

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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

FILED

CLARENCE HADDOX
CLERK U.S. DISTRICT
S.D. OF FLA. - FT. PIERCE
2004 MAR 11 PM 12:22



UNITED STATES OF AMERICA,

Plaintiff,

v.

MARCELLUS MASON,

Defendant.

_____ /

**GOVERNMENT'S RESPONSE TO DEFENDANT'S
MOTIONS TO DISMISS INFORMATION**

The United States of America, by and through the undersigned Assistant United States Attorney, hereby files this response in opposition to defendant's first and second motions to dismiss the Information pending against him, and in support thereof states:

Defendant has been charged by Information with criminal contempt of court in violation of Title 18, United States Code, Section 401(3). This charge was filed on December 3, 2002. Defendant was arraigned on February 12, 2004, and trial is set to commence on March 15, 2004.



Although represented by counsel, defendant has filed two motions to dismiss the Information, along with a bevy of other motions. Since the motions to dismiss are substantive to the outcome of the case, the United States responds to them, even though they are not filed by defendant's appointed counsel, are untimely, and fail to comply with the local rule that requires consultation with opposing counsel before such a motion is filed.

As alleged in the Information, defendant is accused of contempt by violation of the September 20, 2001, lawful order of the District Court enjoining him from filing further pleadings in the numerous civil cases he has filed. Defendant has ignored this order.

Defendant acknowledges in his motions that the proper legal method to attack a judge's order to cease filing pleadings is to attack said order in the appellate courts. Defendant attempted to do this, but the Eleventh Circuit Court of Appeals and the United States Supreme Court have refused to give him relief.

Thus, the order of the District Court enjoining defendant from filing additional pleadings remained in full force and effect. It seems that defendant, unsatisfied that the Appellate Courts disagreed with him, decided at that point to willfully violate the District Court's order and file more pleadings. This is the basis of the contempt charge. Defendant simply cannot ignore a court's order because he disagrees with it or because an appellate court

does not see the order in the same light as the defendant. Despite defendant's lengthy recounting of his legal attacks on the District Court's order, nothing in his motion supports dismissal of the contempt charge. In reality, defendant's motions show that the basis for his legal position is simply that he disagrees with the rulings of the District Court. Disagreement is a right, but defiance is not. Just because the defendant disagrees with the District Court and cannot get an appellate court to agree with him is no excuse or basis for the defendant to willfully defy the Court's order, as he has. Defendant is clearly in violation and contempt of that order and must be held accountable for his actions.

Defendant also complains that his speedy trial rights have been violated. He is mistaken. Defendant bases his argument on the premise that he was arraigned or had an initial appearance on April 8, 2002. This was well before the Information in this case was filed (December 2002). In fact, the hearing before Magistrate Judge Frank J. Lynch had nothing to do with this case.

A careful reading of the transcript of that hearing (Attachment A) reveals it had nothing to do with the case at bar. That hearing was to advise defendant that the Court was considering summary contempt proceedings against him arising out of his civil case. This type of contempt proceeding is separate and distinct from that involved in this case.

Summary contempt, as defined in Title 18, United States Code, Section 401, and Rule 42(a) of the Federal Rules of Criminal Procedure, give courts the inherent authority to punish misbehavior committed in their presence or so near thereto as to obstruct the administration of justice. The contempt must actually obstruct the court in the performance of its judicial duty. Parmelee Transp. Co. v. Keeshin, 292 F.2d 806 (7th Cir. 1961); Ciraolo v. Madigan, 443 F.2d 314 (9th Cir. 1971). It is clear from the order that caused the April 8 hearing, and the transcript from that hearing, that summary contempt was contemplated, and the required notice was given to the defendant at that hearing and the required warning to desist in the behavior causing the contempt. United States v. Schiffer, 351 F.2d 91 (6th Cir. 1965); United States v. Brannon. 546 F.2d 1242 (5th Cir. 1977). As such, this hearing on a summary contempt proceeding had nothing to do with the criminal contempt charge brought months later by Information. Defendant's calculation of the speedy trial period using the April 8 hearing is incorrect. His speedy trial period commenced at his initial appearance on the criminal Information on February 12, 2004, not at his hearing on April 8, 2002, which was related to the Court's summary contempt proceeding. See, United States v. Hermanski, 861

F.2d 1240 (11th Cir. 1988).¹ Clearly, seventy days have not yet passed and no violation of the speedy trial statute has occurred.²

Finally, defendant raises several collateral issues in his motions. First he seeks publication, presumably of the pleadings in this case. There is no authority or precedent for such a procedure. Ongoing cases are not published. Only the decisions reached and then, not always. Moreover, the pleadings in this case are public record, available to anyone instructed in the Clerk's Office. Thus, there is no need or authority to publish anything, as defendant requests.

Defendant also demands a due process hearing in this case. The greatest guarantee of due process contained in the Constitution is the criminal trial process. Defendant is scheduled for trial on Monday, March 15, 2004. Due process will be assessed at that time.

1

It should be noted that the April hearing had no advice to Defendant of an information or charging document, as would be typical and required at a criminal first appearance. This makes it even more evident that this hearing related to the contemplated summary contempt, and thus, did not serve as a trigger for the speedy trial statute.

2

Even if one accepts defendant's argument he cannot prevail on a claim of post-indictment delay. Speedy trial challenges in the context of post-indictment delays are subject to a four-factor test established by the Supreme Court in Barker v. Wingo, 407 U.S. 514 (1972). The factors are (1) length of the delay; (2) reason for the delay; (3) defendant's assertion of the speedy trial right; and, (4) prejudice to the defendant. United States v. Twitty, 107 F.3d 1482 (11th Cir. 1997); United States v. Clark, 83 F.3d 1350 (11th Cir. 1996); United States v. Hayes, 40 F.3d 362 (11th Cir. 1997). To trigger a speedy trial analysis, a defendant must first show that the length of the delay between indictment and arrest was "presumptively prejudicial." Doggett v. United States, 505 U.S. 647 (1992). Only if the threshold point is satisfied may the court proceed with the final three factors in the Barker analysis. In this case, the Defendant can prove no prejudice under the Wingo test.

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

Respectfully submitted,

MARCOS DANIEL JIMENEZ
UNITED STATES ATTORNEY

By



ROBERT H. WATERS, Jr.
ASSISTANT UNITED STATES ATTORNEY
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was sent via facsimile on March 11, 2004, to:

Mr. Leon Watts
Assistant Federal Public Defender
200 S. Indian River Drive, Suite 207
Fort Pierce, Florida
FAX: 772-461-9474



ROBERT H. WATERS, Jr.
ASSISTANT UNITED STATES ATTORNEY

Mason file

[Handwritten signature]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MARCELLUS M. MASON, JR.,)	
)	CASE NUMBER
PLAINTIFF,)	99-14027-CIV-GRAHAM
)	
VS.)	
)	
HEARTLAND LIBRARY COOPERATIVE,)	THIS VOLUME:
ET AL,)	PAGES 1 - 11
)	
DEFENDANTS.)	
)	

(TRANSCRIPT BY TAPE)

TRANSCRIPT OF STATUS CONFERENCE HAD BEFORE THE
HONORABLE FRANK J. LYNCH, JR., IN FORT PIERCE, SAINT LUCIE
COUNTY, FLORIDA, ON APRIL 8, 2002, IN THE ABOVE-STYLED
MATTER.

APPEARANCES:

FOR THE PLAINTIFF: PRO SE
FOR THE DEFENDANTS: (NO COUNSEL PRESENT)

CARL SCHANZLEH
OFFICIAL COURT REPORTER
U. S. COURTHOUSE
299 E. BROWARD BLVD., 202B
FORT LAUDERDALE, FLORIDA 33301
954 769-5488

1 (FORT PIERCE, SAINT LUCIE COUNTY, FLORIDA; APRIL 8, 2002,
2 IN OPEN COURT.)

3 THE COURT: MARCELLUS M. MASON, JR., VERSUS
4 HEARTLAND LIBRARY COOPERATIVE, HIGHLANDS COUNTY BOARD OF
5 COUNTY COMMISSIONERS, ET AL.

6 THERE ARE SEVERAL CASE NUMBERS, 99-14027,
7 99-14042, 99-14257, AND 99-14314 ALL CIVIL GRAHAM.

8 IS MR. MASON HERE?

9 MR. MASON: YES, I'M HERE.

10 THE COURT: OKAY. MR. MASON, WILL YOU STEP TO THE
11 MICROPHONE, PLEASE, SIR.

12 GOOD MORNING.

13 STATE YOUR FULL NAME, PLEASE.

14 MR. MASON: MARCELLUS MASON.

15 THE COURT: MR. MASON, THIS IS A HEARING JUDGE
16 GRAHAM SET ON HIS ORDER TO SHOW CAUSE, WHICH WAS DATED MARCH
17 22, 2002.

18 DO YOU HAVE A COPY OF THAT?

19 MR. MASON: I DON'T HAVE IT WITH ME.

20 THE COURT: BUT YOU RECEIVED IT. OKAY. I JUST
21 WANTED TO MAKE SURE YOU HAD A COPY.

22 THE PURPOSE OF THIS HEARING, SINCE THIS IS, BASED
23 ON JUDGE GRAHAM'S ORDER, ESSENTIAL FACTS RELATING TO
24 CRIMINAL CONTEMPT. SINCE THIS DEALS WITH A CRIMINAL
25 CONTEMPT ISSUE, I NEED TO GO THROUGH THINGS LIKE IT IS A

1 CRIMINAL CASE. I NEED TO ADVISE YOU OF YOUR RIGHTS, I NEED
2 TO INQUIRE ABOUT COURT APPOINTED COUNSEL, THOSE THINGS.
3 OKAY. THAT'S WHY YOU ARE HERE TODAY.

4 SO LET ME PLACE YOU UNDER OATH.

5 WILL YOU RAISE YOUR RIGHT HAND, PLEASE.

6 DO YOU SOLEMNLY SWEAR THE TESTIMONY YOU ARE ABOUT
7 TO GIVE WILL BE THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT
8 THE TRUTH, SO HELP YOU GOD?

9 MR. MASON: I DO.

10 THE COURT: ALL RIGHT. MR. MASON, I THINK I HAVE
11 EXPLAINED WHY YOU ARE HEAR.

12 LET ME ADVISE YOU, YOU HAVE THE RIGHT TO REMAIN
13 SILENT. IF AT ANY TIME TODAY OR IN THE FUTURE YOU GIVE UP
14 THAT RIGHT AND MAKE ANY STATEMENT, THAT STATEMENT WILL BE
15 USED AGAINST YOU.

16 ALSO, IF YOU BEGIN MAKING A STATEMENT AT ANY TIME
17 AND WISH TO STOP TALKING, YOU HAVE THE RIGHT TO STOP. YOU
18 CAN ALSO REFUSE TO ANSWER ANY QUESTION I ASK YOU AND YOU DO
19 NOT EVEN HAVE TO GIVE A REASON FOR REFUSING. BUT SINCE YOU
20 ARE UNDER OATH TODAY IF YOU DO CHOOSE TO ANSWER ANY
21 QUESTION, THE ANSWER MUST BE TRUTHFUL, AND IF I LATER FIND
22 OUT AN ANSWER IS UNTRUTH THAT COULD SUBJECT YOU TO A CHARGE
23 OF PERJURY, DO YOU UNDERSTAND THAT?

24 MR. MASON: YES.

25 THE COURT: OKAY. ALSO, YOU HAVE THE RIGHT TO

1 COURT APPOINTED COUNSEL SINCE THERE ARE POSSIBLE CRIMINAL
2 PENALTIES RELATING TO THIS. YOU HAVE A RIGHT TO HIRE YOUR
3 OWN ATTORNEY.

4 I KNOW YOU FILED A MOTION, I THINK I SAW A COPY,
5 ASKING JUDGE GRAHAM TO INQUIRE ABOUT COURT APPOINTED
6 COUNSEL, IS THAT RIGHT, SIR?

7 MR. MASON: YES.

8 THE COURT: OKAY. DO YOU WANT ME TO SEE IF YOU
9 QUALIFY FOR A COURT APPOINTED LAWYER?

10 MR. MASON: OKAY.

11 THE COURT: OKAY. I HAVE TO ASK YOU QUESTIONS
12 ABOUT THE THINGS YOU OWN, MR. MASON, WHERE THEY ARE AND HOW
13 MUCH THEY ARE WORTH. AND AFTER ANSWERING THOSE QUESTIONS IF
14 I FIND YOU QUALIFY I WILL APPOINT AN ATTORNEY FOR YOU, OKAY,
15 SIR?

16 MR. MASON: AH-HUH.

17 THE COURT: IS THAT A YES?

18 MR. MASON: YES.

19 THE COURT: OKAY. WHAT IS YOUR RESIDENCE ADDRESS,
20 SIR?

21 MR. MASON: IT'S 218 (INAUDIBLE)

22 (BACKGROUND NOISE)

23 THE COURT: THAT'S THE CRAZY SOUND SYSTEM.
24 SOMETIMES IT GIVES FEEDBACK.

25 AND DO YOU OWN THAT RESIDENCE, MR. MASON, OR

1 RENT?

2 MR. MASON: WELL, I OWN IT BUT IT HAS A MORTGAGE

3 (INAUDIBLE)

4 THE COURT: I'M SORRY?

5 MR. MASON: I OWN IT BUT IT -- I TAKE A MORTGAGE

6 (INAUDIBLE)

7 THE COURT: THAT'S FINE. THAT'S OWNING IT.

8 MR. MASON: I DONT OWN IT OUTRIGHT.

9 THE COURT: OKAY. HOW MUCH DO YOU OWE ROUGHLY ON
10 YOUR MORTGAGE?

11 MR. MASON: IT'S DEFINITELY \$50,000.

12 THE COURT: AND ROUGHLY WHAT IS THE FAIR MARKET
13 VALUE?

14 MR. MASON: \$50,000.

15 THE COURT: OKAY. DO YOU OWN ANY HOUSES, LAND,
16 REAL ESTATE ANYWHERE?

17 MR. MASON: NO.

18 THE COURT: ARE YOU MARRIED OR SINGLE?

19 MR. MASON: I'M MARRIED.

20 THE COURT: DO YOU HAVE ANY CHILDREN?

21 MR. MASON: TWO.

22 THE COURT: OVER OR UNDER 18?

23 MR. MASON: BOTH OF THEM.

24 THE COURT: ARE UNDER 18?

25 MR. MASON: TWO GIRLS, ONE 13 THE OTHER ONE IS

1 EIGHT.

2 THE COURT: OKAY. DO YOU HAVE A JOB?

3 MR. MASON: NO.

4 THE COURT: WHEN IS THE LAST TIME YOU WORKED?

5 MR. MASON: SEPTEMBER 19, '99.

6 THE COURT: WAS THAT IN RELATION TO THIS -- THESE
7 FOLKS THAT YOU ARE SUING? IS THAT THE LAST JOB?

8 MR. MASON: (INAUDIBLE)

9 THE COURT: I DIDN'T KNOW IF YOU WORKED IN
10 BETWEEN.

11 MR. MASON: NO, I WORKED FOR IBM SINCE THEN.

12 THE COURT: SINCE THEN? OKAY. AND HOW LONG DID
13 YOU WORK FOR THEM.

14 MR. MASON: SIX MONTHS.

15 THE COURT: AND HOW COME YOU ARE NOT WORKING FOR
16 THEM ANYMORE.

17 MR. MASON: IT WAS TEMPORARY.

18 THE COURT: OKAY. WHEN DID THAT END, MR. MASON --
19 THAT WAS 1999?

20 MR. MASON: SEPTEMBER.

21 THE COURT: SEPTEMBER IS THERE ANYTHING TO
22 PREVENT YOU FROM WORKING NOW, ANY PHYSICAL DISABILITY OR
23 ANYTHING?

24 MR. MASON: NO PHYSICAL DISABILITY.

25 THE COURT: ANYTHING ELSE THAT PREVENTS YOU FROM

1 WORKING?

2 MR. MASON: (INAUDIBLE) NOTHING PHYSICALLY THAT
3 STOPS ME FROM WORKING.

4 THE COURT: IS THERE ANYTHING THAT STOPS YOU FROM
5 WORKING?

6 MR. MASON: SOME PRETTY BAD REFERENCES HERE.

7 THE COURT: OKAY. SO YOU HAVE TRIED TO GET A JOB
8 AND YOU CAN'T?

9 MR. MASON: MY REPUTATION IS CRITICAL TO THE TYPE
10 OF JOB. I'M USED TO MAKING AROUND \$50,000 A YEAR. NOBODY
11 IS WILLING TO DO THAT FOR --

12 THE COURT: OKAY.

13 MR. MASON: -- ALL THE THINGS THE PEOPLE SAY ABOUT
14 ME.

15 THE COURT: I DON'T GO INTO IT FURTHER. I ALWAYS
16 ASK PEOPLE IF THEY HAVEN'T WORKED FOR A WHILE WHAT THEY HAVE
17 BEEN DOING.

18 DO YOU HAVE ANY CARS, TRUCKS, VEHICLES, BOATS,
19 ANYTHING LIKE THAT WITH YOUR NAME ON THEM?

20 MR. MASON: MY CAR IS REPOSSESSED.

21 THE COURT: OKAY.

22 MR. MASON: AND I GOT A BOAT THAT I PAID \$200 FOR
23 MAYBE FIVE YEARS AGO THAT'S WORTHLESS NOW.

24 THE COURT: THAT'S FINE. NOTHING ELSE OF
25 SIGNIFICANT VALUE THAT WAY IN THOSE THINGS?

1 MR. MASON: NO.

2 THE COURT: ANY BANK ACCOUNTS WITH YOUR NAME ON
3 THEM?

4 MR. MASON: THAT WAS CLOSED OUT PROBABLY A YEAR OR
5 SO AGO.

6 THE COURT: ANYTHING ELSE OF A VALUE OF OVER \$500
7 THAT WE HAVEN'T TALKED ABOUT?

8 MR. MASON: NO.

9 THE COURT: OKAY.

10 MR. WATTS, I THINK JUDGE GRAHAM WANTED THE FEDERAL
11 PUBLIC DEFENDER HERE AND THAT'S WHY I ASKED YOU TO STICK
12 AROUND. MR. MASON HAS A CIVIL CASE AND JUDGE GRAHAM HAS
13 ISSUED THIS ORDER. YOU DON'T HAVE THE BENEFIT OF A COPY AND
14 I AM GOING TO GIVE YOU MY COPY AND I CAN GET ANOTHER COPY
15 FROM MISS GRIFFIN-ARNOLD.

16 IT LAYS OUT SOME ISSUES ABOUT CRIMINAL CONTEMPT,
17 AND I THINK ALL JUDGE GRAHAM WANTED ME TO DO WAS TO DO THIS
18 PART, ADVISE MR. MASON OF HIS CONSTITUTIONAL RIGHTS, GET AN
19 ATTORNEY APPOINTED, IF HE WANTED A COURT APPOINTED ATTORNEY,
20 AND THEN I AM GOING TO LET JUDGE GRAHAM KNOW THAT WE HAVE
21 DONE ALL OF THIS. AND I THINK HE IS GOING TO SET IT FOR
22 ANOTHER HEARING OR ANOTHER JUDGE IS GOING TO SET IT FOR A
23 HEARING, BUT THERE IS NO DATE CERTAIN FOR THE FUTURE.

24 THERE IS NO BOND, THERE IS NOTHING LIKE THAT. IT
25 IS NOT THAT TYPE OF A CRIMINAL CASE. IT IS JUST THAT THERE

1 MAY BE PENALTIES IMPOSED WHICH WOULD BE CONSIDERED,
2 MR. MASON, CRIMINAL IN NATURE BECAUSE THEY ARE PENAL IN
3 NATURE, SUCH AS A (INAUDIBLE) THINGS LIKE THAT SO YOU ARE
4 ENTITLED TO ALL OF THESE RIGHTS THAT I'M GOING THROUGH WITH
5 YOU.

6 I THINK THAT PRETTY MUCH TOUCHES EVERYTHING I
7 NEED TO DO.

8 IS THERE ANYTHING, MR. WATTS, THAT YOU CAN THINK
9 OF THAT YOU WANT ME TO ADDRESS WITH MR. MASON NOW?

10 MR. WATTS: I DON'T THINK, YOUR HONOR (INAUDIBLE)

11 THE COURT: OKAY. MR. MASON, WHAT WE ARE GOING TO
12 DO, I WILL ADVISE JUDGE GRAHAM THAT WE HAVE GONE THROUGH
13 THIS AND THAT YOU HAVE AN ATTORNEY APPOINTED NOW.

14 MR. WATTS IS AN ATTORNEY WITH THE FEDERAL PUBLIC
15 DEFENDER'S OFFICE. EITHER HE OR SOMEONE ELSE WITH THAT
16 OFFICE WILL BE ASSIGNED PARTICULARLY TO YOUR CASE. SO TELL
17 THEM EVERYTHING YOU KNOW ABOUT YOUR CASE BECAUSE THEY ARE
18 YOUR ATTORNEYS NOW.

19 UNDERSTAND, THOUGH, THAT THEY ARE YOUR ATTORNEYS
20 IN RELATION TO THIS CRIMINAL CONTEMPT HEARING, THEY ARE NOT
21 YOUR ATTORNEYS ON THE CIVIL CASE FOR PROSECUTING OR
22 DEFENDING THE CIVIL ISSUES, DO YOU UNDERSTAND THAT?

23 MR. MASON: YES, NOR DO I WANT HIM.

24 THE COURT: I JUST WANT TO MAKE SURE THAT IT IS A
25 DISTINCTION LIKE I DID WITH MR. BELL BEFORE TO LET HIM KNOW

1 THAT HE'S GOING TO HAVE AN ATTORNEY HERE AND HE WILL HAVE AN
2 ATTORNEY IN TEXAS. SO I WANT TO MAKE SURE YOU UNDERSTAND
3 THAT.

4 TALK TO MR. WATTS, TELL HIM EVERYTHING YOU KNOW
5 ABOUT THAT ISSUE, AND THEN THE DISTRICT COURT WILL ISSUE
6 SOME SORT OF AN ORDER SETTING THE HEARING, AN EVIDENTIARY
7 HEARING ON THE CRIMINAL CONTEMPT ISSUE. OKAY?

8 MR. WATTS: THANK YOU, YOUR HONOR.

9 THE COURT: OKAY. THANK YOU.

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C E R T I F I C A T E

UNITED STATES OF AMERICA
SOUTHERN DISTRICT OF FLORIDA

I, CARL SCHANZLEH, OFFICIAL COURT REPORTER OF THE
UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
FLORIDA, DO HEREBY CERTIFY THAT THE FOREGOING 10 PAGES
CONSTITUTE A TRUE TRANSCRIPT OF THE PROCEEDINGS HAD BEFORE
THE SAID COURT HELD IN THE CITY OF FORT PIERCE, FLORIDA, IN
THE MATTER THEREIN STATED.

IN TESTIMONY WHEREOF, I HEREUNTO SET MY HAND ON THIS
14TH DAY OF DECEMBER, 2002.

CARL SCHANZLEH, RPR-CM
OFFICIAL FEDERAL COURT REPORTER
299 EAST BROWARD BLVD., 202B
FORT LAUDERDALE, FL 33301
TELEPHONE 954/769-5488