

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

UNITED STATES OF AMERICA,

Plaintiff,

v.

SAVINO DAVILA,

Defendant.

CRIMINAL ACTION

No. 06-20056-01-KHV

ORDER

On June 21, 2010, the Court sustained defendant's motion under 28 U.S.C. § 2255 and ordered that defendant be re-sentenced. Jonathan Laurans represented defendant in his Section 2255 proceeding. On August 10, 2010, after defendant decided that he did not want Mr. Laurans to represent him at re-sentencing, the Court directed defendant to file a financial affidavit so that the Court could evaluate whether counsel should be appointed under the Criminal Justice Reform Act. Doc. #768. On September 21, 2010, the Court appointed John ("Sean") McManman Baker, III to represent defendant and set sentencing for January 25, 2011. Doc. #772. On January 11, 2011, defendant filed a motion to continue based on Mr. Baker's trial commitments and need for additional time to prepare for sentencing. Doc. #777. On January 12, 2011, the Court sustained defendant's motion and continued sentencing to May 3, 2011. Doc. #778. On March 31, 2011, the government filed a motion to continue based on government counsel's trial commitments and need for additional time to prepare for sentencing. Doc. #784. On April 4, 2011, the Court sustained the government's motion and continued sentencing to June 28, 2011. Doc. #785. The sentencing hearing was later re-scheduled for June 27, 2011.

On June 16, 2011, the government filed a motion to continue because although Mr. Baker indicated that defendant would file objections to the PSIR, he had not done so and the government needed additional time to respond to any such objections. Doc. #788. That same day, the Court overruled the government's motion to continue by text entry and noted that defendant should file any objections to the PSIR by June 21, 2011.¹ Later that same day, Jonathan L. Laurans entered an appearance on behalf of defendant.² This matter is before the Court on defendant's Motion To Continue Sentencing Hearing (Doc. #791) filed June 16, 2011. For reasons stated below, the Court overrules defendant's motion.

In the current motion to continue, Mr. Laurans states that as of June 16, 2011, he agreed to re-enter the case and represent defendant at sentencing. Mr. Laurans does not indicate whether present counsel, Mr. Baker, who has not asked to withdraw, will be able to file objections to the PSIR by June 21, 2011. Last summer, defendant decided not to go forward with Mr. Laurans at sentencing and asked the Court to appoint new counsel under the Criminal Justice Reform Act. Absent unusual circumstances, which defendant has not shown on the present record, defendant cannot have his prior counsel enter an appearance less than two weeks before sentencing and obtain a six-month continuance so that prior counsel can get re-acquainted with the case.³

IT IS THEREFORE ORDERED that defendant's Motion To Continue Sentencing Hearing (Doc. #791) filed June 16, 2011 be and hereby is **OVERRULED**.

¹ The Court reserved the question whether any such objections are timely. Doc. #789.

² In his entry of appearance , Mr. Laurans does not indicate what relationship, if any, he has with current appointed counsel, Mr. Baker. Entry Of Appearance (Doc. #790)

³ In general, counsel enters a case subject to the existing schedule. If Mr. Laurans cannot fulfill his ethical obligations under the current schedule, he should determine whether he should withdraw or act as co-counsel with Mr. Baker under the current schedule.

Dated this 20th day of June, 2011, at Kansas City, Kansas.

s/ Kathryn H. Vratil
KATHRYN H. VRATIL
United States District Judge