

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

UNITED STATES OF AMERICA,)	USCA No. 14-1665
)	
Plaintiff-Appellee,)	Appeal from the United States
)	District Court for the Southern
v.)	District of Indiana,
)	Indianapolis Division
BRUCE JONES,)	
)	USDC No. 1:12-cr-00072
Defendant-Appellant.)	Tanya Walton Pratt, <i>Judge.</i>

MOTION TO SUSPEND BRIEFING;
VACATE SENTENCE AS TO COUNTS 2, 3 & 4;
AND REMAND FOR SENTENCING ON ALL COUNTS

The United States of America hereby moves for an order suspending briefing, vacating the sentence on Counts 2, 3, and 4, and remanding this matter to the district court for sentencing on all counts of conviction, which will enable this Court to hear all counts of the original indictment as a single appeal. Such relief will serve the interests of judicial efficiency and clarity and will not result in substantial prejudice to Jones.

Background

As Jones correctly stated in his Jurisdictional Statement, the original indictment in this case contained one count for healthcare fraud and three counts for illegal possession of firearms. (Opening Br. at 1.) Prior to the jury trial, Jones's pre-trial release conditions were revoked and he was detained pending trial on all counts. (Dkt. 141.) The district court severed the two sets of counts, and a jury

convicted Jones on the three firearms counts on October 24, 2013. (Dkt. No. 161.) The court sentenced Jones on the firearms counts on March 24, 2014. (A. 9-11.) The court entered judgment on March 27, 2014, (A. 1), and Jones filed his timely notice of appeal on that day, (A. 21).

On October 27, 2014, Jones proceeded to trial on the healthcare fraud count, and a jury found him guilty on October 30. (Dkt. No. 298.) The matter of Jones's sentencing for this final count of the original indictment is set for January 23, 2015. The Presentence report is complete and is a consolidated report that applies the grouping rules of U.S.S.G. § § 3D1.3 and 3D1.4.

The Counts in this Case Should be Consolidated on Appeal

The sentencing issues that will arise in connection with the final count of conviction and those presented in the current appeal overlap considerably, both with respect to the guidelines calculations and the application of the factors outlined in 18 U.S.C. § 3553(a). In the interest of clarity and efficiency, this Court should resolve Jones's current appeal, which challenges aspects of his initial sentencing as well as other matters, in tandem with any appeal Jones may bring regarding his second trial. Furthermore, because Jones has been convicted of the remaining count and all that remains is sentencing, significant delay and any resulting prejudice are unlikely. Prejudice is further lessened because Jones was detained pre-trial and is not in custody by virtue of the jury's convictions on Counts 2, 3, and 4.

As an initial matter, this Court’s jurisdiction in this case stems from 28 U.S.C. § 1291 (“the courts of appeals . . . shall have jurisdiction of appeals from all final decisions of the district courts”), and 18 U.S.C. § 3742 (granting jurisdiction to review a sentence). In a related context, this Court has held, notwithstanding those statutory grants, that appellate review must wait for resolution of “all the counts that were considered together in a single criminal trial.” *United States v. Kaufman*, 951 F.2d 793, 794 (7th Cir. 1993).

This Court has not decided, however, whether appellate review must wait for resolution of severed counts of a single indictment. At least one court has concluded that the final judgment rule does not preclude appellate jurisdiction where counts of a single indictment have been severed. *See United States v. Powell*, 24 F.3d 28, 30-31 (9th Cir. 1994) (“Severance is analogous to charging the defendant in two separate indictments.”). Had the fraud and firearms counts in the present case been charged separately, separate appeals would be appropriate.

The Court need not resolve that open jurisdictional question here. In all events, suspension, vacation, and remand are warranted as a practical matter.

In *Kaufman*, this Court identified the potential confusion that may arise from multiple sentences in a single count because of the “grouping rules [that] apply in determining offense level” under § 3D1.1 of the Sentencing Guidelines Manual. 951 F.2d at 796. As this Court observed, “logic requires that § 3D1.1 be applied to all counts” of a single indictment. *Id.* Because the severed counts in this case interact to produce Jones’s combined offense level, *see* § 3D1.4, resolving the matters in a

single appeal will prevent confusion and wasteful relitigation of the same issues. *See Kaufman*, 951 F.2d at 795 (“The policy against piecemeal appellate review is at its strongest in criminal cases.”); *cf. Powell*, 24 F.3d at 31 (noting that maintaining separate appeals is sensible where no potential for confusion exists).

Indeed, this Court has recently suspended briefing under similar circumstances. *See Order, United States v. Wilson*, No. 13-2461 (7th Cir. Sept. 5, 2013). In *Wilson*, the defendant appealed a conviction and sentence on counts for structuring financial transactions to evade reporting requirements, while proceedings continued before the district court on severed counts for wire fraud. After hearing the parties’ positions regarding a suspension of briefing or dismissal of the appeal for lack of jurisdiction, this Court suspended briefing and ultimately dismissed the appeal at the parties’ request. *See id.*; *see also Order, United States v. Wilson*, No. 13-2461 (7th Cir. Sept. 26, 2013).

Here, the surest way to conserve judicial resources and avoid confusion would be to grant the requested relief and hear both of Jones’s appeals from the indictment as a single appeal. *See Kaufman*, 951 F.2d at 974 (cautioning against hearing “multiple appeals on the closely-related counts in one indictment, thus burdening the legal system for no purpose”). Accordingly, the appellee respectfully requests that the Court suspend briefing in this appeal, vacate the sentence, and remand for resentencing on all counts of conviction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 13, 2015, I electronically filed the foregoing Motion with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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