


UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA

FILED
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CLERK

WESTERN DIVISION

UNITED STATES OF AMERICA,

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CR 08-50079

Plaintiff,

vs.

ORDER DENYING
DEFENDANT MARSHALL'S
*RENEWED MOTION FOR SEVERANCE
* AND REQUEST FOR SPEEDY TRIAL

JOHN GRAHAM, a/k/a/ John Boy Patton,
VINE RICHARD MARSHALL, a/k/a
Richard Vine Marshall, a/k/a
Dick Marshall,

Defendant.

Pending before the Court is Defendant Richard Marshall's Renewed Motion for Severance and Request for Speedy Trial. (Doc. 418.) Marshall previously moved for a severance of his trial from that of Co-Defendant John Graham. His motion for severance was denied. After this Court dismissed one count of the indictment against Graham, the government filed an interlocutory appeal to the Eighth Circuit. The government and Marshall stipulated to a 60-day continuance of the trial which had been scheduled to begin on May 12, 2009. After a hearing with the parties in Rapid City on May 5, 2009, the Court granted the parties' joint motion to continue the trial, but held that the continuance would not be 60 days; rather it would be until the Eighth Circuit issued a ruling on the appeal.¹ The Court stated at the May 5 hearing that a new trial date would be set as soon as the Eighth Circuit ruled. Counsel for Marshall asked the Court for permission to renew the motion for severance to allow Marshall to proceed to trial if the Eighth Circuit had not ruled within 60 days.

¹Granting of the continuance rendered moot Defendant Graham's Motion for Severance of Counts and Objection to Stay of Proceedings, doc. 328, in which Graham asked to proceed with trial of the remaining two counts on May 12, 2009.

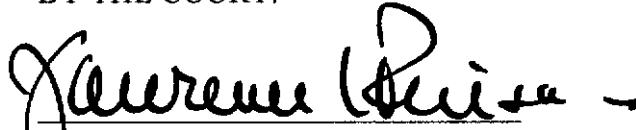
On July 21, 2009, when more than 60 days had passed and the Eighth Circuit had not ruled on the government's appeal, Marshall filed the Renewed Motion to Sever so he could proceed to trial while the appeal was pending. On July 28, 2009, the Eighth Circuit issued its ruling on the appeal and, two days later, this Court set a new trial date of October 6, 2009. (Doc. 422.) This action rendered moot Marshall's Renewed Motion for Severance and Request for Speedy Trial. Accordingly,

IT IS ORDERED:

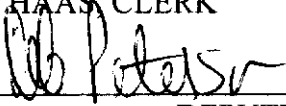
1. That Defendant Richard Marshall's Renewed Motion for Severance and Request for Speedy Trial, doc. 418, is denied as moot.
2. That Defendant Graham's Motion for Severance of Counts and Objection to Stay of Proceedings, doc. 328, is denied as moot.

Dated this 9th day of September, 2009.

BY THE COURT:


Lawrence L. Piersol
United States District Judge

ATTEST:
JOSEPH HAAS, CLERK

BY: 
DEPUTY