

UNITED STATES OF AMERICA v. WILLIAM J. BENSON, Defendant

No. 87 CR 278

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

1991 U.S. Dist. LEXIS 2178

January 18, 1991

JUDGES:

[*1]

Paul E. Plunkett, United States District Judge.

OPINIONBY:

PLUNKETT

OPINION:

MEMORANDUM OPINION AND ORDER

Defendant William J. Benson ("Benson") has filed what is essentially a motion to reconsider, in light of the United States Supreme Court's recent decision in *United States v. Cheek*, No. 89-658, 59 U.S.L.W. 4049 (January 8, 1991), our earlier denial of his motion for bail pending appeal. The standard we are to apply is well settled. In order to obtain bail pending appeal Benson must demonstrate, pursuant to 18 U.S.C. § 3143(b)(2), that his appeal "is not for purpose of delay and raises a substantial question of law or fact likely to result in reversal or an order for a new trial." *United States v. Shoffner*, 791 F.2d 586, 588 (7th Cir. 1986). A "substantial question" is one that is a close question or one that could very well be decided the other way. *Shoffner*, 791 F.2d at 589 (citing *United States v. Thompson*, 787 F.2d 1084, 1085 (7th Cir. 1985)). Benson argues that he is entitled to bail pending appeal because he has raised (or he will raise if allowed by the Seventh Circuit) a substantial issue - that under *Cheek* he is entitled to a new trial.

We find that our original decision [*2] to deny bail pending appeal was correct and nothing in the *Cheek* decision leads us to conclude that our prior ruling need be reconsidered or modified. The Supreme Court was quite explicit in *Cheek*. Certain issues must go to the jury, and certain issues must not. In Part III A of the *Cheek* opinion, the Court held that a good faith

misunderstanding of the law or a good faith belief that one is not violating the law negates willfulness, whether or not the claimed belief or misunderstanding is objectively reasonable. Part III A refers only to "state of mind" defenses - that is the specific intent (willfulness) element of 26 U.S.C. §§ 7201 and 7203. The Court, construing prior decisions in criminal tax cases, noted that the Government, in order to prove willfulness, must prove that the law imposed a duty on the defendant, that the defendant knew of this duty, and that he voluntarily and intentionally violated that duty. The Court held:

We thus disagree with the Court of Appeals' requirement that a claimed good-faith belief must be objectively reasonable if it is to be considered as possibly negating the Government's evidence purporting to show a defendant's awareness [*3] of the legal duty at issue. Knowledge and belief are characteristically questions for the factfinder, in this case the jury. Characterizing a particular belief as not objectively reasonable transforms the inquiry into a legal one and would prevent the jury from considering it.

It was therefore error to instruct the jury to disregard evidence of *Cheek's* understanding that, within the meaning of the tax laws, he was not a person required to file a return or pay income taxes and that wages are not taxable income, as incredible as such misunderstandings of and beliefs about the law might be.

59 U.S.L.W. at 4052-4053 (emphasis added). Under Part III A of the *Cheek* opinion, a defendant's asserted beliefs of the meaning of the Internal Revenue Code must go to the jury so that the jury can decide if the Government has met its burden of proving that the defendant acted wilfully.

However, not all of a defendant's beliefs must, or even should, go to the jury. Part III B of the Cheek opinion shifts gears and tells us quite explicitly that:

[A] defendant's views about the validity of the tax statutes are irrelevant to the issue of willfulness, [*4] need not be heard by the jury, and if they are, an instruction to disregard them would be proper. For this purpose, it makes no difference whether the claims of invalidity are frivolous or have substance. It was therefore not error for the District Judge to instruct the jury not to consider Cheek's claims that the tax laws were unconstitutional.

59 U.S.L.W. at 4053 (emphasis added). The Court's rationale was that, unlike a defendant's beliefs and understandings of the meaning of the tax laws, beliefs and understandings of the validity of those laws "reveal full knowledge of the provisions at issue." *Id.*

With that background, we turn to Benson's argument that, because of Cheek, he now has a substantial issue on appeal. We find that whatever Benson may argue in the Seventh Circuit, Cheek will be of no help to him. Benson's main argument is that under Cheek he should have been allowed to argue to the jury a series of defenses all based on the purported invalidity of the Sixteenth Amendment. We refused to conduct an evidentiary hearing on this issue and we refused to let defendant present any Sixteenth Amendment-based defenses to the jury. However, Cheek changes none of

[*5] that. In fact, Part III B of Cheek makes it clear that no Sixteenth Amendment argument, whether grounded in actual invalidity or believed invalidity, may go to the jury. We find it clear that Cheek gives defendant no substantial issues on appeal that flow, in any way, from arguments of the invalidity of the Sixteenth Amendment.

We now turn to arguments based on Part III A of Cheek. Under Part III A, we must let a jury decide whether or not a taxpayer wilfully violated the Internal Revenue Code. We must therefore let the jury pass on a defendant's asserted beliefs that "within the meaning of the Internal Revenue Code," *59 U.S.L.W. at 4053*, he owed no tax. Benson did make such an argument to the jury. Benson argued to the jury that he believed certain monies he received, specifically payments from an insurance company and Social Security disability benefits, were not taxable under the Internal Revenue Code. Those defenses, directed at the willfulness element, were considered (and rejected) by the jury. Benson does not argue today (or in the Seventh Circuit) that he was prevented from presenting to the jury any defenses based on his beliefs and understandings of the meaning [*6] of the tax laws. Thus, Part III A of Cheek offers Benson no substantial issues on appeal.

Conclusion

For the reasons set out above, we find that the Supreme Court's recent opinion in *United States v. Cheek* offers defendant Benson no substantial issues on appeal as defined in *18 U.S.C. § 3143(b)(2)*. Defendant's renewed motion for bail pending appeal is denied.