

DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

UNITED STATES OF AMERICA

v.

JIM DAVID WALLACE,

Defendant.

1:04-cr-00098-WAL-EAH

TO: Evan Rikhye, Esq., AUSA
Gabriel J. Villegas, Esq., AFD

ORDER

THIS MATTER comes before the Court on Defendant Jim David Wallace's oral Motion for Release from Detention Pending Revocation Hearing, made during the September 25, 2024, Preliminary Hearing. Dkt. No. 70. For the reasons that follow, the Court will deny the motion.

BACKGROUND

On August 2, 2005, Jim David Wallace pleaded guilty in federal court to one count of being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g). He was sentenced to 37-months' imprisonment and three years of supervised release. Dkt. No. 45. This case presently comes before the Court for an alleged violation by Mr. Wallace of the terms of supervised release following that conviction. Dkt. No. 46.¹

In January 2005, while serving his prison term for 04-cr-98 at MDC Guaynabo, Mr. Wallace was charged with "forcibly assaulting, resisting, opposing, impeding, intimidating, or interfering" with a Corrections Officer, thereby inflicting bodily injury, pursuant to 18

¹ For ease of reference, the Court will identify the current case by its case number: 04-cr-98. The Court will further identify the rest of Mr. Wallace's cases discussed herein by their case number.

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U.S.C. §§ 111(a)(1) and (b). *United States v. Wallace*, No. 10-cr-17, Dkt. No. 1.² Mr. Wallace pleaded guilty to the assault and was sentenced in the District Court of Puerto Rico to an additional 18-months' imprisonment, to be served consecutively to the sentence issued in 04-cr-98. *Id.* Because of this additional sentence, Mr. Wallace was not released from prison until July 3, 2008, at which time his three-year term of supervised release began. Dkt. No. 47.

As part of the terms of supervised release imposed by the Court in 04-cr-98, Mr. Wallace was ordered not to commit another federal, state, or local crime. Dkt. No. 45. On April 1, 2010, however, Mr. Wallace was arrested on warrants issued by the Superior Court of the Virgin Islands. Dkt. No. 47. He was accused, inter alia, of violating Virgin Islands laws against Unauthorized Possession of a Firearm During the Commission of a Crime of Violence, Reckless Endangerment 1st Degree, and Assault 3rd Degree. *Id.*; *People v. Wallace*, No. SX-10-CR-165 (V.I. Sup. Ct. Sept. 11, 2014).

On September 11, 2014, Mr. Wallace was found guilty on all charges in SX-10-cr-165. He was sentenced to 25-years' imprisonment. Then, in 2022, Mr. Wallace pleaded guilty to voluntary manslaughter. *People v. Wallace*, No. SX-11-CR-256 (V.I. Sup. Ct. Sept. 29, 2022).³

² That case was transferred from the District of Puerto Rico to this Court.

³ In a memorandum to the Court, the Probation Office for the District of the Virgin Islands stated that a warrant for Mr. Wallace's arrest for first-degree murder and third-degree assault was issued at the same time as the warrant in SX-10-CR-165, initiating a separate case: *People v. Wallace*, No. SX-19-CR-160 (V.I. Sup. Apr. 1, 2010). Mr. Wallace was then arrested on a new information alleging that on February 19, 2004, he murdered another man. *People v. Wallace*, No. SX-11-CR-256 (V.I. Sup. Ct. Apr. 14, 2011). The memo indicates that both cases arose out of the same conduct. SX-19-CR-160 was ultimately dismissed just before Mr. Wallace pleaded guilty to voluntary manslaughter in SX-11-CR-256. Neither the Government at the hearing nor the Probation Office has provided more detail on the facts

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The conduct underlying the SX-11-CR-256 conviction occurred before Mr. Wallace was convicted in District Court in 04-cr-98. Therefore, despite being convicted and sentenced after the imposition of supervised release in this case, Mr. Wallace does not stand accused of violating his terms of release based on the 2022 conviction.

On September 4, 2024, Mr. Wallace was paroled by the Virgin Islands Parole Board. Soon thereafter, he was arrested by the U.S. Marshals Service pursuant to a federal detainer regarding the alleged supervised release violation from 2010. He was brought before this Court for an Initial Appearance and Preliminary Hearing on September 25, 2024, fourteen years after the alleged supervised release violation. During the hearing, Mr. Wallace requested release while awaiting a revocation hearing. The Government opposed his release, asserting that Mr. Wallace was a danger to the community.

In support of its opposition, the Government alerted the Court to Mr. Wallace's past convictions for assault, assault on a corrections officer, and voluntary manslaughter to demonstrate that he is a danger to the community. The Court questioned whether Mr. Wallace's recent grant of parole from the V.I. Parole Board suggested that reliance on these fourteen-, nineteen-, and twenty-year-old crimes was misplaced. The Government stated that it was not and rested on Mr. Wallace's prior convictions.

Mr. Wallace, through his attorney, Gabriel J. Villegas, AAFP, presented two potential third-party custodians to demonstrate that he was not a danger to the community. The first

and circumstances of these cases.

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witness was Mr. Wallace's uncle, Renardo Vasquez, who offered to look after Mr. Wallace while he was awaiting his revocation hearing. Mr. Vasquez testified that Mr. Wallace would not be living with him, but that he could check in on Mr. Wallace every day after work or during lunch breaks. He further testified that he would report Mr. Wallace immediately if he learned that Mr. Wallace violated a term of release. The Court then heard from Andrea Gomez, Mr. Wallace's grandmother. Ms. Gomez testified that Mr. Wallace would live with her and that she, too, could be a third-party custodian. She testified that she stayed home all day and that she also lived with her adult, adopted son, who would be home when he was not working. Ms. Gomez testified that Mr. Wallace listens to her and respects her and that she would be willing to report Mr. Wallace if she learned he violated a term of his probation. She also testified that there was no landline in the house.

Attorney Villegas also argued that Mr. Wallace has a fourteen-year-old son that he is eager to build a relationship with and that Mr. Wallace would not jeopardize that relationship by violating the Court's orders. Counsel further emphasized the significant length of time that had passed since the 2004 manslaughter, the 2005 assault on a corrections officer, and the 2010 third-degree assault. Attorney Villegas stated that Mr. Wallace was now a different person from the man who previously violated supervised release. He also informed the Court that Mr. Wallace would have a second set of conditions from his release on parole that would further ensure his compliance with the law. Counsel argued that home confinement and GPS monitoring—along with the standard conditions of release—would be sufficient to assure the Court that Mr. Wallace would not be a danger to

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the community. The Government agreed that those conditions would be appropriate if the Court were to grant Mr. Wallace's release, but maintained that it is their position that Mr. Wallace is a danger to the community.

The Court took the matter under advisement. In the intervening period, the District Judge scheduled Mr. Wallace's revocation hearing for October 4, 2024. Dkt. No. 72.

For the reasons that follow, the Court denies Mr. Wallace's oral motion for release pending the revocation hearing.

DISCUSSION

I. Applicable Legal Principles

"Rule 32.1 of the Federal Rules of Criminal Procedure pertains to revoking or modifying probation or supervised release." *United States v. Baez*, No. 01-cr-529, 2022 WL 3701965, at *2 (E.D. Pa. Aug. 25, 2022). Rule 32.1 provides that a "magistrate judge may release or detain" an individual with a pending supervised release revocation hearing "under 18 U.S.C. § 3143(a)(1) pending further proceedings." Fed. R. Cr. P. 32.1(a)(6). Section 3143(a)(1), in turn, provides that

a person who has been found guilty of an offense and who is awaiting imposition or execution of sentence . . . [shall] be detained, unless the judicial officer finds by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released under section 3142(b) or (c).

Unlike in pre-trial detention hearings, "[t]he burden of establishing by clear and convincing evidence that the person will not flee or pose a danger to the community rests with the person" seeking to avoid prehearing detention. Fed. R. Cr. P. 32.1(a)(6). In this context, clear

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and convincing evidence “will be shown where the truth of the facts asserted is highly probable.” *United States v. Georgiou*, No. 09-cr-88, 2010 WL 701892, at *1 (E.D. Pa. Mar. 1, 2010) (quoting *Black’s Law Dictionary* 251 (6th ed. 1990)).

The Government does not argue that Mr. Wallace poses a flight risk. Thus, the only question before this Court is whether Mr. Wallace has provided enough evidence to show that it is “highly probable” that he poses no danger to the community, despite a presumption that he be detained.

This Court could find only two cases from the Third Circuit that apply Rule 32.1(a)(6). In one case, a court in the Eastern District of Pennsylvania looked to the severity of the alleged conduct underlying the release violation, the releasee’s criminal history since his release, and his stability and employment to determine whether he proved clearly and convincingly that he was not a danger to the community. *Baez*, 2022 WL 3701965, at *2-3. In that case, a 45-year-old releasee was accused of raping an 18-year-old girl. *Id.* The severity of the crime notwithstanding, the court found pre-revocation hearing release appropriate because the releasee had never been accused of any violent conduct prior to that allegation, there was scant evidence to support the allegation, and the releasee had not yet been tried for the alleged rape and so still bore the presumption of innocence. *Id.*

In the other case, the court found a releasee’s “consistent pattern of conduct contrary to the conditions of his supervised release, including his alleged engagement in insurance fraud,” convincing evidence that the releasee posed a danger to the community. *United States v. Manuel*, No. 09-cr-394, 2012 WL 4024975, at *2 (E.D. Pa. Sept. 13, 2012). The court also

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found significant the releasee's initial, counseled, stipulation to detention while awaiting the revocation hearing. *Id.*

Bearing these cases in mind, the Court will perform a "thorough review of the totality of the circumstances," to determine whether Mr. Wallace has clearly and convincingly proven that it is highly probable that he is not a danger to the community. *United States v. Collymore*, No. 9-cr-160 at *1, 2021 WL 3130330, at *1 (D.R.I. July 23, 2021) (reviewing all evidence presented to find pre-revocation hearing releasee did not meet his burden under Rule 32.1(a)(6) despite a period of pro-social behavior because of a "lengthy criminal history . . . notable for the involvement of firearms and some instances of charged violence," and because of recent "deteriorating behavior.>").

II. Analysis

At the hearing, the burden fell upon Mr. Wallace to rebut the presumption that he should be detained by providing clear and convincing evidence that it is highly probable that he is not a danger to the community. Fed. R. Cr. P. 32.1(a)(6). He offered almost no evidence that could meet that burden. In addition to the foundational presumption of detention, the Court was provided compelling evidence affirmatively demonstrating the danger Mr. Wallace posed to the community in the form of a litany of gun charges, assaults, and a manslaughter conviction.

The Court recognizes that "it's inherently difficult to show clearly and convincingly that a person is neither dangerous nor a flight risk." *United States v. Rawls*, No. 18-cr-49, 2022 WL 2439571, at *2 (E.D. Ark. July 5, 2022). Still, the releasee, under Rule 32.1(a)(6), must

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provide some substantive evidence demonstrating that it is highly probable that he is not a danger to the community. Attorney Villegas offered conclusory statements indicating that Mr. Wallace is not the person he was when he committed those violent and dangerous crimes. That may well be, but Counsel provided no evidence to back those statements up.

Courts often look to a releasee's recent pattern of behavior to determine whether the releasee has proven they are not dangerous. *See, e.g., Baez*, 2022 WL 3701965, at *2-3 (citing releasee's recent engagement, employment history, and lack of criminal charges as evidence proving clearly and convincingly that it is highly probable that releasee poses no danger to the community); *Collymore*, 2021 WL 3130330, at *1 (citing recent "deteriorating behavior" as grounds for detention despite releasee's history of adherence to terms of supervised release). A long-incarcerated defendant might establish that he is no longer a danger to the community by providing evidence of his rehabilitation over his time in prison. *United States v. Rodriguez*, 451 F. Supp. 3d 392, 405 (E.D. Pa. 2020). In *Rodriguez*, a court determined an incarcerated defendant was not a danger to the community in part because he completed GED and vocational classes, personal rehabilitative classes, and had no violent disciplinary infractions during his seventeen years in prison. *Id.* Mr. Wallace, however, provided no evidence of how he has been behaving since 2010. The Court cannot, without evidence, find that Mr. Wallace is a changed man solely because of his lengthy stay in prison. That is especially so when the evidence demonstrates that even while in prison, he engaged in dangerous conduct that resulted in harm to a corrections officer. *See* 10-cr-17. Moreover, Mr.

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Wallace has been found guilty of the conduct underlying his alleged violation and so is not entitled to a presumption of innocence. *Cf. Baez*, 2022 WL 3701965.

The only substantive evidence Mr. Wallace provided for the Court to consider was the testimony of two potential third-party custodians. But such evidence does not “*rebut*” the statutory presumption that he is a danger to the community.” *United States v. Benjamin*, No. 19-cr-79, 2021 WL 3559471, at *3 (D.V.I. Aug. 11, 2021) (emphasis in original) (finding availability of third-party custodian was not evidence demonstrating lack of dangerousness). That is especially so where, as here, the defendant has a history of serious violent offenses. Courts finding detention appropriate in this context have relied on less serious offenses to do so. *See, e.g., United States v. Washington*, No. 19-cr-298, 2024 WL 3833267, at *2 (W.D.N.C. Aug. 15, 2024) (finding pre-hearing detention appropriate based on releasee’s history of robberies, assaults, and firearm possession); *United States v. Martinez*, No. 14-cr-1128, 2021 WL 1574910, at *1 (D.N.M. Apr. 22, 2021) (finding same based on history of dismissed gun charges, aggravated battery causing great bodily harm, and auto theft).

The only evidence available to the Court that approaches proof of non-dangerousness is the Virgin Islands Parole Board’s recent decision granting Mr. Wallace’s parole despite his record. Parole in the Virgin Islands is granted only if “there is a reasonable probability that [an] applicant will live and remain at liberty without violating the laws and if in the opinion of the Board such release is not incompatible with the welfare of society.” 5 V.I.C. § 4604. A parole-eligible person must have a “record of conduct [that] shows that he has observed the rules of the institution in which he is confined,” and requires a recommendation from the

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Director of the Bureau of Corrections and the recommendation of a psychiatrist and/or psychologist. 5 V.I.C. § 4601. Applications for parole are not considered unless an “applicant’s conduct has been uniformly excellent for at least six months.” 5 V.I.C. § 4603. According to the Parole Board’s former Chairman, “above anything else, the impact of public safety is considered before reaching a decision relating to the parole of a prisoner.”⁴

The Board, therefore, contemplated the very same question now before the Court. But the Court was not offered any evidence of Defendant Wallace’s conduct while in prison over the last decade or an indication of how the Parole Board came to their decision to release Mr. Wallace. Considering the severity of the Mr. Wallace’s prior charges, the Court is not convinced the grant of parole, without more, makes it highly probable that he will not pose a danger.

Simply put, Mr. Wallace failed to provide any evidence, let alone clear and convincing evidence that it is highly probable that he was not a danger to the community and thus did not rebut the presumption in favor of detention. The Court recognizes, however, that were more evidence adduced regarding Mr. Wallace’s potential rehabilitation in prison, Mr. Wallace may have met his burden. At the time of the hearing, the parties did not appear to appreciate the fact that the supervised releasee, not the Government, bore the burden of proving by clear and convincing evidence that he was not a danger to the community. The

⁴ Government of the Virgin Islands, *Press Release: Parole Board to Consider Public’s Safety First* (Oct. 9, 2015) <https://bvi.gov.vg/media-centre/parole-board-consider-public-s-safety-first#:~:text=Health%20Services%20Authority.-,Mr.,and%20the%20rehabilitation%20of%20offenders> (last accessed Sept. 26, 2024).

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Court would ordinarily have held the matter open for supplemental briefing and argument with the proper standard in mind. Given the imminence of the revocation hearing, however, the Court will instead rely on the evidence already provided by the parties to deny Mr. Wallace's motion for release pending the revocation hearing. *See Dietz v. Bouldin*, 579 U.S. 40, 47 (2016) (courts possess an "inherent authority to manage their dockets and courtrooms with a view toward efficient and expedient resolution of cases").

Accordingly, it is now hereby **ORDERED**:

1. The Defendant's Oral Motion for Release from Detention Pending Revocation Hearing is **DENIED**.

ENTER:

Dated: October 1, 2024

/s/ Emile A. Henderson III
EMILE A. HENDERSON III
U.S. MAGISTRATE JUDGE