

UNITED STATES DISTRICT COURT

Northern District of Oklahoma

United States of America

vs.

O. W. Morris

Criminal No. 77-CR-79

FILED

FEB 28 1978

Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER FOR DISMISSAL

Pursuant to Rule 48(a) of the Federal Rules of Criminal Procedure and by leave of court endorsed hereon the United States Attorney for the Northern District of Oklahoma hereby dismisses the Information against (indictment, information, complaint) O. W. Morris defendant.

A. Kenneth P. Srope
Asst. United States Attorney

Leave of court is granted for the filing of the foregoing dismissal.

A. H. Dale Cook
United States District Judge

Date: February 28, 1978

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 ROBERT LEE DICK, JR., ET AL.,)
)
 Defendants,)

No. 76-CR-78-C ✓

FILED

FEB 28 1978 *ph*

Jack C. Silver, Clerk
U. S. DISTRICT COURT

O R D E R

The Court has before it for consideration the motion of the defendant, Robert Lee Dick, Jr., for a reduction of sentence pursuant to Rule 35 of the Federal Rules of Criminal Procedure. The defendant was convicted of violating 18 U.S.C. § 371 and was sentenced by the Court on January 3, 1977. Under the terms of that sentence, the defendant is eligible for parole as provided in 18 U.S.C. § 4205(b)(2). The defendant's conviction and sentence were affirmed by the United States Circuit Court of Appeals, Tenth Circuit, on July 25, 1977, and certiorari was denied by the United States Supreme Court on October 31, 1977.

In considering defendant's motion for reduction of sentence, the Court has carefully reviewed the entire record and finds that the sentence imposed was appropriate, just and reasonable under the circumstances of this case. Therefore, the motion for reduction of sentence is hereby overruled.

It is so Ordered this 28th day of February, 1978.

H. Dale Cook
H. DALE COOK
United States District Judge

FEB 21 1978

UNITED STATES DISTRICT COURT

Northern District of Oklahoma

Jack C. Silver, Clerk
U. S. DISTRICT COURT

United States of America)

vs.)

JOHN OLIVER DRAKE,)

Criminal No. 77-CR-143-β

ORDER FOR DISMISSAL

Pursuant to Rule 48(a) of the Federal Rules of Criminal Procedure and by leave of court endorsed hereon the United States Attorney for the Northern District of Oklahoma hereby dismisses the Indictment against JOHN OLIVER DRAKE defendant.
(indictment, information, complaint)

Kenneth P. Swase
Asst. United States Attorney

Leave of court is granted for the filing of the foregoing dismissal. Thereby, the pending motions of Defendant and mental competency hearing are moot and his bond is exonerated.

Allen E. Bennett
United States District Judge

Date: February 21, 1977

FEB 21 1978

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES OF AMERICA,)	
	Plaintiff,)
v.)	NOS. 77-C-516-B
)	<u>75-CR-8-B</u>
NOLAN RAY CRAFT,)	
	Movant.)

O R D E R

The Court has for consideration a motion pursuant to 28 U.S.C. § 2255 filed pro se, in forma pauperis by Nolan Ray Craft. The cause has been assigned civil case No. 77-C-516-B and docketed in his criminal case No. 76-CR-129-B.

Movant is a prisoner in the Oklahoma State Penitentiary, McAlester, Oklahoma, serving a sentence to ten years upon his plea of guilty to armed robbery in Case No. CRF-74-184 in the District Court of Creek County, Sapulpa, Oklahoma. Thereafter, he is to serve a Federal sentence of eight years, eligible for parole as the Parole Commission might determine pursuant to 18 U.S.C. § 4208(a)(2). The Federal sentence was imposed upon Movant's plea of guilty to possession of an unregistered firearm in violation of 26 U.S.C. § 5861(d) in case No. 75-CR-8, which Federal conviction and sentence Movant challenges by his present motion.

Movant in his § 2255 motion demands his release from custody and as grounds therefor claims that he is being deprived of his liberty in violation of his rights guaranteed by the Constitution of the United States of America. In particular, Movant claims that:

1. He is imprisoned in violation of his rights against double jeopardy in that the State and Federal offenses of which he is convicted and sentenced were based on the same evidence; that is, the shotgun, Ser. No. A 43344, was identified as the gun used in the State robbery charge and it was also the gun in the Federal possession of an unregistered firearm charge.
2. His plea of guilty was not made voluntarily with understanding of the consequences of his plea in that he was not made aware of the impact of 18 U.S.C. § 3568 on his sentence.
3. He was convicted by use of evidence, that is, the Ser. No. 43344 shotgun, obtained pursuant to an unlawful search and seizure.
4. His conviction was obtained in violation of his privilege against self-incrimination in that the Court was aware that Movant was a felon and could not register the shotgun without violating the law.
5. There was insufficient evidence of the crime in that the Government offered no proof that the shotgun was not registered to Movant.

The Court has carefully reviewed the pending motion, the criminal file including transcripts of the plea and sentence, and a prior § 2255 motion, Case No. 75-C-358, affirmed on appeal, No. 76-1105, October 7, 1976, and finds that neither response nor evidentiary hearing is required, and that the present motion should be denied and the case dismissed.

Movant's first contention of double jeopardy is without merit. The State of Oklahoma and the Federal Government are separate sovereignties, and prosecutions by separate sovereignties furnish no ground for an assertion of the defense of double jeopardy. See, Abbate v. United States, 359 U. S. 187 (1959); United States v. Addington, 471 F.2d 560, 566 (10th Cir. 1971). Further, Blockburger v. United States, 284 U. S. 299, 304 (1932) provides, "The applicable rule is that where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not." Therefore, even if there were a preclusion of charges in both the State and Federal jurisdictions, armed robbery and possession of an unregistered firearm each require proof of facts or elements which the other does not, and the defense of double jeopardy does not apply, even though the same weapon was used to commit both crimes.

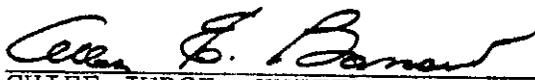
In support of his second contention that his plea was not understanding and voluntary because he was not made aware of the impact of 18 U.S.C. § 3568, Movant relies on United States v. Myers, 451 F.2d 402 (9th Cir. 1972). The Tenth Circuit does not agree with Myers, and further, Movant is referred to a decision subsequent to Myers of the Ninth Circuit, Johnson v. United States, 460 F.2d 1203 (9th Cir. 1972). This Court prior to accepting Movant's plea of guilty carefully advised him of the consequences of his plea. The fact that service of the Federal sentence would follow the previously imposed State sentence was not required under Rule 11, Federal Rules of Criminal Procedure. See, Wall v. United States, 500 F.2d 38 (10th Cir. 1974) Cert. denied 419 U. S. 1025; Williams v. United States, 500 F.2d 42 (10th Cir. 1974).

Movant's contentions three, four and five, claiming an unlawful search and seizure, self-incrimination and insufficient evidence to prove the crime charged, are also without merit. Movant's guilty plea was competently

and voluntarily entered, in full compliance with Rule 11, Federal Rules of Criminal Procedure, and constitutional safeguards. His valid plea of guilty, wherein he admitted in open Court that he was in fact guilty of the Federal offense with which he was charged, waives all prior non-jurisdictional defects. United States v. Soltow, 444 F.2d 59 (10th Cir. 1971); William Samuel Hancock v. United States (unpublished No. 75-1986, 10th Cir. filed Aug. 5, 1976); James Chaney v. United States (unpublished No. 76-1116, 10th Cir. filed Jan. 4, 1977); United States v. Nooner, ___ F.2d ___ (10th Cir. 1977).

IT IS, THEREFORE, ORDERED that the motion pursuant to 28 U.S.C. § 2255 of Nolan Ray Craft be and it is hereby overruled and the cause is dismissed.

Dated this 21st day of February, 1978, at Tulsa, Oklahoma.



CHIEF JUDGE, UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT OF
OKLAHOMA

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 VS)
)
 JAMES RUSSELL BENNETT,)
)
 Defendant.)

76-CR-86-C

F I L E D

FEB 21 1978

O R D E R

Jack G. Silver, Clerk
U. S. DISTRICT COURT

On August 3, 1976, came the attorney for the Government, Hubert H. Bryant, and the defendant appeared in person and by counsel, Joel Wohlgemuth.

IT WAS ADJUDGED that the defendant, upon his plea of guilty to Count 1 of the Indictment, was convicted of having violated Title 18, U.S.C., §1702, as charged in the Indictment.

IT WAS ADJUDGED that the imposition of sentence be suspended and the defendant James Russell Bennett be placed on probation for a period of Three (3) Years from August 3, 1976, under the Federal Youth Correction Act, Title 18, U.S.C., §5010(a).

Thereafter, on February 13, 1978, there having been filed an application by the Supervising Probation Officer, Jerry B. Baines, that the defendant's probation be revoked and the grounds therefor being set thereon, and upon approval of the Court, Warrant for Arrest of Probationer was issued.

NOW, on this 21st day of February, 1978, pursuant to said Warrant, the defendant appeared before the Court with his attorney and counsel, Joel Wohlgemuth. The Government was present and represented by its attorney, George Carrasquillo. Thereafter, the Court directed that the Probation Officer, Jerry B. Baines, recite and advise the Court and defendant the grounds of revocation, and after statements by the defendant's counsel and sworn testimony by the defendant confirming the probation violation, the Court finds that the defendant has violated the terms of his probation and that the probation should be revoked.

It is the finding of the Court that the defendant was the age of 20 years at the time of his conviction, subject to the Youth Correction Act, and it is the further finding of the Court that the defendant would not derive appropriate benefit from the Youth Correction Act, and is therefore sentenced under the applicable statute.

IT IS ORDERED that the defendant, James Russell Bennett, is hereby committed to the custody of the Attorney General, or his authorized representative, for imprisonment for a period of Eighteen (18) Months.

IT IS RECOMMENDED that the defendant be sentenced to an institution that has the proper facilities to treat the defendant for his drug problems and associated psychiatric problems.

IT IS ORDERED that the Clerk deliver a certified copy of this Judgment and Commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

Dated this 21st day of February, 1978.


UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
VS)
)
LAWRENCE EARL REID,)
)
Defendant.)

77-CR-73-C **F I L E D**

FEB - 6 1978

Jack C. Silver, Clerk
U. S. DISTRICT COURT

O R D E R

On September 29, 1977, came the attorney for the Government, Ben F. Baker, and the defendant appeared in person and by counsel, Fred L. Boss.

IT WAS ADJUDGED that the defendant, upon his plea of guilty to Count 2 of the Indictment, was convicted of having violated Title 18, U.S.C., §2312, as charged in Count 2 of the Indictment.

IT WAS ADJUDGED that the defendant be committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Three (3) Years as to Count 2. The execution of the sentence was suspended and the defendant was placed on probation for a period of Five (5) Years from September 29, 1977, as to Count 2. In addition to the usual conditions of probation, the defendant was to obtain help in regard to his problem with alcohol.

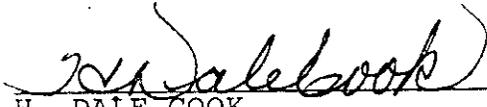
Thereafter, on February 1, 1978, there having been filed an application by the Supervising Probation Officer, Rod Baker, that the defendant's probation be revoked and the grounds therefor being set thereon, and upon approval of the Court, Warrant for Arrest of Probationer was issued.

NOW, on this 6th day of February, 1978, pursuant to said Warrant, the defendant appeared before the Court with his attorney and counsel, Fred L. Boss. The Government was present and represented by its attorney, George Carrasquillo. Thereafter, the Court directed that the Probation Officer, Rod Baker, recite and advise the Court and defendant the grounds of revocation, and after statements confirming probation violation by the probationer and his counsel, the Court finds that an evidentiary hearing is not necessary, that the defendant has violated the terms of his probation and that the probation should be revoked.

THE COURT ORDERS that the judgment and sentence heretofore suspended on the 29th day of September, 1977, be executed, and the defendant, Lawrence Earl Reid, is hereby committed to the custody of the Attorney General, or his authorized representative, for imprisonment for a period of Three (3) Years as to Count 2.

IT IS ORDERED that the Clerk deliver a certified copy of this Judgment and Commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

Dated this 6th day of February, 1978.



H. DALE COOK
UNITED STATES DISTRICT JUDGE