

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 15-CR-10032-01-JTM

WALTER JASPER SAMUEL SHRUM,

Defendant.

MEMORANDUM AND ORDER

Before the court is Defendant Walter Shrum's "Response and Supplemental Authority and Brief to Government's Opposition to [his] Pro Persona Motion to Continue." Dkt. 67. Shrum requests: 1) continuance of the trial to the November 2016 docket, 2) oral argument on this motion, 3) leave to file a mandamus with the Tenth Circuit Court of Appeals regarding the court's denial of his motion to dismiss and motion to suppress, and 4) stay of the proceedings pending a ruling from the Tenth Circuit. On July 25, 2016, the court granted Shrum's motion to continue the trial over the Government's objection, and set the jury trial for November 1, 2016. Thus, Shrum's request for a continuance is denied as moot. And because oral argument is unnecessary for the resolution of this motion, the court denies Shrum's request for oral argument.

A motion for stay pending appeal requires consideration of four factors: 1) whether the appellant has a strong position on the merits of the appeal; 2) whether the appellant will suffer irreparable injury if a stay is denied; 3) whether a stay would substantially harm other parties to the litigation; and 4) where the public interest lies. *Hilton v. Braunskill*, 481 U.S. 770, 776

(1987). Shrum wants to appeal the court's ruling on his motion to suppress. But a ruling on a motion to suppress in a pending criminal proceeding is interlocutory and not immediately appealable. *DiBella v. United States*, 369 U.S. 121, 131 (1962). Thus, the Tenth Circuit would likely dismiss the appeal for lack of jurisdiction. *United States v. Tucker*, 745 F.3d 1054, 1057 (10th Cir. 2014) (dismissing appeals of district court's denial of motion quash indictment and motion to suppress for lack of jurisdiction). Factors 3 and 4 also weigh against Shrum. Accordingly, the court denies Shrum's request for a stay pending appeal.

IT IS THEREFORE ORDERED that Shrum's motion (Dkt. 67) is **DENIED**.

IT IS SO ORDERED this 3rd day of August 2016.

s/ J. Thomas Marten
J. THOMAS MARTEN, Judge