

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
CRIMINAL NO. 21-142 (DSD/ECW)

United States of America,

Plaintiff,

v.

**ORDER**

Mark Allen Miller,

Defendant.

This matter is before the court on defendant Mark Allen Miller's motion to stay his sentence pending appeal. On May 18, 2023, the court sentenced Miller to imprisonment for a term of twelve months and one day, well below the guidelines range of 30-37 months. Miller appealed to the Eighth Circuit Court of Appeals and will argue that he should have received a probationary sentence. In the present motion, he contends that his position on appeal represents a substantial issue of law and fact likely to result in a sentence that does not include a term of imprisonment. See 18 U.S.C. § 3143(b)(1)(B)(iii). The government opposes the motion.

The court finds that Miller has not met the standard set forth in § 3143(b)(1)(B)(iii). First, the sentence imposed is well below the guidelines range, which means that the sentence is unlikely to be found to be substantively unreasonable by the Eighth Circuit. Second, in his plea agreement, Miller waived the right

to appeal any sentence at or below 41 months. ECF No. 238, at 10. Obviously, the sentence imposed is well below that amount, thus rendering his appeal infirm and likely to be dismissed. Because of these facts, the court finds that the motion is brought for purposes of delay rather than to correct a substantial question of fact or law. See 18 U.S.C. § 3143(b)(1)(B). As a result, the motion must be denied.

Accordingly, **IT IS HEREBY ORDERED** that the motion to stay sentence pending appeal [ECF No. 234] is denied.

Dated: July 11, 2023

s/David S. Doty  
David S. Doty, Judge  
United States District Court