

UNITED STATES DISTRICT COURT

Northern District of Oklahoma

FILED
IN OPEN COURT
MAY 28 1980

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

United States of America
vs.
ANNETTE LASHON HURD

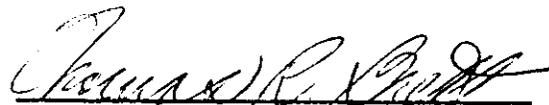
Criminal No. 80-CR-14-C ✓

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~~ Counts One, Two, Six & Eight only of the indictment (indictment, information, complaint) against Annette Lashon Hurd defendant.


Asst. United States Attorney

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


United States District Judge

Date: May 28, 1980

ho

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

JIM ZOLLIE JOHNSON,)
)
) Plaintiff,)
)
 vs.)
)
 UNITED STATES OF AMERICA,)
 GEORGE WILKINSON, Warden,)
 United States Penitentiary,)
 Leavenworth, Kansas 66048,)
 COMMUNITY PROGRAMS OFFICER,)
 United States Bureau of Prisons,)
 South Central Region,)
 Dallas, Texas,)
)
 Respondents.)

74-cc-80 ✓
No. 80-C-223-B ✓

FILED
MAY 16 1980
Jack C. Silver, Clerk
U. S. DISTRICT COURT

O R D E R

Petitioner, Jim Zollie Johnson, seeks a writ of habeas corpus pursuant to 28 U.S.C. §2241. Petitioner alleges that the respondents are violating the policy statement concerning parolee's transfer to a Community Treatment Center, by allowing his transfer to the Community Treatment Center in Oklahoma City, Oklahoma, only 29 days prior to his release instead of 120 days provided for in the policy statement.

Petitioner names as respondents the Warden of the United States Penitentiary in Leavenworth, Kansas, and the Community Programs Officer located in Dallas, Texas. He files his petition in this Court, alleging that jurisdiction is proper in that this is the sentencing court.

While such a petition is cognizable in Federal District Courts, 28 U.S.C. §2241 allows the granting of writs of habeas corpus only "within their respective jurisdictions." Therefore, this Court may only consider this petition if it has jurisdiction over the petitioner or his custodian. Braden v. 30th Judicial Circuit Court of Kentucky, 410 U.S. 484 (1973); McCoy v. United States Board of Parole, 537 F2d 962 (8th Cir. 1976); Wright v. United States Board of Parole, 557 F2d 74 (6th Cir. 1977); Blau v. United States, 566 F2d 526 (5th Cir. 1978); Andrino v. United States Board of Parole, 550 F2d 519 (9th Cir. 1977); Fore v. United States, 436 F.Supp. 769 (E.D. Tenn. 1977).

In this case, petitioner is confined in Kansas. Further, both the Warden of Leavenworth Penitentiary and the Community Programs Officer are outside the jurisdiction of this Court.

Therefore, Jim Zollie Johnson's petition for writ of habeas corpus is dismissed without prejudice to filing in the proper court.

ORDERED THIS 16TH day of May, 1980.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF OKLAHOMA

DEFENDANT

HURD, ANNETTE LASHON

DOCKET NO. 80-00014-01

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO-245 (5/75)

In the presence of the attorney for the government the defendant appeared in person on this date

MONTH	DAY	YEAR
05	28	80

COUNSEL

WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

WITH COUNSEL

Allen M. Smallwood, Retained (Name of counsel)

PLEA

GUILTY, and the court being satisfied that there is a factual basis for the plea,

NOLO CONTENDERE,

NOT GUILTY

There being a finding of

NOT GUILTY. Defendant is discharged

GUILTY.

FINDING & JUDGMENT

Defendant has been convicted as charged of the offense(s) of having violated T. 18, U.S.C., Section 656, as charged in the Indictment.

FILED

MAY 28 1980

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

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of -

SENTENCE OR PROBATION ORDER

Counts 3, 4, 5 and 7: IMPOSITION OF SENTENCE IS SUSPENDED and Defendant Annette Lashon Hurd is placed on probation for a period of Three (3) Years as to each count, all to run concurrently and all pursuant to T. 18, U.S.C., Section 5010(a), under the provisions of the Youth Correction Act.

SPECIAL CONDITIONS OF PROBATION

IT IS FURTHER ORDERED BY THE COURT that Defendant is to make Restitution in the amount of \$2,700.00 at a monthly rate to be determined by the United States Probation Office.

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

Approved by:

Kenneth P. Snoke Assistant U.S. Attorney

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

X U.S. District Judge

HONORABLE THOMAS R. BRETT U.S. DISTRICT JUDGE

Date May 28, 1980

XXXXXXXXXX

UNITED STATES DISTRICT COURT

MAY 15 1980 B

NORTHERN District of OKLAHOMA

United States of America)

Criminal No. 80-CR-57-E

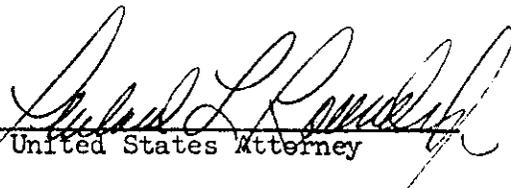
vs.)

MELVIN E. JACOBS)

ORDER FOR DISMISSAL

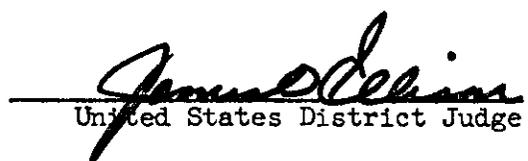
Pursuant to Rule 48(a) of the Federal Rules of Criminal Procedure and by leave of court endorsed hereon the United States Attorney for the Northern District of Oklahoma hereby dismisses the SECOND COUNT OF THE INDICTMENT against (indictment, information, complaint) Melvin E. Jacobs defendant.

Assistant United States Attorney



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

United States District Judge



Date: May 15, 1980.

DEFENDANT

JOY E. GRAENING

DOCKET NO.

80-CR-45-C

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 245 (5/75)

In the presence of the attorney for the government the defendant appeared in person on this date

MONTH 5 DAY 15 YEAR 80

COUNSEL

WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

WITH COUNSEL James E. Frasier, Retained (Name of counsel)

PLEA

GUILTY, and the court being satisfied that there is a factual basis for the plea, NOLO CONTENDERE, NOT GUILTY

FINDING & JUDGMENT

There being a finding/verdict of NOT GUILTY. Defendant is discharged GUILTY.

Defendant has been convicted as charged of the offense(s) of having violated T. 42, U.S.C., Section 408(d), as charged in the Information

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that:

The imposition of any sentence of imprisonment or fine is hereby suspended and the defendant is placed on probation for a period of One (1) year from this date, under the Federal Youth Correction Act, pursuant to T. 18, U.S.C., Section 5010(a)

SPECIAL CONDITIONS OF PROBATION

FILE MAY 16 1980

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

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

CERTIFIED AS A TRUE COPY ON

SIGNED BY

U.S. District Judge

U.S. Magistrate

[Signature]

THIS DATE

BY

CLERK

DEPUTY

Date 5-15-80

DEFENDANT

JACK STERLING BURDEN

DOCKET NO.

79-CR-153-C

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 245 (5/75)

In the presence of the attorney for the government the defendant appeared in person on this date

MONTH 5 DAY 15 YEAR 80

COUNSEL

WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

WITH COUNSEL

John E. Eagleton, Retained

(Name of counsel)

PLEA

GUILTY, and the court being satisfied that there is a factual basis for the plea,

NOLO CONTENDERE,

NOT GUILTY

There being a finding/verdict of

NOT GUILTY. Defendant is discharged

GUILTY.

FINDING & JUDGMENT

Defendant has been convicted as charged of the offense(s) of having violated T. 26, U.S.C., Section 7215, as charged in the Information

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: ~~the defendant~~ hereby committed to the custody of the Attorney General as his authorized representative for ~~the defendant~~

The imposition of any sentence of imprisonment is hereby suspended on Counts I, II, III and IV and defendant is sentenced to pay a fine of \$1,000.00 on Count I, \$1,000.00 on Count II, \$1,000.00 on Count III, and \$1,000.00 on Count IV. Defendant is placed on probation for a period of Five (5) Years from this date provided that the probation shall terminate upon the payment of the fines and the payment to the Internal Revenue Service of the taxes, penalty and interest due for FICA taxes and federal income taxes withheld from wages as alleged in the Information.

SPECIAL CONDITIONS OF PROBATION

MAY 16 1980

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

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

CERTIFIED AS A TRUE COPY ON

SIGNED BY

U.S. District Judge

U.S. Magistrate

[Signature]

Date 5-15-80

THIS DATE

BY

CLERK

DEPUTY

ho

DEFENDANT

VERA WILSON

DOCKET NO.

80-CR-48-E

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO-245 (5/75)

In the presence of the attorney for the government the defendant appeared in person on this date

MONTH DAY YEAR 5- 14 80

COUNSEL

WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

WITH COUNSEL Tom H. Bruner, Retained

(Name of counsel)

PLEA

GUILTY, and the court being satisfied that there is a factual basis for the plea, NOLO CONTENDERE, NOT GUILTY

MAY 14 1980

There being a finding/verdict of

NOT GUILTY. Defendant is discharged GUILTY.

Jack O. Ellison, Clerk U.S. District Court

FINDING & JUDGMENT

Defendant has been convicted as charged of the offense(s) of having violated Title 18, U.S.C., Sections 1708, 495 & 371, as charged in counts 5, 6, 7, 8, 9, 10, 11, 12 and 15 of the Indictment.

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

Count 15 - ONE (1) YEAR.

Counts 5 thru 12 - The Imposition of sentence is suspended and the defendant is hereby placed on probation for a period of FIVE (5) YEARS as to each count, to commence at expiration of the sentence imposed herein, Counts 6, 7, 8, 9, 10, 11 and 12 to run concurrently with count 5.

SPECIAL CONDITIONS OF PROBATION

A SPECIAL CONDITION of probation is that the defendant make restitution in the sum of \$5,577.37.

ADDITIONAL CONDITIONS OF PROBATION

IT IS FURTHER ADJUDGED that the execution of this sentence is deferred until May 27, 1980, at 9:30 a.m., at which time the defendant is to present herself to the U. S. Marshal, unless extended by further order of the Court.

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

CERTIFIED AS A TRUE COPY ON

THIS DATE

SIGNED BY

U.S. District Judge

James O. Ellison

By

() CLERK

U.S. Magistrate

Date 5-14-80

() DEPUTY

60

DEFENDANT

VERA MAE WILSON, a/k/a
Vera May Key

DOCKET NO.

80-CR-47-E

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO-245 (5/75)

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH DAY YEAR
5 14 80

COUNSEL

WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

WITH COUNSEL Tom H. Bruner, Retained

(Name of counsel)

PLEA

GUILTY, and the court being satisfied that there is a factual basis for the plea,

NOLO CONTENDERE,

NOT GUILTY

FINDING & JUDGMENT

There being a finding ~~and~~ of

NOT GUILTY. Defendant is discharged
 GUILTY.

Defendant has been convicted as charged of the offense(s) of **having violated Title 18, U.S.C., Section 1708 and 495, as charged in counts 1 through 8 of the Indictment.**

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: ~~XXXXXX~~

Counts 1 thru 8 - The Imposition of sentence is suspended and the defendant is hereby placed on probation for a period of FIVE (5) YEARS as to each count, to run concurrently with probation imposed in Case No. 80-CR-48.

SPECIAL CONDITIONS OF PROBATION

FILED
MAY 14 1980
Jack C. [unclear]
U. S. DISTRICT COURT

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

CERTIFIED AS A TRUE COPY ON

THIS DATE _____

SIGNED BY

U.S. District Judge

James O. Ellison

By _____

U.S. Magistrate

Date 5-14-80

() CLERK

() DEPUTY

ho

DEFENDANT

DOROTHY LOUISE MILLER

DOCKET NO.

80-CR-43-E

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO-245 (5/75)

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date

MONTH	DAY	YEAR
5	14	80

WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

WITH COUNSEL

Edward A. Hollingsworth, Retained

(Name of counsel)

PLEA

GUILTY, and the court being satisfied that there is a factual basis for the plea,

NOLO CONTENDERE,

NOT GUILTY

FINDING & JUDGMENT

There being a finding/verdict of NOT GUILTY. Defendant is discharged GUILTY.

Defendant has been convicted as charged of the offense(s) of **having violated Title 18, U.S.C., Section 656, as charged in counts 1,2,3 & 4 of the Indictment.**

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that:

Counts 1,2,3 & 4 - The Imposition of sentence is suspended and the defendant is placed on probation for a period of THREE (3) YEARS from this date as to each count. Counts 2,3 & 4 to run concurrently with Count 1.

SPECIAL CONDITIONS OF PROBATION

A SPECIAL CONDITION of probation is that the defendant reside for a Sixty (60) day period at the Salvation Army Pre-release Center, Tulsa, Oklahoma.

MAY 14 1980

Jack C. Silver, U.S. District Judge

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

CERTIFIED AS A TRUE COPY ON

THIS DATE

SIGNED BY

U.S. District Judge

James O. Ellison

By

U.S. Magistrate

Date 5-14-80

() CLERK () DEPUTY

ho

DEFENDANT

VERA MAE WILSON, a/k/a
Vera May Key

DOCKET NO.

80-CR-38-E

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO-245 (5/75)

COUNSEL

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH	DAY	YEAR
5	14	80

WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

WITH COUNSEL

Tom H. Bruner, Retained

(Name of counsel)

PLEA

GUILTY, and the court being satisfied that
there is a factual basis for the plea,

NOLO CONTENDERE,

NOT GUILTY

FINDING &
JUDGMENT

There being a finding ~~MAKING~~ of

NOT GUILTY. Defendant is discharged
 GUILTY.

Defendant has been convicted as charged of the offense(s) of **having violated Title 18, U.S.C.,
Sections 1708 & 495 as charged in counts one through eight of the
Indictment.**

SENTENCE
OR
PROBATION
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: ~~the defendant be~~

Counts 1 thru 8 - The imposition of sentence is suspended and the defendant is hereby placed on probation for a period of FIVE (5) YEARS as to each count, to run concurrently with probation imposed in Cases No. 80-CR-47 and 80-CR-48.

SPECIAL
CONDITIONS
OF
PROBATION

MAY 14 1980

JACK O. ELLISON
U. S. DISTRICT JUDGE

ADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT
RECOMMEN-
DATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

CERTIFIED AS A TRUE COPY ON

THIS DATE _____

SIGNED BY

U.S. District Judge

James O. Ellison

By _____

() CLERK

U.S. Magistrate

Date

5-14-80

() DEPUTY

ho

DEFENDANT

LEONARDO DE LA CRUZ

DOCKET NO.

80-CR-37-E

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 245 (5/75)

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date

MONTH 5 DAY 14 YEAR 80

WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

WITH COUNSEL

Larry D. Leonard, Retained

(Name of counsel)

PLEA

GUILTY, and the court being satisfied that there is a factual basis for the plea,

NOLO CONTENDERE,

NOT GUILTY

FINDING & JUDGMENT

There being a finding/verdict of NOT GUILTY. Defendant is discharged. GUILTY.

Defendant has been convicted as charged of the offense(s) of having violated Title 26, U.S.C., Section 7207, as charged in Counts 1 and 2 of the Indictment.

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that:

Counts 1 and 2 - The Imposition of sentence is suspended and the defendant is hereby placed on probation for a period of ONE (1) YEAR as to each count, Count 2 is to run concurrently with Count 1.

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

CERTIFIED AS A TRUE COPY ON

THIS DATE

SIGNED BY

U.S. District Judge

James O. Ellison

By

U.S. Magistrate

Date 5-14-80

CLERK DEPUTY

no

UNITED STATES DISTRICT COURT

NORTHERN District of OKLAHOMA

United States of America

vs.

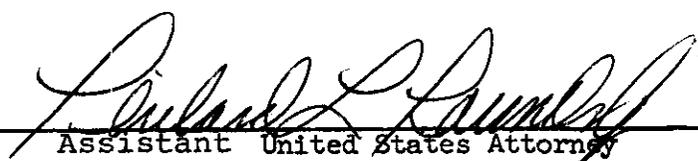
JIM R. McCORMICK

Criminal No. 80-CR-35-E

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 Jim R. McCormick defendant.
(indictment, information, complaint)

FILED
MAY 14 1980
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA


Assistant United States Attorney

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

S/ JAMES O. ELLISON
United States District Judge

Date: May 14, 1980

DOJ

FORM OBD-113

8-27-74

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

FILED

MAY 12 1980

UNITED STATES OF AMERICA,)
)
Plaintiff-Respondent,)
)
vs.)
)
MARVIN DALE FRAZEE,)
)
Defendant-Movant.)

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

Nos. 79-C-479-E
75-CR-178-BE

O R D E R

This is a pro se motion to vacate or set aside sentence pursuant to 28 U.S.C. §2255. The cause has been assigned Civil Case No. 79-C-479-E and docketed in Movant's criminal case no. 75-CR-178-B.

Movant is a prisoner at the United States Penitentiary, Leavenworth, Kansas, serving a sentence of 20 years' imprisonment upon conviction by jury of bank robbery in violation of 18 U.S.C. §2113(a). The trial was before and the sentence imposed by the late Honorable Allen E. Barrow. On direct appeal, the only issue presented was whether trial for a bank robbery in Oklahoma, committed on October 21, 1975, with the sole defense being insanity at the time of the commission of the offense, was collaterally estopped by a verdict of not guilty in a trial in North Dakota for a bank robbery committed in North Dakota two months earlier on August 1, 1975, where the sole defense was insanity, and without evidence of a change in mental condition in the trial in this Court in Oklahoma. The conviction was affirmed, United States v. Frazee, No. 76-2012 Unreported (Tenth Cir. Mar. 27, 1978) cert. denied 436 U.S. 929, 98 S.Ct. 2827 (1978).

In his §2255 motion, Movant contends that he was denied due process of law and a fair trial in that (1) there was improper closing argument by the prosecutor emphasizing in twelve instances the consequences of a verdict of not guilty; (2) Movant was not present at every stage of the trial, i.e., the jury during deliberations sent notes to the Court requesting additional instructions of law, and Movant, though in the custody of the marshal,

was not brought into Court and present when the additional instructions were given to the jury; and (3) there was insufficient evidence to support the conviction. Movant also originally presented an additional contention that the government shifted the burden of proof to the defense by calling expert, medical witnesses out of sequence. However, he abandoned this allegation in his traverse, and the Court finds that defense counsel agreed during trial in Movant's presence to the procedure used in presenting the witnesses in the government's case in chief. There was no error in the order government witnesses were called. This allegation is totally without merit, presents no basis for §2255 relief and will not be further considered herein.

On the three claims remaining for consideration, the government answers that Movant's contentions do not state a violation of his rights under the Constitution of the United States of America, and since they were not raised by objection at trial or on direct appeal they are not a proper subject for a §2255 motion since the errors asserted do not amount to "plain error" affecting Movant's substantial rights.

It is true that §2255 motions are not intended to serve the office of appeal, and that ordinarily, §2255 is not available to test the legality of matters which should have been raised on direct appeal. Joe v. United States, 510 F.2d 1038 (Tenth Cir. 1975); Garcia v. United States, 492 F.2d 395 (Tenth Cir. 1974); Porth v. Templar, 453 F.2d 330 (Tenth Cir. 1971); United States v. Battaglia, 428 F.2d 957 (Ninth Cir. 1970) cert. denied 400 U.S. 919, 91 S.Ct. 181 (1970); United States v. Rocha, 458 F.2d 441 (Ninth Cir. 1972). However, constitutional claims may be raised in collateral proceedings even if a defendant failed to pursue them on appeal, and nonconstitutional claims are proper for collateral review if a "fundamental defect" is asserted. Marshall v. United States, 576 F.2d 160 (Ninth Cir. 1978); Davis v. United States, 417 U.S. 333, 94 S.Ct. 2298, 41 L.Ed.2d 109 (1974); Kaufman v. United States, 394 U.S. 217, 89 S.Ct. 1068, 22 L.Ed.2d 227 (1969); Stone v. Powell, 428 U.S. 465, at 477 n.10, 96 S.Ct. 3037 at 3043, 49 L.Ed.2d 1067 (1976).

There is no hard and fast rule governing errors allegedly resulting from remarks in closing argument. Each case must be examined on its own facts to determine "whether there is reason to believe that the statement affected the ultimate verdict of the jury." Devine v. United States, 403 F.2d 93, 96 (Tenth Cir. 1968), cert. denied 394 U.S. 1003, 89 S.Ct. 1599 (1969). Only if this is true does such misconduct become prejudicial.

It is true, as is pointed out by the United States, that the Court would first have to be convinced that the remarks of the prosecutor, under the circumstances of this case, constituted "plain error", because no objection was made at the time of trial. The Court, in order to be so convinced would need to conclude that the prosecutor's remarks constituted "serious prejudicial error affecting life or liberty." United States v. Guerrero, 517 F.2d 528, 531 (Tenth Cir. 1975). Under certain circumstances, statements made in closing argument can rise to the level of plain error, e.g., United States v. Ludwig, 508 F.2d 140 (Tenth Cir. 1974); United States v. Fearn, 501 F.2d 486 (Seventh Cir. 1974).

In this case, the only defense raised was that of insanity at the time of the commission of the act. There was never any denial of the act charged.

The Court finds that under the circumstances of this case, the argument of government counsel, as contended by Movant, could be plain error resulting in fundamental defect, and this claim should be resolved in Movant's §2255 motion even though the error was neither objected to at trial nor raised on direct appeal. Baker v. United States, 407 F.2d 618 (Seventh Cir. 1969). Also see, although dealing with direct appeals, United States v. Cook, 505 F.2d 659, 663 (Fifth Cir. 1974) cert. denied 421 U.S. 1000, 95 S.Ct. 2397, 44 L.Ed.2d 667 (1975); Evalt v. United States, 359 F.2d 534, 544 (Ninth Cir. 1966); United States v. Birrell, 421 F.2d 665 (Ninth Cir. 1970); United States v. Leon, 534 F.2d 667 (Sixth Cir. 1976); United States v. Juarez, 566 F.2d 511 (Fifth Cir. 1978).

In considering Movant's claims relating to the prosecutor's argument, the Court finds that there are no controverted factual issues, and this matter is capable of resolution through the

Court's files and records. An evidentiary hearing is not required, see Machibroda v. United States, 368 U.S. 487, 82 S.Ct. 510 (1962); Rule 8, Rules Governing Section 2255 Proceedings. Therefore, this Court has proceeded to carefully review the motion, answer, traverse, and criminal file including the transcripts of the jury trial, and finds:

The Government in proof of its charge of bank robbery presented twelve witnesses.

The head teller of the bank identified the Movant as the person who came into the bank, handed her the note entered without objection as Plaintiff's Ex. 1, and told her to "hurry up he wasn't joking" when she tried to stall for time. She testified that she gave Movant the money in an envelope and Movant left, and that he appeared normal, just as any customer of the bank. (TR. 98-110).

A teller being trained by the head teller and standing beside her at the time of the robbery also identified the note and Movant and his loud, gruff statement to "hurry up he meant it". She further testified that she had dealt with people in the past who acted unusual or a little strange and whom she thought might have a mental problem, and Movant appeared an average, normal customer. (Tr. 110-116).

The drive-in teller in close proximity to the head teller and trainee identified Movant as the man she saw rob the bank and tell the head teller to hurry up. (Tr. 117-120).

An F.B.I. Agent testified (Tr. 121-132) that he arrested the Movant in November, 1975, in Richmond, California, for a bank robbery in Fargo, North Dakota, and that after Movant had been given his Miranda warnings, he voluntarily told the agent of other bank robberies as well as writing a statement in his own hand and words without any suggestion or assistance from the Agent other than that the Agent dictated the opening paragraph regarding identity and the last paragraph that no threats or coercion were used to obtain the statement. The written statement was received in evidence, without objection, as Plaintiff's Ex. 10, and the statement was read into evidence. (Tr. 126-128). The Agent testified that comparing others he had arrested with

Movant, the Movant acted very sane. The Agent also testified that the Movant had been tried in North Dakota for a bank robbery in Fargo where his defense was insanity and the jury had returned a verdict of not guilty. (Tr. 130).

An F.B.I. Agent who arrested Movant in Arizona testified that Movant, after Miranda warnings, informed them of eleven banks he had robbed, shown on a list in Movant's pocket secretary, giving the city and the approximate amount taken from each bank. (Plaintiff's Ex. 11 and 12). The Agent testified that Movant had stated he had robbed these eleven banks in the period from August 1, 1975, to December 6, 1975, and taken approximately \$12,000.00 and had spent all of it except the \$2,049.00 he had when arrested. It was the Agent's opinion that the Movant did not think he had done anything wrong. (Tr. 133-150).

A United States Deputy Marshal who had transported the Movant from California to North Dakota, and North Dakota to Oklahoma, and who had been responsible for Movant's custody during the week trial in North Dakota, testified that Movant had always acted sane and required no special handling or medication. (Tr. 154-161).

The Lieutenant in charge of the Tulsa County Jail testified (Tr. 161-170) that Movant during his confinement in Tulsa County Jail required no medication, special handling or segregation and appeared at all times sane.

The assistant director of the Tulsa County Jail testified (Tr. 170-180) that in his duties he came in contact daily with the prisoners in the jail, and that Movant had caused no trouble and required no special attention, segregation or medication; and in the 24-man cell in which Movant was held, he talked and acted like anyone else.

Deputy Sheriff of Tulsa County Jail testified that in his duties he had observed the Movant who appeared and conducted himself in a normal way requiring no special attention.

Three doctors, a physician psychiatrist (Tr. 186-204), a

psychiatrist (Tr. 205-222), and the Chief of Psychiatric Service (Tr. 222-231), at the United States Medical Center for Federal Prisoners at Springfield, Missouri, testified that Movant was under psychiatric observation and study at the Springfield institution from February 19, 1976, to March 29, 1976, and again for a brief period in July, 1976, and it was the opinion of each of these doctors that at the time of the commission of the crime for which Movant was on trial the Movant knew what he was doing, knew that what he was doing was wrong, and was capable of controlling his conduct.

Stipulations were admitted and read to the jury that the deposits of the bank involved were insured by the Federal Savings and Loan Insurance Corporation at the time of the offense charged (Tr. 96-97), and that the testimony of a Deputy Sheriff, if called, would be that he took the fingerprint impressions of Movant appearing on Plaintiff's Ex. 3 and caused the same to be sent to the Federal Bureau of Investigation, Washington, D.C. (Tr. 150-151).

In defense, Movant testified personally (Tr. 238-292) that he had been in South Dakota and Nebraska state mental hospitals for about six years, starting in 1965, and had spent about another five years in prison for car thefts and writing bad checks. He stated that he had been confined in some type institution for about eleven of his twenty-eight years. He also admitted the bank robberies, including the one for which he was on trial, but contended that they were not robberies, but rather that he was getting money people wanted him to have because he had been locked up that ten or eleven years when he shouldn't have been. Movant also admitted writing the note, Plaintiff's Ex. 1, used in the robbery for which he was on trial. He admitted that the list of cities and amounts of money taken in each (Plaintiff's Ex. 12) was his. Movant admitted writing the statement, (Plaintiff's Ex. 10), but claimed the Agents told him what to say at the beginning and end and to use the word "robbed". Movant testified that two cases charging him with bank robbery

in San Francisco had been dismissed, and the jury found him not guilty of the Fargo bank robbery in North Dakota.

Three physicians specializing in psychiatry testified for the defense, and each diagnosed Movant as a chronic paranoid schizophrenic who could not on the date of the bank robbery for which he was on trial appreciate the rightfulness or wrongfulness of his act or control his behavior. It was each of their opinions that Movant was not legally sane at the time of the crime for which he was on trial and for some period prior thereto in that he did not know that what he was doing was robbery. (Tr. 299-311, 312-343, and 358-392).

There was conflicting evidence, both lay and professional, on the sole defense offered, insanity at the time of the commission of the crime, and the jury was properly instructed by the Court as to the elements of the offense, including specific intent, and that an insane person was not capable of forming the essential intent element. The jury was clearly informed that the test to be applied in determining mental responsibility at the time of the crime was that before a verdict of guilty could be returned, the jury must be convinced beyond a reasonable doubt that at the time the accused committed the unlawful act, he was mentally capable of knowing what he was doing, was mentally capable of knowing that it was wrong, and was mentally capable of controlling his conduct. Wion v. United States, 325 F.2d 420 (Tenth Cir. 1963), cert. denied 377 U.S. 946, 84 S.Ct. 1354 (1964).

Movant contends that he was denied due process and a fair trial because the prosecutor allegedly repeatedly told the jurors the consequences of a verdict of "not guilty". Although these references, in and of themselves, would most likely not rise to the requisite level so as to be cognizable herein, coupled with the following statement, they, and their probable effect, cannot be overlooked:

Talk about turning him loose. Turn him loose? It is not even closing time, at least let's wait until after closing time if we are going to turn him loose. He has already been here twice, two

banks. Not at 3:30, please don't let him go this time. If you are going to let him go wait until after 6:00.

* * *

Here is Marvin. Give him all of his money. Don't be taken by this. If you do, wait until after 6:00 o'clock. Wait until Sooner Federal closes. Let Tulsa Federal close. Let Fourth National close, please. This is Friday, you know they stay open late, let them close first. Let him -- your verdict, I would submit to you, is guilty or not guilty. That is it.

Guilty, possibility that we can help him. Not guilty, he walks right between that swinging gate. That is it. Not guilty, he walks out that door, and where is he going to go? What is he going to do? Will he go get another pocket secretary? In six months will we have another list? Will someone else be looking at him, saying, "My, he is withdrawn, isn't he?"

The prosecutor's remarks invite the jury to return a guilty verdict even if they believe that the Defendant is innocent by reason of insanity, because if he is found guilty, he can be "helped". Invitations from the prosecution to the jury to convict for the protection of society have been held to be fundamentally unfair, and it has also been held to be error for the Court to instruct, or for counsel to argue, the effect of a not guilty verdict, especially when the defense of insanity was raised. E.g., Evalt v. United States, supra; United States v. Birrell, supra; United States v. McCracken, 488 F.2d 406, 421 (Fifth Cir. 1974). In United States v. Jackson, 542 F.2d 403, 411 (Seventh Cir. 1976), the Court said:

The common element in cases reversed because of improper Government argument relating to the defense of insanity is a prosecutor's invitation to the jury to convict even though it might believe the defendant to be insane in order to keep the defendant off the streets and away from society.

The court went on to state, at 542 F.2d 412:

We wish to emphasize that the Government walks a fine line when it makes reference to a defendant walking out of court where an insanity defense is asserted. The threat always is present that the jury's consideration of the evidence will be affected by their fear that a finding of insanity will result in a defendant being set free.

See also Martin v. Estelle, 546 F.2d 177 (Fifth Cir. 1977), cert.

denied 431 U.S. 971, 97 S.Ct. 2935 (1977); and Bruce v. Estelle (Bruce I), 483 F.2d 1031, 1039 (Fifth Cir. 1973), cert. denied 429 U.S. 1053, 97 S.Ct. 767 (1977), overruled on other grounds, Zapata v. Estelle, 585 F.2d 750 (Fifth Cir. 1978).

In this case, the only question present was that of Defendant's sanity at the time of the commission of the act. The testimony was conflicting as to his sanity; the experts disagreed, and the matter was, of course, left for the jury to resolve. The jury could have determined that Defendant was sane at the time in question, or the jury could have believed that Defendant was insane at the time, and in need of help, but that he could receive such help only if convicted.

Viewing the prosecutor's remarks in light of the peculiar circumstances of this case, the Court concludes that the remarks, coming as they did immediately prior to instruction of the jury and deliberation, in a case where the only defense was that of insanity, were seriously prejudicial to Movant. As the Court in Bruce v. Estelle, supra, noted,

we cannot ignore our responsibility to insure that an accused obtains a fair trial by an impartial jury. As the Supreme Court has reiterated time and again, "[e]xercise of calm and informed judgment by ... [a jury's] members is essential to proper enforcement of law." Highly prejudicial remarks uttered by the prosecutor jeopardize the jury's deliberative processes and hence infringe upon an accused's right to a fair hearing on the merits of the case.

483 F.2d at 1040 (footnotes omitted). In this case, the prosecutor's remarks went to the very heart of the issue before the jury, injecting improper considerations which would clearly have a highly prejudicial effect on the deliberative process.

In light of the circumstances of this case, and the relevant authorities, the Court concludes that Movant's motion must be granted, the judgment vacated and set aside, and a new trial granted.

Movant's second allegation that he was denied his right to be present at every stage of his trial in that he was not present when "additional" instructions were given to the jury is without

merit. The jury was instructed that if it was necessary to communicate with the court during deliberations, they were to send a note by the marshal. (Tr. 448). This the foreman did, asking for the instructions on the law, not for additional or supplementary instructions, and for the stipulations used as evidence. The record is silent as to the handling of these notes by the trial judge, except appearing on the face of the request for the stipulations is a notation "OK'd by attys". As appears from the affidavits of the prosecuting and defense attorneys, the notes from the jury foreman were made known to them by the trial judge and the written instructions and stipulations that had previously been given orally in open court were sent to the jury with the approval of such handling by the attorneys, albeit without Movant being present when this action was taken. The procedure used is clearly not in conformity with Rule 43, Federal Rules of Criminal Procedure, which provides:

The defendant shall be present ... at every stage of the trial including the impaneling of the jury and return of the verdict ... except as otherwise provided by this rule.

However, to be considered with Rule 43 is Rule 52(a) which provides:

Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.

The Supreme Court of the United States has recognized that a violation of Rule 43 may be harmless error. Rogers v. United States, 422 U.S. 35, 95 S.Ct. 2091, 45 L.Ed.2d 1 (1975). In the matter before the Court, particularly with defense counsel having been informed and having approved the procedure used, and it appearing on the face of the notes from the jury foreman that the jury was not requesting clarification, additional or supplemental instructions of the Court, this Court finds nothing in the manner in which the trial judge handled the request which was prejudicial to the rights of the Movant. Movant was not in any substantial way deprived of a fair trial or due process of law by the noncompliance with Rule 43. In the circum-

stances before the Court, the failure of the trial judge to comply with Rule 43 was harmless error. Chapman v. California, 386 U.S. 18, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967). Also see, United States v. Wilburn, 549 F.2d 734, 737 (Tenth Cir. 1977); United States v. Freed, 460 F.2d 75, 78 (Tenth Cir. 1972); United States v. Arriagada, 451 F.2d 487 (Fourth Cir. 1971) cert. denied 405 U.S. 1018, 92 S.Ct. 1300 (1972); Estes v. United States, 335 F.2d 609 (Fifth Cir. 1964) cert. denied 379 U.S. 964, reh. denied 380 U.S. 926 (1965); Jones v. United States, 299 F.2d 661 (Tenth Cir. 1962) cert. denied 371 U.S. 864, 83 S.Ct. 123, 9 L.Ed.2d 101, reh. denied 371 U.S. 931, 83 S.Ct. 294, 9 L.Ed.2d 239 (1962); Outlaw v. United States, 81 F.2d 805, 809 (Fifth Cir. 1936) cert. denied 298 U.S. 665, 56 S.Ct. 747, 80 L.Ed. 1389 (1936).

The Court finds that no additional or supplementary instructions to those the jury received in open court were given, and defense counsel was informed and approved the procedure used. This finding is made in the face of the Movant's naked, unsworn assertion in his traverse that he can produce a witness who was present and will testify under oath that "the jury received the additional requested instructions" in open court while Movant was held in the United States Marshal's holding cell. Movant has not named such witness, presented or offered to present an affidavit by such witness, or stated any facts showing the reliability of such proposed testimony. Further, since the written instructions, read orally to the jury in Movant's presence, were the instructions sent to the jury, testimony regarding the place where this action was taken has no substantial value and is not legally capable, if believed, of supporting a finding in Movant's favor on this claim. Even if it were true that the written instructions and stipulations were sent to the jury from someplace other than the library of the trial judge, in the circumstances before the Court that would not entitle Movant to the relief he seeks. Based on the foregoing, Movant's second contention for relief is without merit.

As to Movant's third contention, attacking the sufficiency of the evidence, the Court has noted that conflicting testimony

was presented on the issue of Movant's sanity at the time of the act charged. The record is not so devoid of evidence so as to raise a question cognizable herein, e.g., Lorraine v. United States, 444 F.2d 1 (Tenth Cir. 1971); Marsh v. United States, 435 F.Supp. 426 (W.D. Okla. 1976). Movant's third contention is without merit.

IT IS THEREFORE ORDERED that Movant's motion be granted, the judgment entered in this case be vacated and held for naught, and that Movant is hereby granted a new trial.

It is so Ordered this 12th day of May, 1980.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

DEFENDANT

Rosie Carrel a/k/a Rosie Brewer

DOCKET NO.

80-CR-44-C

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO-245 (5/75)

In the presence of the attorney for the government the defendant appeared in person on this date

MONTH 5 DAY 12 YEAR 80

COUNSEL

WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

WITH COUNSEL

T. B. Hendrix, Retained

(Name of counsel)

PLEA

GUILTY, and the court being satisfied that there is a factual basis for the plea,

NOLO CONTENDERE,

NOT GUILTY

FINDING & JUDGMENT

There being a finding/verdict of

NOT GUILTY. Defendant is discharged

GUILTY.

Defendant has been convicted as charged of the offense(s) of having violated Title 42, Sections 1383(a)(2) and 408(d), U.S.C., as charged in the Information

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that:

The imposition of sentence of imprisonment and fine suspended on both Counts I and II. Defendant is placed on probation for a period of one year on Count I and one year on Count II. The sentence on Count II to run consecutive to the sentence on Count I.

MAY 12 1980

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

SPECIAL CONDITIONS OF PROBATION

Defendant to make restitution in connection with Social Security overpayments by payment to the United States Court Clerk in amounts and at such times during the two year probationary period as determined to be feasible by the probation officer in charge of defendant's supervision.

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

CERTIFIED AS A TRUE COPY ON

THIS DATE

SIGNED BY

U.S. District Judge

By

U.S. Magistrate

Date 5-12-80

() CLERK

() DEPUTY

ho

UNITED STATES DISTRICT COURT

Northern District of Oklahoma

FILED

MAY 9 1980

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

United States of America
vs.
RONALD FLOYD WHITE

Criminal No. 80-CR-42-C

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 original indictment filed 4-2-80 against (indictment, information, complaint)
RONALD FLOYD WHITE defendant.

Kenneth R. Sucke
Asst. United States Attorney

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

James O. Ellison
United States District Judge

Date:

DOJ

FORM OBD-113

8-27-74

UNITED STATES DISTRICT COURT

Northern District of Oklahoma

United States of America)
vs.)
PASCUAL DAVALOS-TORRES)

Criminal No. 74-CR-144

10
FILED
MAY 8 1980

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 Indictment against
(indictment, information, complaint)

Pascual Davalos-Torres, defendant.

HUBERT H. BRYANT

Hubert H. Bryant
United States Attorney

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

W. Salebook
United States District Judge

Date:

DOJ

FORM OBD-113

8-27-74

UNITED STATES DISTRICT COURT

Northern District of Oklahoma

United States of America

Criminal No. 73-CR-128

vs.

OCTAVIO REYNA

FILED

NO MAY 8 1980

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 Indictment against Octavio Reyna, (indictment, information, complaint) defendant.

HUBERT H. BRYANT

Hubert H. Bryant
United States Attorney

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

Jack C. Silver
United States District Judge

Date:

DOJ

FORM OBD-113

8-27-74

UNITED STATES DISTRICT COURT

Northern District of Oklahoma

United States of America

vs.

RUBEN CASTRO

Criminal No. 72-CR-193 ✓

FILED

MAY 8 1980

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 Indictment against
(indictment, information, complaint)

Ruben Castro, defendant.

HUBERT H. BRYANT

Hubert H. Bryant
United States Attorney

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

W. J. [Signature]
United States District Judge

Date:

DOJ

FORM OBD-113

8-27-74

hs

UNITED STATES DISTRICT COURT

Northern District of Oklahoma

United States of America

vs.

OSCAR GONZALEZ-ORTIZ

Criminal No. 70-CR-76

FILED

HC **MAY 8 1980**

ORDER FOR DISMISSAL

Jack C. Silver, Clerk

U.S. DISTRICT COURT

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
(indictment, information, complaint)

Oscar Gonzalez-Ortiz, defendant.

HUBERT H. BRYANT

Hubert H. Bryant
United States Attorney

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

W. J. [Signature]
United States District Judge

Date:

DOJ

FORM OBD-113

8-27-74

and upon approval of the Court, Warrant for Arrest of Probationer was issued.

Thereafter, on May 7, 1980, pursuant to said Warrant, the defendant appeared before the Court with her attorney and counsel, Eric E. Anderson. The Government was present and represented by its attorney, Kenneth P. Snoke. The Court directed the Probation Officer, Steve J. Martin, recite and advise the Court and defendant the grounds of revocation, and after statements confirming probation violation by the probationer and her counsel, and after the probationer and her counsel waived a formal hearing, the Court found that an evidentiary hearing was not necessary, that the defendant had violated the terms of her probation and that the probation should be revoked. The Court further found that the defendant was 19 years of age at the time of conviction and subject to sentence under the YCA; but the Court further found that the defendant would not derive any benefit from sentence under the YCA and the defendant was, therefore, sentenced under applicable statute.

IT IS, THEREFORE, ORDERED BY THE COURT that the Order of Probation entered on December 27, 1977, be revoked and set aside.

IT IS ADJUDGED that the defendant, CAROLYN WEBB, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Thirty (30) Months as to Count 3 of the Indictment.

IT IS RECOMMENDED BY THE COURT that the defendant be committed to an institution having a professional and substantial drug rehabilitation program, such as the Federal Correctional Institution in Fort Worth, Texas, or the Federal Correctional Institution in Lexington, Kentucky.

IT IS ORDERED that the Clerk of the Court 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 7th day of May, 1980.



H. DALE COOK
Chief, U. S. District Judge

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

FILED
MAY 5 1980

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

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
CHARLES ETTA SAULTERS,)
)
Defendant.)

No. 77-Cr-37-02-C ✓

O R D E R

The Court is in receipt of a letter from defendant Charles Etta Saulters in which she asks the Court to consider "a sentence reduction, clemency or to be released to a half-way house". Defendant was found guilty by a jury of violations of Title 21 U.S.C. §§ 841(a)(1), 843(b), and 846, and sentenced on June 10, 1977. The conviction was appealed, and judgment was rendered in that appeal on March 9, 1979 by the United States Court of Appeals for the Tenth Circuit.

The only authority for considering defendant Saulters's request is Rule 35, F.R.Cr.P. That rule provides that the Court may correct an illegal sentence at any time, or otherwise reduce a sentence within 120 days of: 1) sentencing, 2) the receipt of a mandate affirming sentence, or 3) the entry of an order of the Supreme Court denying review or upholding judgment. Defendant has not challenged the legality of her sentence. Any other modification of her sentence by this Court depends on the jurisdictional 120 day limit of Rule 35. The pertinent date here is the Court of Appeals decision, rendered on March 9, 1979. The Court received defendant's letter on April 11, 1980. Defendant is therefore outside the 120 day limit of Rule 35, and this Court lacks the jurisdiction to consider her request. U.S. v. Kenner, 578 F.2d 1165 (5th Cir. 1978).

For the foregoing reason, defendant's motion to modify sentence is hereby overruled.

It is so Ordered this 5th day of May, 1980.


H. DALE COOK
Chief Judge, U.S. District Court

DEFENDANT

RAHMAT ULLAH JAN

DOCKET NO.

80-CR-32-E

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO-245 (5/75)

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date

MONTH 5 DAY 2 YEAR 80

WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

WITH COUNSEL

E. Terrill Corley, Retained

(Name of counsel)

FILED

PLEA

GUILTY, and the court being satisfied that there is a factual basis for the plea,

NOLO CONTENDERE,

NOT GUILTY

MAY 2 1980

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

FINDING & JUDGMENT

There being a finding of

NOT GUILTY. Defendant is discharged. GUILTY.

Defendant has been convicted as charged of the offense(s) of having violated Title 18, U.S.C., Section 922(e), as charged in the Indictment.

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Count One - Five (5) years, on the condition that the defendant shall be confined in a jail-type institution that the defendant Thirty (30) days, the execution of the remainder of the sentence is hereby suspended and the defendant is placed on unsupervised probation for a period of Fifty-nine (59) months, to commence upon release from confinement.

SPECIAL CONDITIONS OF PROBATION

A SPECIAL CONDITION of probation is that the defendant leave the United States upon release from custody.

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

CERTIFIED AS A TRUE COPY ON

THIS DATE

By

JAMES O. ELLISON

Date

5-2-80

() CLERK () DEPUTY

ho

1

SIGNED BY

U.S. District Judge

U.S. Magistrate

DEFENDANT

FAZLE MEHMUD

DOCKET NO. 80-CR-32-E

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO-245 (5/75)

In the presence of the attorney for the government the defendant appeared in person on this date

MONTH 5 DAY 2 YEAR 80

COUNSEL

WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

WITH COUNSEL E. Terrill Corley, Retained

(Name of counsel)

FILED

PLEA

GUILTY, and the court being satisfied that there is a factual basis for the plea, NOLO CONTENDERE, NOT GUILTY

MAY 2 1980

FINDING & JUDGMENT

There being a finding of fact of NOT GUILTY. Defendant is discharged GUILTY.

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

Defendant has been convicted as charged of the offense(s) of having violated Title 18, U.S.C., Section 922(e), as charged in the indictment.

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

Count One - FIVE (5) YEARS.

IT IS FURTHERED ORDERED that the imposition of sentence is suspended and the defendant is hereby placed on unsupervised probation for a period of Five (5) years.

SPECIAL CONDITIONS OF PROBATION

A SPECIAL CONDITION of probation is that the defendant leave the United States immediately.

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

CERTIFIED AS A TRUE COPY ON

SIGNED BY

S/ JAMES O. ELLISON

THIS DATE

U.S. District Judge

JAMES O. ELLISON

By

U.S. Magistrate

Date 5-2-80

() CLERK () DEPUTY

ho

UNITED STATES DISTRICT COURT

Northern District of Oklahoma

United States of America

vs.

Ahmad Manzoor and
Rahmat Ullah

Criminal No. 80-CR-11-C

FILED
IN OPEN COURT

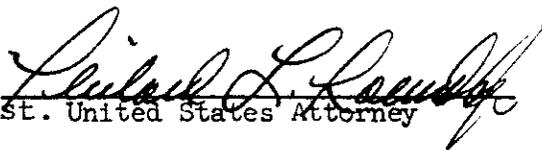
MAY 2 1980

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 indictment against
(indictment, information, complaint)
Rahmat Ullah defendant.

HUBERT H. BRYANT
United States Attorney


ASST. United States Attorney

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


United States District Judge

Date:

DOJ

FORM OBD-113

8-27-74

DEFENDANT

AHMAD MANZOOR KHAN

DOCKET NO. 80-CR-11-E

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO-245 (5/75)

In the presence of the attorney for the government the defendant appeared in person on this date

MONTH 5 DAY 2 YEAR 80

COUNSEL

WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

WITH COUNSEL R. Terrill Corley & Phil Frazier, Retained (Name of counsel)

PLEA

GUILTY, and the court being satisfied that there is a factual basis for the plea, NOLO CONTENDERE, NOT GUILTY MAY 2 1980

FINDING & JUDGMENT

There being a finding of NOT GUILTY. Defendant is discharged GUILTY.

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

Defendant has been convicted as charged of the offense(s) of having violated Title 18, U. S. C., Section 922(e), as charged in the Indictment.

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

Count One - Five (5) years, on the condition that the defendant shall be confined in a jail-type institution for a period of Two (2) months, the execution of the remainder of the sentence is hereby suspended and the defendant is placed on unsupervised probation for a period of Fifty-eight (58) months, to commence when the defendant is released from confinement.

SPECIAL CONDITIONS OF PROBATION

A SPECIAL CONDITION of probation is that the defendant leave the United States upon release from custody.

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

CERTIFIED AS A TRUE COPY ON

SIGNED BY

U.S. District Judge

S/ JAMES O. ELLISON

JAMES O. ELLISON

THIS DATE

By

() CLERK

() DEPUTY

U.S. Magistrate

Date

5-2-80

ho

DEFENDANT

DAVID M. CUNNINGHAM d/b/a TRINITY REAL ESTATE COMPANY

DOCKET NO. 80-CR-30-C

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 245 (5/75)

In the presence of the attorney for the government the defendant appeared in person on this date

Table with columns: MONTH (5), DAY (1), YEAR (80)

COUNSEL

[] WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

[X] WITH COUNSEL

Joe LeDonne, Retained

(Name of counsel)

PLEA

[X] GUILTY, and the court being satisfied that there is a factual basis for the plea,

[] NOLO CONTENDERE,

[] NOT GUILTY

MAY 1 1980

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

FINDING & JUDGMENT

There being a finding of

[] NOT GUILTY. Defendant is discharged

[X] GUILTY.

Defendant has been convicted as charged of the offense(s) of having violated Title 18, U.S.C., Sections 1010 and 641, as charged in Counts 1 through 16 of the Indictment.

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

Count 1 - Two (2) Years

Counts 4 through 16 - Two (2) Years on each Count, all to run concurrently with the sentence imposed in Count 1

Counts 2 and 3 - Four (4) Years on each Count, all to run concurrently with the sentence imposed in Count 1

SPECIAL CONDITIONS OF PROBATION

IT IS FURTHER ORDERED that the execution of sentence is stayed until June 2, 1980, at 9:00 a.m., at which time the defendant shall report to the U. S. Marshal. In the event the defendant wishes to report directly to the institution designated by the Attorney General, he shall advise the U. S. Marshal within 10 days, and at the option of the U. S. Marshal, he may be granted permission to surrender himself to the designated institution.

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

CERTIFIED AS A TRUE COPY ON

THIS DATE

SIGNED BY [X] U.S. District Judge

H. DALE COOK

By

[] U.S. Magistrate

Date 5-1-80

() CLERK

() DEPUTY

UNITED STATES DISTRICT COURT

Northern District of Oklahoma

United States of America

vs.

TAMARA LYNN STONE

Criminal No. 80-CR-29-C ✓

FILE

MAY 1 1980 *hm*

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~~ Count II of the Indictment against (indictment, information, complaint) Tamara Lynn Stone, defendant.

HUBERT H. BRYANT
United States Attorney

Richard L. Rowley
Asst. United States Attorney

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

W. Dale Cook
United States District Judge

Date: ~~April~~ *May* 1, 1980

DEFENDANT

TAMARA LYNN STONE

DOCKET NO.

80-CR-29-C

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO-245 (5/75)

In the presence of the attorney for the government the defendant appeared in person on this date

MONTH	DAY	YEAR
5	1	80

COUNSEL

WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

WITH COUNSEL

Eric E. Anderson, Court Appointed

(Name of counsel)

PLEA

GUILTY, and the court being satisfied that there is a factual basis for the plea,

NOLO CONTENDERE,

NOT GUILTY

MAY 1 1980

There being a finding/verdict of

NOT GUILTY. Defendant is discharged

GUILTY.

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

FINDING & JUDGMENT

Defendant has been convicted as charged of the offense(s) of having violated Title 18, U.S.C., Section 1341, as charged in Count 1 of the Indictment.

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that

Count 1 - The imposition of sentence is hereby suspended and the defendant is placed on probation for a period of Five (5) Years from this date.

On the motion of the Assistant U. S. Attorney, Count 2 is dismissed.

SPECIAL CONDITIONS OF PROBATION

In addition to the usual conditions of probation, the defendant is ordered to make restitution, and further, the Court directs that the defendant receive and seek psychiatric counseling for such period of time as is beneficial to the defendant. At such time as the Probation Department is satisfied that counseling is no longer warranted, The Court will consider lifting that condition.

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

CERTIFIED AS A TRUE COPY ON

THIS DATE

SIGNED BY

U.S. District Judge

H. DALE COOK

By

() CLERK

() DEPUTY

U.S. Magistrate

Date

5-1-80