

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

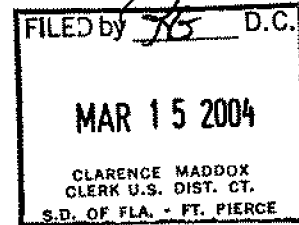
Case No. 02-14020-CR-MOORE
Magistrate Judge O'Sullivan

UNITED STATES OF AMERICA,
Plaintiff,

vs.

MARCELLUS M. MASON, JR.,
Defendant.

ORDER



THIS CAUSE came before the Court upon Defendant Marcellus M. Mason, Jr.'s Second Motions to Dismiss the Information charging him with criminal contempt (DE #s 35 & 40), Motion for Due Process Hearing and Motion for Publication (DE #4).¹

Mason is charged with criminal contempt of court in violation of 18 U.S.C. § 401(3). Mason argues that his rights to a speedy trial have been violated, asserting that an April 8, 2002 appearance before the Honorable Frank J. Lynch, Jr., United States Magistrate Judge, started the speedy trial clock for purposes of (1) filing an indictment or information and (2) commencing trial. However, that hearing, which occurred nearly eight months before the information in this criminal action was filed, provided Mason notice that the court was considering summary contempt proceedings against him, as provided for under 18 U.S.C. § 401 and Fed. R. Crim. P. 42(b). Mason's appearance before Magistrate Judge Lynch served as a notice of the summary contempt proceedings contemplated by the Honorable Donald L. Graham, United States District Judge. (See Judge Graham's March 22, 2002 Order to Show Cause, case no. 99-14027-CIV, DE #900.) Mason was neither arrested nor otherwise summoned for the instant charge, thus

¹Although Mason is represented by counsel, he filed these motions *pro se*. Mason also filed Motions to Dismiss and for Declaratory Relief on November 27, 2002 (DE #4). Because they were filed before Mason was formally charged, those motions are denied as moot.

defeating his claim of a speedy trial violation under 18 U.S.C. § 3161(b) ("Any information or indictment charging an individual with the commission of an offense shall be filed within thirty days from the date on which such individual was arrested or served with a summons in connection with such charges.").

Mason's February 12, 2004 appearance before the Honorable John J. O'Sullivan, United States Magistrate Judge, on the instant criminal contempt charge began the speedy trial calculation period. Seventy days have not passed since that time. 18 U.S.C. § 3161(c)(1) ("[T]he trial of a defendant charged in an information or indictment with the commission of an offense shall commence within seventy days from the filing date (and making public) of the information or indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, **whichever date last occurs.**" (emphasis added)). Thus, Mason's speedy trial rights are intact.

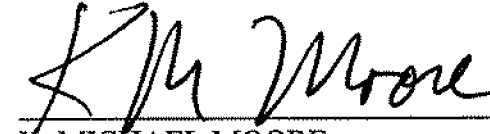
Mason's motions for due process hearing and publication are meritless. The due process claim concerns Judge Graham's September 20, 2001 Omnibus Order enjoining Mason from filing pleadings or new lawsuits without first obtaining court permission. The proper venue for contesting the constitutionality of that order is the United States Court of Appeals, not this Court. Indeed, the Eleventh Circuit dismissed Mason's appeal of the September 20, 2001 Omnibus Order. (Case no. 99-14027-CIV, DE #922.) Moreover, Mason's demand that this "matter" be published is without authority. Accordingly, it is

ORDERED AND ADJUDGED that Defendant Marcellus M. Mason Jr.'s Second Motions to Dismiss the Information charging him with criminal contempt (DE #s 35 & 40) are **DENIED**. It is further

ORDERED AND ADJUDGED that, as discussed in note 1, Mason's Motions to Dismiss and for Declaratory Relief (DE #4) are DENIED AS MOOT. It is further

ORDERED AND ADJUDGED that Mason's Motions for Due Process Hearing and Publication (DE #4) are DENIED.

DONE AND ORDERED in Chambers at Fort Pierce, Florida, this 15th day of March, 2004.


K. MICHAEL MOORE
UNITED STATES DISTRICT JUDGE

cc: Marcellus M. Mason, Jr., 218 Florida Dr., Sebring, FL 33870
Leon Watts, AFPD
Robert H. Waters, Jr., AUSA