

20-2413-cv

United States Court of Appeals for the Second Circuit

VIRGINIA L. GIUFFRE,

Plaintiff-Appellee,

—against—

GHISLAINE MAXWELL,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
15-CV-7433 (LAP)

PLAINTIFF-APPELLEE'S RESPONSE TO AMICUS LETTER BRIEF REGARDING APPELLANT'S MOTION TO CONSOLIDATE

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Plaintiff Virginia Giuffre submits this response pursuant to this Court's September 11, 2020, order directing the parties to respond to the Government's amicus letter brief filed on September 16, 2020. D.E. 113.¹ Ms. Giuffre agrees with the Government's position and opposes Defendant's motion to consolidate this appeal (the "civil appeal") with her appeal in *United States v. Maxwell*, No. 20-3061 (the "criminal appeal"). To the extent that Defendant's criminal appeal is not dismissed, Defendant's motion to consolidate should be denied.

Courts "should consider both equity and judicial economy" in deciding whether consolidation is appropriate. *Devlin v. Transp. Commc'ns Int'l Union*, 175 F.3d 121, 130 (2d Cir. 1999). "However, under the applicable law, efficiency cannot be permitted to prevail at the expense of justice—consolidation should be considered when savings of expense and gains of efficiency can be accomplished *without sacrifice of justice.*" *Id.* (emphasis in original) (internal quotation marks omitted). Here, consolidation would "sacrifice justice" because it would allow Defendant to hold hostage this Court's mandated unsealing process by tying it to a criminal action despite the core issues in the civil and criminal appeals bearing no relation to one another.

First, the issues presented in the criminal appeal have no bearing on the civil

¹ Citations to "D.E." refer to this Court's docket. Ghislaine Maxwell's Appendix is cited as "App." Virginia Giuffre's Supplemental Appendix is cited as "SA."

appeal, and vice versa. As the Government's letter sets forth, Defendant raises new issues in her appeal papers, including a challenge to the process by which the Government obtained certain materials that it intends to use against her at her criminal trial. But Defendant ignores the fact that the only ripe issue before this Court in the criminal matter is Judge Nathan's refusal to modify the protective order. D.E. 113 (Gov't Affirmation) ¶ 27. Further, contrary to Defendant's attempt to blur the lines between two distinct district court proceedings, the only issue in the civil appeal is whether Judge Preska abused her discretion in ordering certain judicial documents unsealed pursuant to the public's right of access to such documents. Whether the *Government* may use evidence against Maxwell during her criminal trial bears absolutely no relation to whether the *public* has a right to access that same evidence if it is a judicial document. The potential disputes between Defendant and the Government in the criminal matter therefore do not impact Defendant's civil appeal, or this Court's order on remand to conduct "a particularized review and unseal all documents for which the presumption of public access outweighs any countervailing privacy interests." *Brown v. Maxwell*, 929 F.3d 41, 51 (2d Cir. 2019).

Second, consolidation of the civil and criminal appeals would not further the interests of equity or judicial economy, as any ruling by the Court in this civil appeal would not prejudice Defendant's right to a fair trial in her criminal action. The fact that a judicial document may become public by means of a ruling in the civil

unsealing process does not necessarily mean that any such document will be admissible evidence in Defendant's criminal trial. Defendant will still enjoy all of the protections of the criminal justice system and the Federal Rules of Evidence, in addition to having the opportunity to raise objections to the Government's evidence-gathering process before Judge Nathan. D.E. 113 ¶¶ 2, 27. Defendant will also be able to appeal any final judgment that may be entered against her in the criminal case. Because the unsealing of the deposition materials at issue in this civil appeal will not affect her criminal case, the interests of equity and judicial economy do not favor consolidation of her civil and criminal appeals.

To the contrary, the interests of equity and judicial economy are best served by denying Defendant's motion for consolidation and allowing the District Court's unsealing process to proceed. Indeed, this Court sought "to avoid further delay," and specifically remanded these materials because the District Court could "*more swiftly and thoroughly* consider particular objections to unsealing specific materials." *Brown*, 929 F.3d at 48, 51 (emphasis added). Defendant, on the other hand, has sought to hinder the unsealing process at every opportunity, including by filing "eleventh-hour" motions asserting broad arguments lacking in specificity. App. 777 ("Ms. Maxwell's eleventh-hour request for reconsideration is denied." (Preska, J.)); *id.* at 803-04 ("And, as Ms. Maxwell knows, her *ipse dixit* does not provide compelling grounds for relief." (Preska, J.)); D.E. 102 at 3 ("But after

fourteen single-spaced pages of heated rhetoric, the Defendant proffers no more than vague, speculative, and conclusory assertions as to why that is the case.” (Nathan, J.)). For example, Defendant’s delay tactics in the civil unsealing process include raising arguments with the District Court only after rulings against her, App. 778 n.1; requesting stays based on “new information” without telling the District Court what that information is, App. 803; filing generalized, conclusory objections to unsealing each and every judicial document at issue despite this Court’s order that the District Court conduct a particularized, document-by-document review, App. 406–21; and even suggesting that the *entire* unsealing process should be stayed pending resolution of Defendant’s criminal trial *next year*, D.E. 68 at 13. Defendant’s motion to consolidate her civil appeal with her criminal proceedings is merely her latest attempt to slow down the unsealing process that this Court ordered over fourteen months ago by delaying a ruling by this Court that could result in the public viewing judicial documents to which they have a presumptive right of access. Consolidation of her criminal appeal with her civil appeal would only slow down the thoughtful and rigorous unsealing process Judge Preska has implemented in the civil action, which is well underway. SA-61-65, 84-116.

Finally, the equities weigh heavily against consolidation, as combining the two appeals would only delay further the public’s access to judicial documents for which it has a strong interest in viewing. As this Court has held: “The common law

right to public access to judicial documents is firmly rooted in our nation’s history.” *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119 (2d Cir. 2006). This Court explained that this Circuit’s “public access cases and those in other circuits emphasize the importance of *immediate access* where a right of access is found.” *Id.* at 126 (emphasis added). This Court has thus emphasized the need for district courts to move quickly. *Id.* (“We take this opportunity to emphasize that the district court must make its finding quickly.”); *see also United States v. Erie Cty., N.Y.*, 763 F.3d 235, 244 (2d Cir. 2014) (“recognizing the ‘importance of immediate access where a right to access is found’”); *United States v. Graham*, 257 F.3d 143, 147-48 (2d Cir. 2001) (noting the importance of contemporaneous access). Indeed, Defendant has argued that this Court should halt the District Court’s unsealing process in its entirety until her criminal trial is completed next year. *See* D.E. 68 at 13 (requesting “a stay of the civil case until the resolution of the criminal case”). Any delay that would result from consolidating Defendant’s criminal appeal with the civil appeal, an appeal of the very first unsealing decision in a review protocol mandated by this Court over a year ago, would be contrary to the public right of access.

For the foregoing reasons, the Court should deny Defendant’s motion to consolidate.

Dated: September 23, 2020

Respectfully Submitted,

/s/ Sigrid S. McCawley

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Certificate of Compliance

Pursuant to Federal Rule of Appellate Procedure 32(g), the undersigned counsel hereby certifies that this response complies with the type-volume limitation of the Federal Rules of Appellate Procedure. As measured by the word processing system used to prepare this response, there are 1,222 words in this response.

/s/ Sigrid S. McCawley

Certificate of Service

I certify that on September 23, 2020, I served a copy of Plaintiff-Appellee's Response to Amicus Letter Brief Regarding Appellant's Motion to Consolidate via CM/ECF, which will send notification of the filing to all counsel of record.

/s/ Sigrid S. McCawley