UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	No. 2:16-cr-00160-HAB-JEM
	)	
v.	)	
	)	Hon. Holly A. Brady
JAMES E. SNYDER,	)	
	)	
Defendant.	)	

DEFENDANT'S BRIEF PURSUANT TO JANUARY 20, 2026 ORDER

Defendant, James Snyder, by counsel, respectfully submits this brief, as instructed by the Court's Order of January 20, 2026 (ECF No. 672), to address (1) the scope of this Court's authority following remand from the U.S. Court of Appeals for the Seventh Circuit, and (2) the applicability of the enhancement under § 3B1.1 of the U.S. Sentencing Guidelines (the "leader/organizer enhancement"). As set forth more fully below, the leader/organizer enhancement does not apply, and the Court is not bound by, and should not defer to, Judge Kennelly's prior application of that enhancement—or any other finding—at Mr. Snyder's 2021 sentencing.

I. On Remand, This Court is Not Bound By Judge Kennelly's Prior Rulings

When Mr. Snyder was sentenced in 2021, the landscape of this case looked very different. At that time, Mr. Snyder stood before the Court with convictions on both a bribery and a tax count. Even then, and even with a guideline range of 46 to 57 months, Mr. Snyder was sentenced to 21 concurrent months based on both convictions. The Judge, acknowledging the likely appellate challenge to the more serious bribery count, allowed Mr. Snyder to remain out of custody on bail, despite the Government's repeated efforts in opposition. ECF Nos. 585 & 605. Three years later, Mr. Snyder prevailed in his challenge to the bribery count, with the Supreme Court reversing the conviction. *Snyder v. United States*, 603 U.S. 1 (2024). Now, despite the reversal, and then

voluntary dismissal, of the bribery count, the Government seeks a sentence on the sole remaining tax count that is even harsher than the 2021 sentence. That defies both basic fairness and the law.

As part of Mr. Snyder's 2021 sentencing, Judge Kennelly applied the leader/organizer enhancement under U.S.S.G. § 3B1.1(c) based on two emails from Mr. Dalton, stating, "The references to burying things and so on and hiding things is sufficient to, I think, show by a preponderance of the evidence that [Mr. Dalton] was a participant in the offense." ECF No. 586 at 121. This resulted in a four-level swing: a two-level increase to Mr. Snyder's offense level and ineligibility for the Zero Point Offender two-level decrease under U.S.S.G. § 4C1.1.

Three years after the 2021 sentence was issued, the Supreme Court reversed Mr. Snyder's bribery conviction, holding: "We reverse the judgment of the U.S. Court of Appeals for the Seventh Circuit and remand the case for further proceedings consistent with this opinion." *Snyder*, 603 U.S. at 20. The Seventh Circuit then remanded the matter, holding that a new trial on the bribery count would be permissible if the Government chose to pursue it. *United States v. Snyder*, No. 21-2986, 2024 WL 4834037, at *2 (7th Cir. Nov. 20, 2024). The Government opted not to do so and has stated it will dismiss the bribery count. ECF No. 634 at 4.

This was a general remand, which "returns the case to the trial court for further proceedings consistent with the appellate court's decision, but consistency with that decision is the only limitation imposed by the appellate court." *United States v. Simms*, 721 F.3d 850, 852 (7th Cir. 2013). Here, the Seventh Circuit decision that "[a] new trial is permissible if the government chooses to pursue it[,]" *Snyder*, 2024 WL 4834037 at *2, in conjunction with the Supreme Court's remand for further proceedings consistent with its opinion, make clear that future proceedings would not simply be a mechanical re-imposition of the previously imposed sentence on the bribery and/or tax count. These orders not only clearly contemplated a new trial—including new pretrial

proceedings[1]—but also a new sentencing on the tax count, as well as any additional counts resulting in conviction after the new trial. Further, when Judge Kennelly granted Mr. Snyder's request for bond pending appeal, Judge Kennelly noted he granted the motion because, if Mr. Snyder's appeal were granted, "it would result in vacating a sentence because the sentence was premised at least in significant part on [the bribery count]." ECF No. 600 at 3 (12/23/2021 Telephonic Conference).

The general rule in the Seventh Circuit is that the Court's silence on an issue raised on appeal means it is not available for consideration on remand, and an issue not raised on appeal is waived and, therefore, not remanded. *United States v. Husband*, 312 F.3d 247, 250–51 (7th Cir. 2002). However, in *Pepper v. United States*, the Supreme Court equated general remands for re-sentencing to an order for de novo sentencing, noting that such orders "effectively wipe the slate clean." 562 U.S. 476, 507 (2011). The Seventh Circuit has held that *Pepper* "stands for the proposition that general remands render a district court ***unconstrained by any element of the prior sentence***." *United States v. Barnes*, 660 F.3d 1000, 1006–07 (7th Cir. 2011) (emphasis added); *see also United States v. Whitlow*, 740 F.3d 433, 439 (7th Cir. 2014) ("The district court was thus free to consider any issue it considered necessary to effectuate its sentencing intent, ***even issues [defendant] failed to raise in his first appeal***.") (emphasis added).

Thus, Seventh Circuit precedent allows the Court to reconsider the original sentence, including the component parts and findings upon which it was based. This is especially true when at least one count of a multi-count indictment is vacated. *See United States v. Mobley*, 833 F.3d 797, 801 (7th Cir. 2016) ("Because a criminal sentence is normally a package that includes several component parts (term of imprisonment, fine, restitution, special assessment, supervised release), when one part of the package is disturbed, we prefer to give the district court the opportunity to

[1] On remand, the Court set pretrial deadlines in anticipation of a retrial on the bribery count. ECF No. 628.

reconsider the sentence as a whole as to 'effectuate its sentencing intent.'") (quoting *Pepper*, 562 U.S. at 507); *United States v. Moore*, 851 F.3d 666, 672–73 (7th Cir. 2017) ("When we vacated [defendant's] conviction on the using-and-carrying charge, we unbundled the sentencing package and left the door open to a new sentence on the felon-in-possession charge—in conjunction with any other charge on which Moore might have been convicted after a second trial."). The sentencing package doctrine generally permits the district court to resentence a defendant on convictions that remain after he succeeds in getting one or more convictions vacated, even if he did not challenge the convictions on which he is resentenced. *See United States v. Binford*, 108 F.3d 723, 728–30 (7th Cir. 1997) (applying sentencing package principles to uphold resentencing after defendant's successful Section 2255 attack on his Section 924 conviction, which led to new consideration and application of firearm-related enhancement under U.S.S.G. § 2D1.1(b)(1)). "The image of the package reflects the likelihood that in sentencing a defendant who is convicted of more than one count of a multicount indictment, the district judge imposes an overall punishment which takes into account the nature of the crime, certain characteristics of the criminal, and the interdependence of the individual counts." *Id.* at 728 (internal citations omitted).

The Government contends that this Court should be bound by Judge Kennelly's initial determination that the leader/organizer enhancement applies. But this would force the Court to ignore evidence before it, "a result that is neither necessary nor justified." *See, e.g., United States v. Harris*, 531 F.3d 507, 514 (7th Cir. 2008) (discussing how district courts should not blindly adhere to prior determinations following remand); *Champaign-Urbana News Agency, Inc. v. J.L. Cummins News Co., Inc.*, 632 F.2d 680, 683 (7th Cir. 1980) ("The only sensible thing for the trial court to do is to set itself right as soon as possible when convinced that the law of the case is erroneous.").

In wake of the Supreme Court's vacatur of the bribery conviction, this Court is "presented with a conviction record distinct from the one that confronted" Judge Kennelly. *Moore*, 851 F.3d at 673. Thus, this Court's discretion in determining Mr. Snyder's sentence is "not cabined by the term that Judge [Kennelly] imposed on just one of the two counts of which [Mr. Snyder] was originally convicted." *Id.*

II. The Leader/Organizer Enhancement Does Not Apply

The leader/organizer enhancement does not apply to the facts of this case. The Government seeks an aggravating-role enhancement under U.S.S.G. § 3B1.1 based solely on two emails sent *from* Steve Dalton *to* Mr. Snyder containing poor language, along with the Government's assertion that Mr. Dalton was acting under Mr. Snyder's direction. *See, e.g.*, ECF No. 658 at 9–11; Government Exhibits 25A & 25B. These communications, however, fall far short of supporting this enhancement. This Court should decline to apply that enhancement at sentencing.

Mr. Dalton was a friend who was out of work and needed something to do, so Mr. Snyder asked Mr. Dalton to perform organizational tasks and general office work. ECF No. 673, Exhibit D, p. 4. There is no evidence that Mr. Dalton was asked to, or did, contribute to the preparation or submission of Mr. Snyder's tax filings, which Agent Hatagan testified were handled by Mr. Snyder's licensed accountant, Dan Pickart. *See, e.g.,* ECF No. 231 at 16 (Trial Vol. 3, 1/16/2019) ("Dan Pickart was an individual that was responsible for preparing the defendant's individual and business tax returns.").

It is indisputable that Mr. Dalton's emails were about Mr. Snyder's 2010 and 2011 personal income tax returns, not the 2007 to 2009 personal and payroll taxes at issue in this case. *See* Government Exhibits 25A & 25B. Nor is there any dispute that Mr. Snyder's accountant, Mr. Pickart—not Mr. Dalton—prepared and filed Mr. Snyder's 2010 and 2011 personal income tax returns. The Government offers no evidence from the trial record (1) that Mr. Dalton engaged in

any criminal activity, (2) that Mr. Snyder managed, ordered, or otherwise instructed Mr. Dalton to engage in illegal conduct on Mr. Snyder's behalf, (3) that Mr. Snyder's accountant, Mr. Pickart, relied on Mr. Dalton's emails or purported "help" in any way or that Mr. Pickart filed incorrect information on the 2010 and 2011 personal tax returns that were the subject of Mr. Dalton's emails, or (4) that the 2010 and 2011 personal tax returns reflected any of Mr. Dalton's "suggestions." No charges related to the tax returns at issue in Mr. Dalton's emails were ever brought. The only relevant conduct that occurred after Mr. Dalton's emails is the submission of the April 2013 Form 433-A—which was submitted six months later.[2]

The Government moved to admit the emails at trial under Federal Rule of Evidence 801(d)(2) on the basis that Mr. Snyder hired Mr. Dalton to assist him with his 2010 and 2011 personal taxes, suggesting that (1) Mr. Snyder authorized Mr. Dalton to make a statement on the subject and (2) Mr. Dalton was Mr. Snyder's agent or employee on a matter within the scope of that relationship. ECF No. 231 at 45–46 (Trial Vol. 3, 1/16/2019). Judge Van Bokkelen eventually admitted the emails over the defense's objections, but stated "I'll be quite honest with you, [the tax count] gives me heartburn to start off with, but I'm going to let it play out and see where we're going with it … I'm going to overrule the objection, but I'm just saying that I've got some problems with that count, so I'm going to let it play out; and as it plays out, as it goes through and you're right, that count may be gone." ECF No. 231 at 50–51 (Trial Vol. 3, 1/16/2019).

The Government introduced these irrelevant emails at trial to inflame the jury and now argues these emails show Mr. Snyder was a leader/organizer despite Agent Hatagan's trial

[2] To the extent the Government now argues that Mr. Dalton's emails were a continuation of the conduct surrounding the 2007 to 2009 payroll taxes at issue and led to omissions on the April 2013 Form 433-A, Agent Hatagan acknowledged it was possible that form included all of Mr. Snyder's income. ECF No. 231 at 197–99 (Trial Vol. 3, 1/16/2019).

testimony regarding the respective roles of Mr. Dalton and Mr. Pickart and the fact there is no evidence of criminal activity related to Mr. Snyder's 2010 and 2011 personal income tax returns.

Section 3B1.1(c) requires proof that the defendant organized, led, managed, or supervised at least one ***criminally responsible*** participant. This requires the exercise of "some real and direct influence" over the alleged participant. *United States v. Sierra*, 188 F.3d 798, 803 (7th Cir. 1999) (citing *United States v. Mankiewicz*, 122 F.3d 399, 405 (7th Cir. 1997)). Management or supervision alone is insufficient for application of the enhancement. *See United States v. Katora*, 981 F.2d 1398, 1403 (3d Cir. 1992) (management of nonculpable party does not warrant application of § 3B1.1). As the Sentencing Commission's guidance explains, for purposes of § 3B1.1(c), a "participant" is "a person who is criminally responsible for the commission of the offense, but need not have been convicted," and makes clear that "a person who is not criminally responsible for the commission of the offense . . . is not a participant." U.S.S.G. § 3B1.1 cmt. n. 1. As such, alleged supervision must relate to actual criminal conduct, not merely job duties, communication, or ambiguous interactions. *See, e.g., United States v. DeGovanni*, 104 F.3d 43, 44–46 (3d Cir. 1997) (rejecting application of § 3B1.1(c) to defendant simply by virtue of his position as workplace supervisor, where defendant's participation was merely "rank and file" and he did not actually supervise illegal conduct).

Because Mr. Dalton is not a criminally responsible participant under § 3B1.1 the enhancement should not apply. There is no evidence in the record that Mr. Snyder managed, ordered, or otherwise instructed Mr. Dalton to engage in illegal conduct on Mr. Snyder's behalf, nor is there evidence—or even allegations—that Mr. Snyder's licensed accountant, Mr. Pickart, filed incorrect information on the tax returns that were the subject of Mr. Dalton's emails. Since the enhancement does not apply, Mr. Snyder qualifies for a two-level decrease for being a Zero-Point Offender. U.S.S.G. § 4C1.1.

III. Tax Withholding

Regarding the issue of payroll tax withholdings, previously in this case, the Government erroneously claimed that Mr. Snyder withheld taxes in a trust account and then transferred those funds to himself. During the final pretrial conference in 2021, the Court, after confirming there was no trust account, stated, "It's a huge difference. He's taking money out of the company's account and paying it to himself as opposed to money goes into an account where it's being held for payment over to the IRS and . . . then he takes it out of there" and that "it bears on whether the transfer of the money was a dishonest act, which is the predicate for 609(a)(2)" and ruled it was inadmissible at trial. ECF No. 598 at 54 (3/5/2021 Final Pretrial Conference). To be clear, payroll taxes were withheld from FFTM employees' paychecks. But the funds were not actually set aside in a trust or any other account; they went to pay operational costs for the business. Mr. Snyder has continued to object to the Government's claim that those withholdings were set aside and then used by Mr. Snyder personally, which is inaccurate and for which there is no evidence. The transcript from Mr. Dalton's grand jury testimony, which the Government attached in its recent brief, makes that clear:

Q: Do you recall why he wasn't remitting the money to the IRS?

A: Well, I think in his mind he didn't have the money.

Q: Was that in truth the reality?

A: Yeah. Sure. The business was upside-down.

Q: The whole time?

A: I don't remember James ever making money in that company.

ECF No. 673, Exhibit D, p. 26–27.

CONCLUSION

This Court should consider the record anew on remand. In doing so, this Court should decline to apply the leader/organizer enhancement, which is not supported by the evidence.

Date: February 4, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a copy of the foregoing has been served on all counsel of record via the Court's ECF filing system on this 4th day of February, 2026.

/s/ Jordan M. Oliver
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