

FOR PUBLICATION

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

UNITED STATES OF AMERICA,)
)
)
 Plaintiff,)
) Criminal No. 2008-07
 v.)
)
 MITCHELL FRANCIS and)
 ATIBA BRATHWAITE,)
)
 Defendants.)
)
 _____)

ATTORNEYS:

Delia L. Smith, AUSA
St. Thomas, U.S.V.I.
For the plaintiff.

Thurston T. McKelvin, FPD
St. Thomas, U.S.V.I.
For defendant Mitchell Francis.

Darren John-Baptiste, Esq.
St. Thomas, U.S.V.I.
For defendant Atiba Brathwaite.

ORDER

GÓMEZ, C.J.

The defendants in this matter, Mitchell Francis ("Francis") and Atiba Brathwaite ("Brathwaite") (collectively referred to as the "Defendants"), were charged on January 14, 2008, in a two-count information with conspiracy to distribute a controlled substance and possession with intent to distribute a controlled

substance. Brathwaite was arraigned on January 16, 2008. On January 14, 2008, a sealed arrest warrant issued for Francis. Francis was arrested on January 15, 2008, and arraigned on January 23, 2008.¹

On January 28, 2008, Francis filed a motion to unseal the arrest warrant against him and supporting affidavit, asserting that both his co-defendant and he had been arrested and arraigned and that there was no other reason to keep the warrant and affidavit sealed. The government did not file an opposition. The magistrate judge denied Francis's motion without explanation. Francis now appeals the magistrate judge's ruling.

Francis's motion is captioned as a "Motion for Reconsideration." The Court has been advised that Francis in fact appeals from the magistrate judge's order pursuant to 28 U.S.C. 636(b)(1)(A). That provision sets forth a ten-day period within which a party may appeal from a magistrate judge's order.

Here, the magistrate judge denied Francis's motion on February 14, 2008. Francis filed this appeal on March 5, 2008. More than ten days elapsed from the denial of Francis's motion to the filing of this appeal. Francis's appeal is therefore

¹ On February 14, 2008, the government filed a motion to dismiss the information against the Defendants after filing an indictment against them for the same offenses. The Court thereafter dismissed the information.

untimely. See, e.g., *United States v. Forchion*, 215 Fed. Appx. 194, 195 (3d Cir. 2007) (not precedential) (affirming the district court's denial on untimeliness grounds of a defendant's appeal from a magistrate judge's order and stating that "timeliness of an appeal is a mandatory jurisdictional prerequisite"). Accordingly, it is hereby

ORDERED that the appeal is **DENIED**.

Dated: March 20, 2008

S_____
CURTIS V. GÓMEZ
Chief Judge

Copy: Delia L. Smith, AUSA
Thurston T. McKelvin, FPD
Darren John-Baptiste, Esq.