

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

UNITED STATES OF AMERICA)	
)	CRIMINAL NO. 7:02CR0009
)	
v.)	<u>MEMORANDUM OPINION</u>
)	
CECIL KNOX, III, ET AL.)	By: Samuel G. Wilson
)	Chief United States District Judge

A grand jury indicted Willard Newbill James, Jr. on multiple racketeering, conspiracy, mail fraud, and health care fraud charges. During the course of a lengthy, two-month trial, the court granted James' motion for judgment of acquittal on multiple counts, leaving only five counts for the jury's resolution, and holding his motion as to those remaining five counts under advisement. The jury hung on all five counts, and the court declared a mistrial. The government later re-indicted James and two others on the five counts in a fourth superseding indictment, and the government now moves the court, pursuant to Federal Rule of Criminal Procedure 48(a), to dismiss James without prejudice.

Once the government moves to dismiss an indictment pursuant to Rule 48, the court has little discretion in determining whether or not to dismiss it. See U.S. v. Goodson, 204 F.3d 508, 512 (4th Cir. 2000). However, the court retains inherent supervisory authority—including the inherent supervisory authority to dismiss an indictment with prejudice—to insure the orderly administration of the court's docket and to protect the defendant's rights. The government asserts that the court only may dismiss with prejudice if the court finds bad faith. Although the court agrees that its inherent supervisory authority is circumscribed, the court disagrees with the government's assertion that the court may dismiss with prejudice only if it finds bad faith. Indeed, the procedural posture of this case stands in

marked contrast to those cases that have required such findings. Here the government has charged James in a fourth superseding indictment with two co-defendants, following a lengthy trial; James has pending Rule 29 motions; Rule 16 disclosures are in progress; and a trial date approaches. If the court could not dismiss with prejudice under these circumstances its inherent supervisory authority would be illusory. It would retain neither the ability to administer its own docket nor the ability to protect the defendant from prejudice and uncertainty.

Here, it appears that the likelihood of further criminal proceedings against James is small, but he, having come this far, is entitled to certainty—a resolution that has finality. Therefore, the court dismisses the remaining counts against James with prejudice.

ENTER: This 8th day of March, 2004.

Chief United States District Judge

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UNITED STATES OF AMERICA)	
)	CRIMINAL NO. 7:02CR0009
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v.)	<u>ORDER</u>
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CECIL KNOX, III, ET AL.)	By: Samuel G. Wilson
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In accordance with the Memorandum Opinion entered this day, it is hereby **ORDERED** and **ADJUDGED** that Willard Newbill James, Jr. is **DISMISSED WITH PREJUDICE** from the Third and Fourth Superseding Indictments. This dismissal, however, shall not be given preclusive effect as to any other person or entity.

The Clerk of the Court is directed to send certified copies of this Order and the accompanying Memorandum Opinion to the counsel of record for the United States and for James.

ENTER: This 8th day of March, 2004.

Chief United States District Judge