

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

JUN 21 1999

PATRICK FISHER
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ALVIN PETERSON, SR.,

Defendant-Appellant.

No. 99-2080
(D.C. No. CR-98-228-LH)
(D. N.M.)

ORDER AND JUDGMENT*

Before **PORFILIO**, **BALDOCK**, and **KELLY**, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

Defendant Alvin Peterson, Sr. appeals the district court's denial of his motion for release pending appeal under 18 U.S.C. § 3145(c). We affirm.

Pursuant to § 3143(b)(1), a defendant requesting release pending appeal must be detained unless the court finds that (1) the defendant has established by clear and convincing evidence that he is not likely to flee or pose a danger to the safety of any other person or to the community, and (2) the defendant has established by a preponderance of the evidence that the appeal is not for purpose of delay, the appeal raises a substantial question of law or fact, and if that substantial question is determined favorably to defendant on appeal, the decision is likely to result in reversal, an order for a new trial, a sentence with no term of imprisonment, or a reduced sentence. *See United States v. Affleck*, 765 F.2d 944, 952-53 (10th Cir. 1985). A defendant's detention is not mandatory if he both meets the conditions of § 3143(b)(1) and clearly shows exceptional reasons why detention is inappropriate. *See* 18 U.S.C. § 3145(c).

Upon consideration, we determine that defendant has failed to show that he is entitled to the relief sought. Therefore, the judgment of the United States District Court for the District of New Mexico denying release pending appeal is AFFIRMED.

Judge Porfilio would grant release pending appeal.

ENTERED FOR THE COURT
PER CURIAM