

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 02-14020-CR-MOORE/O'SULLIVAN

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARCELLUS MASON,

Defendant.

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**GOVERNMENT'S RESPONSE TO DEFENDANT'S  
MOTIONS TO VACATE CONVICTION (DE 106)**

The United States of America, by and through the undersigned Assistant United States Attorney, hereby files this response in opposition to *Defendant's Motion to Vacate Conviction* (DE 106), and in support thereof states:

On March 15, 2004, following a bench trial, the Defendant was found guilty of criminal contempt, as charged in the one-count Information. The conviction was based on the Defendant's repeated, willful violations of a Court Order issued by a U.S. District Judge that prohibited the Defendant from filing further pleadings in various civil actions in which the Defendant was a party.

The tortured tale of this civil litigation stretches over several years, and literally thousands of pleadings. The contempt charge was the result of the Defendant's refusal to comply with Court orders time after time simply because he did not agree with

the Court's rulings. The Defendant now seeks to have this conviction vacated.

Defendant Mason cites Fed.R.Civ.P. 60(b)(4) as legal authority for the relief he seeks. This is an invalid assumption. The defendant was convicted of criminal contempt; which is obviously a case that is criminal-in-nature, and governed by the Federal Rules of Criminal Procedure. There is no civil aspect to the Defendant's conviction. The judgment clearly states he was convicted in a criminal case. Fed.R.Civ.P. 1 states that the Rules, including Rule 60(b), apply only to cases that are civil in nature. Thus, the Defendant's legal basis for his requested relief is incorrect and his motion must be denied.

In addition, a close reading of the Rule the Defendant mistakenly cites as authority (60(b)) requires that any request for relief under Section (4) [as the Defendant cites], must be filed within "a reasonable time." The Defendant's conviction was on March 15, 2004, and the sentence was handed down on June 30, 1004, as was the judgment. The instant motion was filed in June 2007; three years after his conviction. This is not a timely fling and is not a reasonable time, as required by Rule 60(b). For this reason also, the Defendant's motion must be denied.

Close examination of the Defendant's motion reveals the majority of his complaints revolve around issues that are contained in the morass of civil cases he has filed and litigated before

another judge of this Court. This is made quite clear by an examination of pages 5-6 of the Defendant's motion labeled "Issues before the Court." None of these issues directly pertain to the criminal contempt conviction, which was based on the Defendant's conduct in violating court orders. All of these issues are issues raised in the Defendant's civil cases and litigated in court. Most of these issues, it seems, have also been reviewed by the 11<sup>th</sup> Circuit Court of Appeals during the numerous filings, briefs, and pleadings, both in the District Court and the Court of Appeals. The Defendant now seeks to revisit these issues, not because they have not been decided, but because he does not agree with the decisions. Thus the "issues" cited by Defendant at pages 5-6 are not properly before this Court, as they are civil in nature and have been decided in another court and affirmed on appeal.

On page 23 of the Defendant's motion he outlines the relief he seeks. Two of the three items he seeks are not possible for all the reasons outlined above. He also seeks to have his conviction vacated, it seems, based on his belief that the Order enjoining him from filing further pleadings, issued on September 20, 2001, in Case No. 99-14027-CIV-Graham (DE 878), is invalid for numerous reasons.

Defendant Mason urges that if this injunction is invalid, his conviction must be vacated because his contempt conviction is based, in part, on his violation of that Order. This reasoning is

defective because the 11<sup>th</sup> Circuit Court of Appeals has repeatedly refused to review this Order or found it to be valid, as outlined in various places in the instant motion. What could be a more clear indication that the Appellate Court has found this Order valid, than its striking of the Defendant's appellate brief for arguing against the Order. Moreover, on December 5, 2001, the Appellate Court specifically declined to review this Order, despite the Defendant's request.

Thus, it is clear the Order on which the contempt conviction, in part based, has been found to be valid. Once again, the Defendant seeks relief not because the order has not been reviewed, but rather he seeks relief in this Court because he disagrees with the finding that the Order was valid. This is no basis for the relief sought.

Interestingly, the Defendant could have appealed his contempt conviction directly, and thus, sought another review of the underlying injunction he violated. However, for reasons known only to the Defendant, he refused to cooperate with his attorney in the appeal process, which resulted in the 11<sup>th</sup> Circuit Court of Appeals dismissing his direct appeal as abandoned on January 17, 2007.

The instant motion is no more than another attempt by the Defendant to re-litigate issues he has already lost, without proper legal authority, using confused and conclusory reasoning driven by a refusal to accept legal decisions by District and Appellate

courts. The Defendant simply cannot accept the fact that a legal issue can be decided against him, contrary to his conclusions and beliefs. It is this defiance of reality that led to his contempt conviction, not any legal mistake or miscarriage of justice, as the Defendant continues to believe, and probably will always believe.

Wherefore, based on the foregoing, the United States of America respectfully requests this Court deny the Defendant's motion in all respects without a hearing.

Respectfully submitted,

R. ALEXANDER ACOSTA  
UNITED STATES ATTORNEY

By

s / Robert H. Waters, Jr.

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 2, 2007, I electronically filed the foregoing with the Clerk of the Court using CM/ECF.

I also certify that on August 2, 2007, a copy of the foregoing was mailed to:

Mr. Marcellus M. Mason, Jr.  
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s / Robert H. Waters, Jr.

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