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Analysis
As of: Jul 02, 2008

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. DAVID N. BOWMAN, Defendant-Appellant.

No. 96-3813

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

1996 U.S. App. LEXIS 22275

July 29, 1996, FILED

NOTICE: [*1] NOT RECOMMENDED FOR FULL-TEXT PUBLICATION. SIXTH CIRCUIT RULE 24 LIMITS CITATION TO SPECIFIC SITUATIONS. PLEASE SEE RULE 24 BEFORE CITING IN A PROCEEDING IN A COURT IN THE SIXTH CIRCUIT. IF CITED, A COPY MUST BE SERVED ON OTHER PARTIES AND THE COURT. THIS NOTICE IS TO BE PROMINENTLY DISPLAYED IF THIS DECISION IS REPRODUCED.

DISPOSITION: Defendant's motion for an emergency stay denied.

COUNSEL: For UNITED STATES OF AMERICA, Plaintiff - Appellee: Robert E. Lindsay, Alan Hechtkopf, Scott A. Schumacher, U.S. Department of Justice, Appellate Section, Tax Division, Washington, DC.

For DAVID N. BOWMAN, Defendant - Appellant: Paul Croushore, Columbus, OH.

OPINION

ORDER

The defendant appeals a pretrial, district court ruling denying his motion to prohibit further violation by the government of the defendant's attorney client privilege and to prohibit the use at trial of documents or information improperly obtained by the government. The defendant now moves to stay his trial during the pendency of his appeal. The district court has denied a similar motion. The government has filed a response in opposition. Because trial has already begun, the defendant's motion has

been referred to a single judge [*2] of the court for expedited consideration. *See Rule 27(c), Fed. R. App. P.*

The factors to be considered by the court in determining whether a stay pending appeal should issue are: 1) whether the applicant has demonstrated a likelihood of success on the merits; 2) whether the applicant will be irreparably injured absent a stay; 3) whether issuance of the stay will substantially injure the other interested parties; and 4) where the public interest lies. *Michigan Coalition of Radioactive Material Users, Inc. v. Griepentrog, 945 F.2d 150, 153 (6th Cir. 1991)*. Upon consideration of these factors, the court concludes that the criteria for issuance of a stay have not been met. There is nothing about the district court's ruling that distinguishes it "from the run of pretrial decisions that affect the rights of criminal defendants yet must await completion of trial court proceedings for review." *Flanagan v. United States, 465 U.S. 259, 259, 79 L. Ed. 2d 288, 104 S. Ct. 1051 (1984); c.f. United States v. Steele, 727 F.2d 580, 586 (6th Cir.), cert. denied, 467 U.S. 1209 (1984)* (remedy for government's intrusion upon the attorney client relationship of the defendant is a reversal [*3] of the conviction). The defendant's reliance on *United States v. Presser, 844 F.2d 1275 (6th Cir. 1988)*, is misplaced. In *Presser*, the court had jurisdiction over the government's interlocutory appeal pursuant to specific statutory authority. *See 18 U.S.C. § 3731. Section 3731 does not provide for an appeal by a defendant. United States v. Shamezadeh, 41 F.3d 266 (6th Cir. 1994)* (order).

It is therefore **ORDERED** that the defendant's motion for an emergency stay is denied.

