.C. § 3143(b)(1)(B), in view of the prior order of Magistrate Judge Kravchuk to stay imposition of the sentence pending appeal (Docket # 21), the acquiescence of the Government to the Defendant's motion (Docket # 34), and the fact that the Defendant would likely serve his full sentence before his appeal to the First Circuit is resolved, this Court GRANTS the Defendant's motion to stay the sentence imposed on Count I. However, as the Defendant has made no claim of legal error on the conviction and sentence on Count II, the Defendant's motion is DENIED to the extent it requests the sentence under Count II be stayed.

/s/ John A. Woodcock, Jr.  
JOHN A. WOODCOCK, JR.  
UNITED STATES DISTRICT JUDGE

Dated this 26th day of May, 2005

**Defendant**

**WILLIAM R MCFARLAND (1)**  
*TERMINATED: 12/23/2004*

represented by **DAVID W. BATE**  
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**Plaintiff**

**USA**

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