

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA)
)
) Criminal No. 19-192
)
v.)
)
DAQUAY WRIGHT)

UNITED STATES' RESPONSE IN OPPOSITION TO MOTION TO MODIFY RELEASE
CONDITIONS
[DOC. NO. 55]

The defendant, Daquay Wright, has filed a motion requesting that this Court modify his pre-trial release conditions to permit him to use medical marijuana. His motion, however, must be denied, because granting it would permit him to violate federal law—which is prohibited as a mandatory condition of his pretrial release—with impunity.

On June 25, 2019, a federal grand jury returned an Indictment charging Mr. Wright with possession of a firearm and ammunition by a convicted felon. He was arrested on June 27, 2019 and brought before the Court for his initial appearance that same day. (Doc 12). The defendant was released on a \$25,000 unsecured bond, with conditions. (*Id.*). Pursuant to the Order setting conditions, Mr. Wright is subject to several release conditions, including the following:

- (1) “defendant must not violate federal, state, or local law while on release”;
- (2) “defendant must . . . (m) not use or unlawfully possess a narcotic drug or other controlled substances defined in 21 U.S.C. § 802, unless prescribed by a licensed medical practitioner”; and
- (3) “defendant must . . . (n) submit to testing for a prohibited substance if required by the pretrial services office or supervising officer”.

Since his arrest, the defendant has had several positive drug tests for cannabinoids,

including on 11/6/2019, 11/18/2019 (Doc. 30) and February 10, 2021. (Doc. 47). According to Mr. Wright, he has recently obtained a Medical Marijuana Identification Card, issued on April 10, 2021. (Doc. No. 55, Ex. A). In his motion, Mr. Wright avers that his ability to obtain the identification card was based on a specific medical diagnosis.¹ (Doc. 55 at ¶ 6).

Pennsylvania’s Medical Marijuana Act, codified at 35 Pa. Stat. § 10231.101 *et seq.*, permits Pennsylvania residents to apply for and obtain marijuana for medicinal purposes for a limited set of “serious medical condition[s].” 35 Pa. Stat. § 10231.103. This authorization, however, is subject to a host of rules and requirements. Pennsylvanians seeking medical marijuana must first obtain a “certification” from a physician who is approved by the Department of Health for inclusion in the medical marijuana registry and who has determined, in light of his “professional opinion and review of past treatments,” that the patient is likely to receive “therapeutic or palliative benefit from the use of medical marijuana.” *Id.* at § 10231.403. Among other things, this certification must affirm that the patient has at least one of seventeen qualifying, serious medical conditions for which the patient is under the physician’s continuing care. *Id.* A patient with an approved certification must then apply for an “identification card,” which if issued would allow the patient to obtain medical marijuana from an approved dispensary. *Id.* at §§ 10231.303, 10231.304, 10231.501.

Mr. Wright did not include in his pleading a copy of the “certification” for medical marijuana for a medical condition from his physician. Furthermore, Mr. Wright’s alleged medical condition justifying his access to medical marijuana is not recognized as a “serious medical

¹ This medical diagnosis has been specified in defense filings under seal, in order to protect the privacy of the defendant.

condition” under Pennsylvania’s medical marijuana act.² See 10231.103 (providing list of seventeen conditions that qualify as a “serious medical condition,” none of which includes Mr. Wright’s claimed medical condition).

Medical marijuana may be dispensed in only the following limited forms: pill; oil; topical forms; “a form medically appropriate for administration by vaporization or nebulization, excluding dry leaf or plant form until dry leaf or plant forms become acceptable under regulations adopted under section 1202;” tincture; or liquid. *Id.* § 10231.303(b)(2). Importantly, medical marijuana may not be smoked or, except in certain circumstances, consumed in edible form, *id.* § 10231.304, and the patient must be in possession of a valid ID card any time he or she is in possession of medical marijuana, *id.* § 10231.303.

Mr. Wright now requests this Court to modify his bond to allow the use of medical marijuana so long as he is in compliance with Pennsylvania law or, in the alternative, to agree to take no punitive action if he is violated for using medical marijuana in compliance with Pennsylvania law. Mr. Wright’s motion should be denied for several reasons.

1) *Marijuana use, whether medicinal or recreational, is prohibited under federal law.*

Marijuana is a Schedule I controlled substance. Marijuana possession or use is illegal

² The listed “serious medical conditions” are: 1) Cancer; (2) Positive status for human immunodeficiency virus or acquired immune deficiency syndrome; (3) Amyotrophic lateral sclerosis; (4) Parkinson's disease; (5) Multiple sclerosis; (6) Damage to the nervous tissue of the spinal cord with objective neurological indication of intractable spasticity; (7) Epilepsy; (8) Inflammatory bowel disease; (9) Neuropathies; (10) Huntington's disease; (11) Crohn's disease; (12) Post-traumatic stress disorder; (13) Intractable seizures; (14) Glaucoma; (15) Sickle cell anemia; (16) Severe chronic or intractable pain of neuropathic origin or severe chronic or intractable pain in which conventional therapeutic intervention and opiate therapy is contraindicated or ineffective; (17) Autism.

under federal law, and there is no federal exception permitting medical marijuana. 21 U.S.C. § 844(a); *United States v. Bey*, 341 F. Supp. 3d 528, 530 (E.D. Pa. 2018); *see also United States v. Jason Perla*, 2:20-cr-00281-WSH, Doc. 32 at 4 (Hardy, J.) (W.D.PA, February 9, 2021) (hereinafter, “*Perla*”) (“Although Pennsylvania has legalized medical marijuana use under certain regulated conditions, the possession of marijuana violates federal law, contrary to the clear requirements of the Bail Reform Act.”). To the contrary, “by characterizing marijuana as a Schedule I drug, Congress expressly found that the drug has no acceptable medical uses.” *Gonzales v. Raich*, 545 U.S. 1, 27 (2005). Mr. Wright’s pretrial release conditions cannot, and should not, be modified to allow him to possess or use marijuana. *See Bey*, 341 F.Supp.3d at 529 (stating, in reference to the federal supervisee in the case, that “neither he, nor any Pennsylvanian, can doubt federal law preempts Pennsylvania’s limited permission to use and possess doctor-prescribed medical marijuana. Persons released from prison subject to this Court’s supervised release—as with all Pennsylvanians—may not use, possess or distribute marijuana under federal law”); *see also United States v. Anderson*, 12-cr-200-NBF, Doc. 547 (W.D. Pa. Feb. 26, 2020) (ordering that the federal supervisee in the case “shall not use medical marijuana and shall surrender any medical marijuana to the Probation Officer”); *United States v. Viccari*, 14-cr-102-NBF, Doc. 58 (W.D. Pa. Feb. 18, 2020) (same).

2) *Prohibiting violations of federal law is a mandatory condition of pretrial release.*

The Bail Reform Act requires that any individual released on bond shall be subject to the requirement “that the person not commit a Federal, State, or local crime during the period of release . . .” 18 U.S.C. §§ 3142(b) and 3142(c)(1)(A). This is a mandatory condition that cannot be waived or removed from a defendant’s pretrial release order. *Perla*, at 4; *see also* 18 U.S.C. §§ 3142(b) and 3142(c)(1)(A) (noting judicial officer “*shall order*” the pretrial release of an

individual subject to the condition that they not commit any federal, state or local crime).

Because the possession or use of marijuana, medical or otherwise, violates federal law, permitting its possession and use by pretrial releasees is foreclosed by the Bail Reform Act. *See, e.g., United States v. Kelly*, 419 F. Supp. 3d 610, 611 (W.D.N.Y. 2019) (denying request to modify pretrial release conditions to permit the defendant to participate in a medical marijuana program at a neurological institute given the fact that “‘compliance with federal law is a mandatory condition’ of release” (quoting *United States v. Arizaga*, No. 16-CR-89-LTS, 2016 WL 7974826, *2 (S.D.N.Y. Dec. 22, 2016))); *United States v. Pearlman*, No. 3:17CR00027(MPS), 2017 WL 7732811, at *4 (D. Conn. July 7, 2017) (recognizing that the condition for a defendant on pretrial release not to violate federal law is “mandated by the statute”; noting that use of medical marijuana would expose the defendant to penalties under 18 U.S.C. § 3147; and denying motion to modify release conditions to permit defendant to use medical marijuana); *cf. United States v. Schostag*, 895 F.3d 1025, 1028 (8th Cir. 2018) (“[T]he district court had no discretion to allow Schostag to use medical marijuana while on supervised release.”).

3) *The Court and Probation Office remain compelled to enforce a releasee’s conditions of pretrial release, even as they relate to the use of medical marijuana.*

Mr. Wright requests, if the Court is unwilling to alter his release conditions to permit medical marijuana use, to essentially agree to turn a blind eye and take no punitive actions regarding Mr. Wright’s continued marijuana use, so long as it complies with Pennsylvania’s medical marijuana statute. (Doc. 55 at ¶ 4).

Congress has foreclosed such a possibility, requiring revocation of pretrial release where a judicial officer finds that there is “probable cause that the person has committed a Federal, State, or local crime” and that the person is unlikely to abide by any condition or conditions of release

or otherwise poses a danger to the community or risk of flight. 18 U.S.C. § 3148(b). Furthermore, if a defendant is convicted of committing an offense while on pretrial release, the defendant is subjected to additional punishment. 18 U.S.C. § 3147. Therefore, the Court should also deny Mr. Wright's request to have the Court and the Probation Office turn a blind eye to his continued marijuana use.

Mr. Wright's motion for modification of bond should be denied. As an initial matter, he has not scheduled that his purported medical marijuana use would be in compliance with Pennsylvania's medical marijuana statute. Secondly, even if his "medical" marijuana use was in compliance with Pennsylvania law, that does not change the fact that such use remains illegal under federal law. As it is statutorily mandated that Mr. Wright not violate any federal law while on pretrial release, his request to modify the conditions of his bond should be denied.

WHEREFORE, the government respectfully requests that Mr. Wright's motion to modify release conditions be denied.

Respectfully submitted,

STEPHEN R. KAUFMAN
Acting United States Attorney

/s/ Douglas C. Maloney
DOUGLAS C. MALONEY
Assistant U.S. Attorney
PA ID No. 314082