

FILED

FOR PUBLICATION

JUL 17 2015

UNITED STATES COURT OF APPEALS

**MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

QUAN PHAM HOWARD,

Defendant - Appellant.

No. 15-10259

D.C. No. 5:14-cr-00390-LHK-1
(PSG)

Northern District of California,
San Jose

ORDER

Appeal from the United States District Court
for the Northern District of California
Lucy H. Koh, District Judge, Presiding

Submitted to Motions Panel July 17, 2015

Before: SCHROEDER, CANBY, and KOZINSKI, Circuit Judges.

PER CURIAM:

This is an appeal from the district court's revocation of appellant's pretrial release order. We have jurisdiction pursuant to 18 U.S.C. § 3145(c) and 28 U.S.C. § 1291.

We review the district court's factual findings concerning the danger that appellant poses to the community under a “deferential, clearly erroneous

standard.”” *United States v. Hir*, 517 F.3d 1081, 1086 (9th Cir. 2008) (quoting *United States v. Townsend*, 897 F.2d 989, 994 (9th Cir. 1990)). The conclusions based on such factual findings, however, present a mixed question of fact and law. *Hir*, 517 F.3d at 1086. Thus, “the question of whether the district court’s factual determinations justify the pretrial detention order is reviewed de novo.” *Id.* at 1086-87 (citations omitted).

The district court may enter an order of revocation and detention if, after a hearing, the court: (1) finds that there is either “probable cause to believe that the person has committed a Federal, State, or local crime while on release” or “clear and convincing evidence that the person has violated any other condition of release”; and (2) finds that “based on the factors set forth in [18 U.S.C. § 3142(g)], there is no condition or combination of conditions of release that will assure that the person will not flee or pose a danger to the safety of any other person or the community” or “the person is unlikely to abide by any condition or combination of conditions of release.” 18 U.S.C. § 3148(b)(1) & (2).

The nature of the conduct on which the district court based the revocation order is not clear from the record. In particular, it is not clear whether the district court found that there is probable cause to believe that appellant has committed a crime while on release. Nor is it clear whether the district court found that there is

clear and convincing evidence that appellant violated any other condition of release. We therefore remand the matter to the district court for clarification and for further findings, to the extent further findings are necessary.

REMANDED.

The mandate shall issue forthwith.

Counsel Listing

Daniel L. Barton, Nolan Barton Bradford & Olmos LLP, Palo Alto, California, for Defendant-Appellant.

Michelle Rodriguez, Special Attorney to the U.S. Attorney General, United States Department of Justice, Eastern District of California, Sacramento, California, for Plaintiff-Appellee.