

United States v. Drefke, **707 F.2d 978** (8th Cir. 06/07/1983)

[1] UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

[2] No. 82-1706

[3] 1983.C08.40568 <<http://www.versuslaw.com>>; **707 F.2d 978**

[4] June 7, 1983

[5] **UNITED STATES OF AMERICA, APPELLEE,**
v.
PAUL M. DREFKE, APPELLANT.

[6] Appeal from the United States District Court for the Western District of Missouri

[7] Before BRIGHT, ROSS and JOHN R. GIBSON, Circuit Judges.

[8] Order

[9] Appellant Paul M. Drefke moves for a stay of mandate to permit application to the Supreme Court of the United States for a writ of certiorari and moves for release pending issuance of the court's mandate.

[10] This court's opinion affirming Drefke's conviction was filed May 13, 1983. The record reveals that the United States District Attorney filed a motion to revoke bail at approximately 11:00 a.m., May 13, 1983, on the ground that Drefke's appeal is frivolous and taken for the purpose of delay, relying on 18 U.S.C. § 3148. The district court entered an order revoking bail, effective at 3:00 p.m. on May 13, 1983, upon motion of the United States "and for good cause shown." Drefke's motion recites that at approximately 4:00 p.m., May 13, 1983, he was arrested and incarcerated.

- [11] Our opinion plainly stated that at least two of the grounds asserted in the appeal by Drefke and co-appellant, Richard O. Jameson, were frivolous or without arguable merit. The opinion demonstrates that all of the issues raised were not only without merit, but without arguable merit, and thus legally frivolous. The order of the district court based on the motion that the appeal was frivolous and taken for delay was fully justified.
- [12] Even though the filing of the notice of appeal transferred jurisdiction of this case from the district court to the court of appeals, the district judge retains jurisdiction over a defendant for the limited purpose of reviewing, altering or amending the conditions under which that court released the defendant. The district court is empowered to revoke or forfeit the defendant's bond during pendency of an appeal for any of the reasons which would have supported an initial denial of the defendant's application for release. *United States v. Black*, 543 F.2d 35, 37 (7th Cir. 1976); *United States v. Elkins*, 683 F.2d 143, 145 (6th Cir. 1982).
- [13] The issues in the appeal presented to this court were frivolous and issues that may be raised in a petition for certiorari to the United States Supreme Court are also frivolous, and will be taken only for the purpose of delay.
- [14] Accordingly, the motion to stay mandate is denied, the order of the district court revoking bail is affirmed, and the motion for release pending issuance of mandate is denied.

19830607

© 1998 VersusLaw Inc.
