

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 08-00026-04-CR-W-FJG
)	
CHRISTOPHER ELDER,)	
)	
Defendant.)	

**MOTION TO RECONSIDER ORDER DENYING
RELEASE ON BAIL PENDING APPEAL**

Defendant Christopher Elder hereby moves the Court to reconsider its Order of May 3, 2011, denying his request for release on bail pending appeal. Dr. Elder requests the Court, pursuant to 18 U.S.C. § 3143(b)(1)(A), to release him on bail pending appeal of his conviction.

As the Government conceded in its sentencing memorandum, Dr. Elder does not pose a flight risk or pose a danger to the safety of any other person or the community. As such, if his “appeal is not for the purpose of delay and raises a substantial question of law or fact,” release on bail pending appeal is appropriate. *Id.* at § 3143(b)(1)(A)(b)(B). As the Government acknowledged in its Suggestions in Opposition to Dr. Elder’s original motion for release pending appeal, under this standard “the defendant does not have to show that it is likely or probable that he or she will prevail on the issue on appeal;” rather, the primary question is whether “the question presented by the appeal is substantial” (Doc#433, p. 2) (quoting *United States v. Powell*, 761 F.2d 1227, 1233-34 (8th Cir. 1985)).

Dr. Elder’s case meets this standard. Although the Government introduced evidence to show that his co-defendants profited substantially from their prescription-delivering enterprise, it never showed that Dr. Elder had done so. The Government’s only evidence was that

prescriptions Dr. Elder had written – many of which later were changed to grant refills where he had ordered there be none – were used by the co-defendants to order pills from Belton, Missouri, illegally. Tellingly, Dr. Elder was charged with conspiracy to distribute controlled substances, but only the co-defendants were charged with laundering money from the alleged criminal enterprise.

Before trial, Dr. Elder moved the Court to sever the counts against him from the co-defendants and try him separately (Doc#22). The Court declined. As a result, Dr. Elder, who never was shown to have profited from any criminal enterprise, was shown to the jury as being conflated with individuals of a much higher and different degree of culpability. More than half of the charges before the jury involved a conspiracy to which Dr. Elder was not even alleged to be a party.

Under Rule 8(b), Federal Rules of Criminal Procedure, this Court had “no discretion to deny severance of misjoined defendants; ... misjoinder of defendants is inherently prejudicial.” *United States v. Bledsoe*, 674 F.2d 647, 654 (8th Cir. 1982). “Under Rule 8(b), defendants are properly joined ‘if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses.’ ... Generally, the ‘same series of acts or transactions’ means acts or transactions that are pursuant to a common plan or a common scheme.” *United States v. Wadena*, 152 F.3d 831, 848 (8th Cir. 1998).

In this case, for the vast majority of counts, Dr. Elder was not even charged with participating in the conspiracy. It severely prejudiced Dr. Elder, who was not even accused of illicit financial gain, to be tried alongside criminals who profited greatly off their enterprise. Dr. Elder’s defense was wholly different from the co-defendants. By being tried with them, however, he was made to be seen as “one of the gang” by the jury. This Court abused its discretion in denying Dr. Elder’s motion to sever.

At the very least, this issue is “substantial” within the meaning of 18 U.S.C. § 3143(b)(1)(A)(b)(B). If the Court of Appeals holds that this Court erred in denying Dr. Elder’s motion to sever, it will result in a new trial. *Bledsoe*, 674 F.2d at 671. Coupled with the grounds explained in Dr. Elder’s original motion for release on bail pending appeal, release on bail is warranted.

Wherefore, Defendant Christopher Elder prays the Court to reconsider its order denying him release on bail pending appeal, and release him on bail pending appeal.

Respectfully submitted,

s/Dennis Owens

Dennis Owens, Attorney
7th Floor, Harzfeld’s Building
1111 Main Street
Kansas City, Missouri 64105
Telephone: (816) 474-3000
Facsimile: (816) 474-5533
E-mail: owensappeal@aol.com

COUNSEL FOR DEFENDANT
CHRISTOPHER ELDER

Certificate of Service

I hereby certify that, on July 5, 2011, I served a copy of the foregoing on the Assistant United States Attorney for Western District of Missouri and other ECF listed counsel through use of the Electronic Court Document Filing System.

s/Dennis Owens

Attorney