

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

UNITED STATES OF AMERICA)
)
 v.) 1:10-cr-00050-JAW
)
KENNETH L. GOODRICH)

ORDER ON MOTION TO STAY

Facing a charge of possession of a firearm after having been committed to a mental institution, Kenneth L. Goodrich moves to stay the case until certain Second Amendment issues are resolved through other cases on appeal. The Court denies the motion to stay since Mr. Goodrich’s Second Amendment issues do not require a stay of his case to be resolved and there are public policy concerns that encourage the speedy resolution of criminal cases.

I. STATEMENT OF FACTS

On March 18, 2010, a federal grand jury indicted Kenneth L. Goodrich alleging that from April 3 to April 11, 2009, he possessed a firearm after having been committed to a mental institution. *Indictment* (Docket # 1). An arrest warrant issued on March 18, 2010, and Mr. Goodrich was arrested on June 11, 2010. Mr. Goodrich made his initial appearance on June 14, 2010. *Minute Entry* (Docket # 10). He was ordered released on bail on June 14, 2010. *Order Setting Conditions of Release* (Docket # 12). The Court has set the case for trial three times since June 2010 and each time Mr. Goodrich has twice moved to continue the trial.

Trial List (Docket # 15); *Mot. to Continue* (Docket # 16); *Trial List* (Docket # 18); *Mot. to Continue* (Docket # 19); *Trial List* (Docket # 21).

He now moves for a stay of the criminal action on the ground that he has a “non-frivolous argument that the Defendant’s Second Amendment rights are infringed where he was hospitalized but never received notice of any hearing or an opportunity to be heard and he is then charged with possession of a firearm pursuant to 18 U.S.C. [§] 922(g)(4).” *Mot. for Stay* (Docket # 22). The Government opposes the motion for stay. *Gov’t’s Resp. to Def.’s Mot. to Stay* (Docket # 23). The Defendant has replied. *Def.’s Resp. to Gov’t’s Reply to Def.’s Mot. to Stay* (Docket # 25).

II. DISCUSSION

The Court denies the motion to stay. This case involves events that allegedly took place in April 2009 and a mental health commitment of April 2006. Criminal cases rarely age well. Memories fade, documents are lost, witnesses die or become ill, and for a defendant and others, life is lived under the cloud of a federal charge. Thus, the law requires that federal criminal cases move forward “to assure a speedy trial.” 18 U.S.C. § 3161(a).

The Court has addressed the impact of *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008), on pending federal charges involving the possession of firearms. *United States v. Small*, No. CR-09-184-B-W, 2010 U.S. Dist. LEXIS 13698 (D. Me. Feb. 16, 2010); *United States v. Murphy*, 681 F. Supp. 2d 95 (D. Me. 2010); *United States v. Zetterman*, No. CR-09-54-B-W, 2010 U.S. Dist. LEXIS 25228 (D. Me. Mar.

17, 2010); *United States v. Rehlander*, 685 F. Supp. 2d 159 (D. Me. 2010); *United States v. Burhoe*, No. CR-06-57-B-W, 2010 U.S. Dist. LEXIS 100397 (D. Me. Sept. 21, 2010); *United States v. Roy*, No. 10-107-P-H, 2010 U.S. Dist. LEXIS 107620 (D. Me. Oct. 6, 2010). On June 28, 2010, the United States Supreme Court repeated its assurance in *Heller* “that [its] holding did not cast doubt on such longstanding regulatory measures as ‘prohibitions on the possession of firearms by felons and the mentally ill.’” *McDonald v. City of Chicago*, 130 S. Ct. 3020, 3047 (2010) (quoting *Heller*, 128 S. Ct. at 2816-17).

The Court has yet to sentence Messrs. Murphy, Zetterman, and Burhoe; and Messrs. Small and Rehlander received probationary sentences. Nevertheless, in *United States v. Wyman* and *United States v. Pettengill*, when analogous challenges were made to a firearms possession charges, the defendants moved for bail pending appeal and the Court granted each motion. *United States v. Wyman*, 667 F. Supp. 2d 151, 154-55 (D. Me. 2009); *United States v. Pettengill*, No. CR-09-138-B-W, 2010 U.S. Dist. LEXIS 88551, at *4 (D. Me. Aug. 26, 2010). Like Messrs. Wyman and Pettengill, if Mr. Goodrich is found guilty or pleads conditionally guilty to the pending charge and seeks appellate review, he would have the right to move for bail pending appeal. *See* 18 U.S.C. § 3143(b)(1)(B)(i).

From the Court’s perspective, however, it is wiser to move the pending criminal case to fruition than to stay the case pending appellate resolution of other criminal cases. There are a number of cases on appeal challenging firearms possession convictions on Second Amendment grounds and by the time this case is

resolved at this level, the legal landscape may have become clearer. At the same time, there is no telling whether those opinions will definitively resolve the issue in this case to the satisfaction of the parties and staying Mr. Goodrich's case may only amount to delaying his appeal. In short, Mr. Goodrich's concern about preserving a Second Amendment challenge to the pending charge is not inconsistent with resolving his case in this Court.

III. CONCLUSION

The Court DENIES Kenneth L. Goodrich's Motion to Stay (Docket # 22).

SO ORDERED.

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

Dated this 19th day of November, 2010

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