

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

UNITED STATES OF AMERICA)
)
v.) No. 4:15CR00001-1 BSM
)
MICHAEL A. MAGGIO)

**UNITED STATES’ RESPONSE TO
DEFENDANT’S POST-HEARING BRIEF**

The United States of America, by and through the Attorney for the United States, Acting Under Authority Conferred by Title 28, United States Code, Section 515, for the Eastern District of Arkansas, Patrick Harris, and Julie Peters, Assistant United States Attorney, and Raymond Hulser, Chief, Public Integrity Section, Criminal Division, United States Department of Justice, and Charles R. Walsh, Trial Attorney, for its Response to defendant Michael A. Maggio’s Post-Hearing Brief (docket no. 37), states as follows.

I. Maggio Was an Agent of the State of Arkansas

On Friday, February 26, 2016, this Court heard argument regarding the applicability of 18 U.S.C. § 666 to defendant Michael A. Maggio’s criminal conduct. On Tuesday, March 1, 2016, Maggio filed a Post-Hearing Brief. In his Brief, Maggio raises a new issue, arguing that under the common law of agency, Maggio could not be an agent of the State of Arkansas. Maggio’s reliance on state common law is misplaced. Section 666 expressly defines “agent” as follows:

As used in this section . . . the term “agent” means a person authorized to act on behalf of another person or a government and, in the case of an organization or government, includes a servant or employee, and a partner, director, officer, manager, and representative

18 U.S.C. § 666(d)(1). In cases where a term is defined by statute, the court need not undertake a common-meaning inquiry, for the statutory definition is controlling. *See Lawson v. Suwannee Fruit & S.S. Co.*, 336 U.S. 198, 201 (1949) (“Statutory definitions control the meaning of statutory words....”); *Meese v. Keene*, 481 U.S. 465, 484 (1987). Maggio was “authorized to act on behalf of” the State of Arkansas when he ruled on cases in his capacity as a judge for the 20th Judicial District.¹ Accordingly, using the definition supplied by the criminal statute to which Maggio pleaded guilty, Maggio was indeed an “agent” under 18 U.S.C. § 666.

II. Maggio Accepted the Bribe In Connection With the Business of the State of Arkansas

Maggio makes an about-face and now asserts that he is “not challenging the issue of whether federal funds reach the State of Arkansas, or the Twentieth Judicial Circuit, or whether they were jeopardized in any way.” Maggio Post-Hearing Br. at 5. Instead, Maggio now argues that there is no proof he accepted the bribe “in connection with” the business of the State of Arkansas, Twentieth Judicial District, because “[t]he State of Arkansas was not involved in any way in the civil case where Maggio granted remittitur.” *Id.* at 6. This argument is misplaced. The bribe was paid “in connection with” the business of the State of Arkansas, Twentieth Judicial District, because the bribe was paid to Maggio to exercise his power as an agent for the State of Arkansas, Twentieth Judicial District, to remit the verdict. Section 666 does not require the State to be a party to the lawsuit.

III. Conclusion

Maggio has failed to establish a fair and just reason to withdraw his plea of guilty. Maggio’s rolling filings and metamorphosing arguments are a clear attempt to delay the inevitable, namely, sentencing for his corrupt conduct.

¹ The terms “District” and “Circuit” are used interchangeably to refer the State of Arkansas court region encompassing Faulkner, Van Buren, and Searcy counties. Certainly Maggio, who swore under oath that he served as a judge for that entity, knows that.

WHEREFORE, the United States respectfully requests that this Court deny Maggio's Motions to Withdraw Plea of Guilty and to Dismiss Information (docket nos. 21, 32) and proceed to Sentencing.

Respectfully submitted,

PATRICK HARRIS
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Acting Under Authority Conferred By
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/s/ Julie Peters

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CERTIFICATE OF SERVICE

I hereby certify that on March 3, 2016, a copy of the foregoing was filed electronically using the CM/ECF system and a copy was sent to all counsel of record.

/s/ Julie Peters