

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

The United States of America,

Appellee,

v.

Cr. No.: 2:05CR30

Steven A. Michael,

Appellant.

APPELLANT STEVEN A. MICHAEL'S RESPONSE TO THE
GOVERNMENT'S MOTION TO DISMISS

Comes Now Appellant, Steven A. Michael, by counsel, John J. Wallace, IV, to respond to the Government's previously filed Motion to Dismiss. Based upon the points and authorities, or in this instance, lack thereof, set out in further detail in the attached Memorandum, dismissal of Appellant's appeal is inappropriate.

WHEREFORE, the Court should deny the Government's Motion.

Steven A. Michael
by counsel,

/s/John J. Wallace, IV
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MEMORANDUM IN SUPPORT OF APPELLANT STEVEN A. MICHAEL'S
RESPONSE TO THE GOVERNMENT'S MOTION TO DISMISS

On July 19, 2005 Appellant in the above styled action filed his Notice of Appeal [Doc. 2]. It is notable that his Notice was filed seven days before the Judgment Order was entered against him on July 26, 2005. [Doc. 7]. The appeal was then delayed, in part due to difficulty in obtaining the record. Nevertheless, on April 3, 2006, the Appellant submitted his brief to the Court, in accordance with its Order, weeks before its due date.[Doc. 20, 19]. After obtaining two continuances, the Government submitted its Response Brief nearly six months later on September 27, 2006. [Doc. 27]. Appellant replied in November of that year. Since that time, Appellant's Appeal has awaited decision by the Court.

The Government now argues that Appellant has failed to pursue his Appeal. The Government cites no case, statute or fact which supports, or even tends to support its argument that Appellant has failed to pursue his Appeal. The Appeal was timely filed and briefed in accordance with the Court's Orders. For a general discussion of "failure to pursue" see *Norvell v. State of Illinois*, 373 U.S. 420, 83 S.Ct. 1366, 10 L.Ed.2d 456 (1963). Appellant has found no basis in law for the proposition that a timely filed and briefed appeal may be dismissed due to passage of time awaiting the decision. In fact, Appellant diligently pursued his Appeal, and

left a decision on the merits in the breast of this Court. Accordingly, the Government's Motion must fail.

Appellant prepared and filed their appellate brief that includes an extensive examination of the record and legal arguments. The Government filed a Response and the Appellants filed a Reply. The Federal District Court of New Mexico referenced these cases to counsel Pro hac Vice John McCall during hearings involving the Rainbow Gathering in New Mexico in June and July of 2009. The matters raised in these briefs are of significant public importance and there are many litigants who await decisions on these Briefs. Principles of judicial economy are challenged by dismissing these cases without deciding the matters that are pending before the Court and which were properly preserved and presented to the Court for decision on the Briefs.

WHEREFORE, the Court should deny the Government's Motion.

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by counsel,

/s/John J. Wallace, IV
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CERTIFICATE OF SERVICE

I, John J. Wallace, IV, counsel for Appellant, hereby certify that on February 3, 2010, I electronically filed Appellant Steven A. Michael's Response to the Government's Motion to Dismiss with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Stephen D. Warner, Esq.
John McCall, Esq.

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