NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted May 31, 2023
Decided June 1, 2023

Before

DAVID F. HAMILTON *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 23-2096

UNITED STATES OF AMERICA
Plaintiff-Appellee,

v.

JAMES T. WEISS,
Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 1:19-CR-805-2

Steven Charles Seeger,
Judge.

O R D E R

James T. Weiss was indicted in October 2020 for his alleged involvement in a bribery scheme. Weiss has pleaded not guilty to the charges against him. His codefendant, Luis Arroyo, a former Illinois State Representative, pleaded guilty to the bribery scheme and was sentenced to 57 months' imprisonment in June 2022. Since Arroyo's appeal is pending before us and due to the factual overlap between the cases, we have elected to decide Weiss's interlocutory appeal pursuant to 7th Cir. I.O.P. 6(b).

Weiss appeals the denial of his motion to dismiss the indictment against him on the basis of the Constitution's Speech or Debate Clause. The Speech or Debate Clause provides that "The Senators and Representatives … for any Speech or Debate in either House … shall not be questioned in any other Place." U.S. Const. art I, § 6, cl. 1. The thrust of Weiss's motion to dismiss was that material protected by the Clause was presented to the grand jury that indicted both Arroyo and Weiss, rendering the indictment unsalvageable. The government opposed Weiss's motion, noting that the motion was both untimely and baseless. The district court agreed with the government on the merits, R.252, and Weiss now appeals.

Because it rejects an immunity from suit, the denial of a motion to dismiss based on the Speech or Debate Clause is immediately appealable under the collateral-order doctrine. *United States v. Schock*, 891 F.3d 334, 336 (7th Cir. 2018). Our review of the applicability of the Speech or Debate Clause is plenary. See *Empress Casino Joliet Corp. v. Blagojevich*, 638 F.3d 519, 527 (7th Cir. 2011) (recognizing that the availability of state legislative immunity is reviewed de novo).

We have elected to dispense with briefing and argument in this case: It is evident from the record below that Weiss's appeal is frivolous. Accord *Abney v. United States*, 431 U.S. 651, 662 n.8 (1977) ("It is well within the supervisory powers of the courts of appeals to establish summary procedures and calendars to weed out frivolous claims of former jeopardy."); *Mather v. Village of Mundelein*, 869 F.2d 356, 358 (7th Cir. 1989) ("It is gratuitous cruelty to put counsel through the exercise of writing briefs (and clients to the expense of paying for them) when the outcome is foredoomed."). We have previously noted that a frivolous interlocutory appeal might not vest us with appellate jurisdiction. See *Apostol v. Gallion*, 870 F.2d 1335, 1339 (7th Cir. 1989) ("[A] notice of appeal may be so baseless that it does not invoke appellate jurisdiction."). But we decline that path today because a resolution on the merits is equally available and all the more final.

By its own terms, the Speech or Debate Clause applies only to Members of Congress—not state legislators like Arroyo. *United States v. Gillock*, 445 U.S. 360, 374 (1980) ("The Federal Speech or Debate Clause, of course, is a limitation on the Federal Executive, but by its terms is confined to federal legislators."). The Supreme Court has also foreclosed applying an equivalent privilege to state legislators. *Id*. at 373 ("[R]ecognition of an evidentiary privilege for state legislators for their legislative acts would impair the legitimate interest of the Federal Government in enforcing its criminal statutes with only speculative benefit to the state legislative process."). Most obviously, Weiss is a private

citizen, not a legislator or legislative aide. See *Gravel v. United States*, 408 U.S. 606, 618 (1972) ("[T]he Speech or Debate Clause applies not only to a Member but also to his aides insofar as the conduct of the latter would be a protected legislative act if performed by the Member himself."). Thus, even if the Clause extended to state legislators, it would do private-citizen Weiss no good. "Summary disposition is appropriate when the position of one party is so clearly correct as a matter of law that no substantial question regarding the outcome of the appeal exists." *Williams v. Chrans*, 42 F.3d 1137, 1139 (7th Cir. 1994). Such is the case here, so we summarily affirm the denial of Weiss's motion to dismiss. The government's motion to dismiss this appeal is accordingly denied as moot.

Unfortunately, there is more to say. "The filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982). That divestiture precludes criminal trials. See *United States v. Centracchio*, 236 F.3d 812, 813–14 (7th Cir. 2001). As a result, just four categories of orders are immediately appealable by a criminal defendant: those that deny bail, deny a double-jeopardy immunity, direct the administration of psychotropic drugs, or deny Speech or Debate Clause immunity. *Schock*, 891 F.3d at 339. Against that backdrop, the timing of Weiss's motion, its merits, and his pursuit of this appeal hint that this was perhaps nothing but a last-ditch effort to obtain from us a trial continuance that the district court denied. See R.193 (refusing to continue trial from June 5). Despite being indicted two and a half years earlier (see R.1), Weiss waited until six weeks before trial to invoke the Speech or Debate Clause. R.219. The government responded four days later. R.225. Weiss then took three weeks preparing his reply. R.233. It took the district court just five days to resolve the motion. R.237. Yet Weiss waited twelve days to file his appeal, which came just seven days before his trial is set to begin. R.243.

Taken together, the timing and merits of this appeal lead us to conclude that professional discipline may be warranted. Accordingly, Weiss's counsel shall show cause by June 9, 2023 as to why he should not be subject to disciplinary action, including suspension, disbarment, or a fine, for his pursuit of this appeal. Fed. R. App. P. 46(b), (c); see also Fed. R. App. P. 38.

We also order that the mandate issue forthwith, see Fed. R. App. P. 41(b), so that the district court may proceed to try this case as scheduled. Absent any contrary order, the filing of any petition for panel or en banc rehearing shall not divest the district court

of jurisdiction. See *Apostol*, 870 F.2d at 1339 (Parties "who play games with the district court's schedule forfeit their entitlement to a pre-trial appeal.").

AFFIRMED; ORDER TO SHOW CAUSE ISSUED; MANDATE ISSUED