

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

MAYCE EDWARD CHRISTOPHER
WEBBER III,

Defendant.

Case No. 02-80813

Honorable Nancy G. Edmunds

MEMORANDUM OPINION AND ORDER AMENDING CONDITIONS OF BOND

Defendant Chris Webber was originally charged in an indictment for perjury and obstruction of justice, based on allegedly false statements made to the grand jury. In July, 2003, shortly before the trial was scheduled to begin, the Government filed a superseding information charging contempt of court, 18 U.S.C. § 401, to which Mr. Webber pled guilty. The criminal contempt statute in effect at the time of Mr. Webber's offense¹ states as follows:

A court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other, as—

- (1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;
- (2) Misbehavior of any of its officers in their official transactions;

¹The statute has since been amended to permit the imposition of both a fine and a term of imprisonment, but the version of the statute which applies to Mr. Webber's case is disjunctive: either a fine or imprisonment, but not both.

(3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

18 U.S.C.A. § 401 (West 2000).

Mr. Webber's plea was offered pursuant to a plea agreement with the Government, in which the Government expressly agreed that Mr. Webber would be subject to a fine but not imprisonment. The only apparent issue left to the Court was the amount of the fine and the determination as to whether Mr. Webber's offense would be characterized as a felony or a misdemeanor, an issue on which the Government expressly agreed not to take a position. Under the criminal contempt statute, the maximum fine for a misdemeanor contempt is \$100,000; the maximum fine for a felony contempt is \$250,000. See 18 U.S.C. § 3571(b).

The Court was concerned about the limitations imposed by the plea agreement, and met with probation officer Phil Miller shortly after the plea proceeding to discuss the possibility of a term of probation which would include community service. This meeting was followed by a similar discussion including the Court, probation officer Phil Miller, defense attorney Steven Fishman, and Assistant U.S. Attorney Keith Corbett, one of the federal prosecutors on the case. At that meeting, although everyone agreed that community service was appropriate in this case, Mr. Corbett and Mr. Fishman informed the Court that the Government had expressly agreed that Mr. Webber would not be sentenced to a term of probation.

Generally speaking, if a Court orders community service, it is a condition of probation (or supervised release). Without the probation option, the Court is left without a viable enforcement mechanism if the defendant does not perform. In Mr. Webber's case, the only

factor still viable as an enforcement mechanism is the characterization of his offense as a felony or a misdemeanor. Once he is sentenced, that factor disappears.

The Court has thus determined that in order to retain its jurisdiction over Mr. Webber and provide incentive to complete the community service, the Court will defer sentencing and make 300 hours of community service a condition of bond. In reaching this decision and in finding an appropriate community service project, the Court consulted with the United States Attorney's Office, specifically again with Mr. Corbett, one of the prosecutors on the case, with probation officer Phil Miller, defense lawyer Steve Fishman, with persons involved in local literacy programs, and with others. The Court decided on a literacy program because of the universal recognition of literacy as the foundation for life achievement. The Court decided on a middle school program to target boys and girls still young enough to be enthusiastic about using their summer time to improve their reading skills. And the Court decided on a summer program so that Mr. Webber could be physically present in the City of Detroit, where his offense occurred.

The Court has not yet decided whether Mr. Webber's offense will be characterized as a felony or a misdemeanor, nor the amount of the fine. Part of the reason for deferring the sentence is to see whether Mr. Webber shows accountability and responsibility for his actions, which will influence the Court's final determination.

In addition, the University of Michigan, in a letter sent by its attorney Marvin Krislov, has asked for compensation from Mr. Webber in connection with his relationship with the late Ed Martin. Neither the Government nor the defendant has had an opportunity to respond to this request, and the Court has not yet acted on it.

In accord with this memorandum, Mr. Webber's bond conditions are modified as follows:

1. In each of the following two summers, Mr. Webber shall participate for 150 hours each summer in the summer camp reading program run through the Butzel Middle School. If that program is not operational, the Probation Office may substitute another program, with the approval of the Court;

2. Mr. Webber will be physically present in the City of Detroit for the program and will participate in the academic/reading component;

3. Sentencing is deferred until August or September 2005, pending completion of the bond condition.

SO ORDERED.

/s/Nancy G. Edmunds
Nancy G. Edmunds
U.S. District Judge

Dated: September 19, 2003