

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

FILED

NOV 21 2016

CARMELITA REEDER SHINN
CLERK, U.S. DISTRICT COURT

BY

DEPUTY

UNITED STATES OF AMERICA
Plaintiff,

v.

Case No. 5:14-cr-00318

DOUGLAS G. WILLIAMS
Defendant.

MOTION FOR MODIFICATION
OF THE TERMS OF SUPERVISED RELEASE

NOW COMES, Defendant Douglas G. Williams and files this Motion for Modification of the Terms of Supervised Release. In support thereof Williams states as follows:

1. On September 22, 2015 this Court sentenced Williams to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 24 months. In addition the Court imposed a term of three years supervised release with the special condition that "the Defendant shall not participate in any form of polygraph-related activity during the period of supervision."

2. This special condition that prohibits Williams from working in his field of expertise and experience appears to violate well established 10th Circuit case law. See United States v. Bear, 769 F. 3d 1221 (10th Cir. 2014); United States v. Butler, 694 F. 3d 1177 (10th Cir. 2012); United States v. Wittig, 528 F. 3d 1280 (10th Cir. 2008).

3. Williams is a highly trained and experienced polygraph operator. He has been working in his profession for over 44 years. The District Court has discretion to impose an occupational restriction as a special condition of supervised release, but it's

discretion must be exercised in accordance with 18 U.S.C. §3583 (d) Subsection (a) states that a sentencing court may impose an occupational restriction only if it determines that ". .imposition of such a restriction is reasonably necessary to protect the public because there is reason to believe that absent such restriction, the defendant will continue to engage in unlawful conduct similar to that for which the defendant was convicted."

4. In this case there is no reason to believe that Williams will "continue to engage in unlawful conduct." Williams can practice his profession as a polygraph operator and continue to publish information about the ineffectiveness of the polygraph examination without engaging in a scheme to defraud the United States Government, or without tampering with a witness. Williams has a 1st Amendment right to provide information about how a person taking a polygraph test can avoid being falsely accused of deception simply because they have a nervous reaction to a relevant question. Williams has no intention of providing information or training to any person for the purpose of defrauding the government, or the tampering with a witness. In his business and occupation, Williams seeks to provide comprehensive information about the use of the polygraph examination as well as methods used by the subject being tested to prove their truthfulness on a polygraph examination.

5. Any occupational restriction must be "reasonably necessary to protect the public" which requires a finding by the Court that, in the absense of the restriction "the defendant will continue to engage in unlawful conduct similiar to that for which the defendant was convicted." U.S.S.G. 5F1.5 (a)(2). In providing information about the use of the polygraph examination as well as methods to produce a "truthful" polygraph chart tracing, Williams is actually protecting the public and individual citizens from being defrauded by government agencies or employees who improperly use the polygraph testing process, and falsely brand a truthful person as a liar simply because they are nervous.

6. Williams first published "How to Sting the Polygraph" in 1979. In July of 1985 his manual was entered into the Congressional record. Based upon Williams testimony and other evidence the Congress enacted the "Employee Protection Act" of 1988 which prohibits the use of the polygraph examination to abuse the privacy rights of employees throughout the United States. The Congressional Act virtually outlawed using polygraphs in connection with employment. The United States Supreme Court has ruled that because there was no scientific consensus on the reliability of polygraphs as instruments for establishing the truth, the results of polygraph testing are not allowed into evidence in American Courts. If the Court's condition of supervised release is allowed to stand, it would be inconsistent with both the Congressional Act and the Supreme Courts decision in *United States v. Scheffer* 522 U.S. 303, 140 L. Ed 2, 413, 118 S. Ct. 1261 (1998).

7. Williams currently has a DVD and book for sale on Amazon providing information about how to pass the polygraph test. All of Williams materials contain the following disclaimer:

"The purpose of the polygraph practice test is to prepare you to be able to prove your truthfulness by learning how to produce a perfect "truthful" polygraph chart. I am doing this training with the understanding that you are telling the truth and are only concerned with proving your truthfulness so as not to be falsely accused of deception. I will not tell you a lie, I will not give you a practice test if you tell me you plan to lie, I will not listen to any confessions or admissions of any wrong doing whatsoever. If you make any statements that lead me to believe you are planning to lie, I will stop this training session and tell you to leave immediately. Do you agree to these conditions?"

Williams disclaimer is sufficient to prevent his involvement in any alleged scheme to defraud the Government or the tampering with any witness.

8. Occupational restrictions are subject to "special scrutiny", *United States v. Butler*, 694 F. 3d 1177 (10th Cir. 2012). A ". . . District Court's duty to specifically find that a restriction is minimally restrictive is mandatory." *Butler*, 694, F. 3d at 1184. In *Bulter*, the Tenth Circuit Court of Appeals

considered a similar occupational restriction and reversed the District Court. Judge Lucero stated as follows:

"Conditions of supervised release are permitted if they relate to the offense, afford deterrence to the criminal conduct, protect the public from further crimes, and provide the defendant with rehabilitative training. See 18 U.S.C. §3583(d). However, restrictions that limit a defendant's employment opportunities are subject to special scrutiny. See U.S.S.G. §5F1.4. Such limitations are permissible only if they bear a "reasonably direct relationship" to the crime and they are "reasonably necessary to protect the public." §5F1.5(a),(b). Further, if a court determines that this standard is met, it may only impose the condition "for the minimum time and to the minimum extent necessary to protect the public." §5F1.5(b). A district court's duty to specifically find that a restriction is minimally restrictive is "mandatory." *United States v. Souser*, 405 F. 3d 1162, 1167 (10th Cir. 2005). We have consistently vacated conditions that interfere with a defendant's occupation when no such finding is made. See *United States v. Mike*, 632 F. 3d 686, 698 (10th Cir. 2011); *United States v. Wittig*, 528 F. 3d 1280, 1288-89 (10th Cir. 2008); *Souser*, 405 F. 3d at 1167.

Since 2006, James has worked as the business manager of a commercial deer operation owned by a third party. The restrictions imposed would plainly prevent him from continuing in this position or others similar to it, and the sentencing record is devoid of any finding the the "occupational restriction is the minimum restriction necessary." *Souser* 405 F. 3d at 1167. Because the District Court did not engage in the necessary fact-finding, we vacate the special conditions."

9. In this case the District Court did not engage in the necessary fact-finding to justify a overly broad condition that Williams could not ". . . participate in any form of polygraph related activity during the period of supervision." Therefore this Court should modify the conditions to prohibit Williams from engaging in polygraph activity that is intended or part of a scheme to defraud the United States or tamper with witnesses.

10. The Tenth Circuit has set aside special conditions of supervised release repeatedly in recent years, See *United States v. Bear*, 769 F. 3d 1221, 1229 (10th Cir. 2014); *United States v. Butler*, 694 F. 3d 1177, 1185 (10th Cir. 2012); *United States v. Dougan*, 684 F. 3d 1030, 1037 (10th Cir. 2012); *United States v. Lonjose*, 663 F. 3d 1292, 1303 (10th Cir. 2011); *United States v. Mike*, 632 F. 3d 686, 698 (10th Cir. 2011); *United States v. Wittig*, 528 F. 3d 1280, 1289 (10th Cir. 2008); *United States v.*

Matteson, 327 F. App'x 791 (10th Cir. 2009-even on plain-error review, See United States v. Dunn, 777 F. 3d 1171, 1177-79 (10th Cir. 2015)); United States v. Burns, 775 F. 3d 1221, 1223 (10th Cir. 2014); United States v. Sunday, 447 F. App'x 885, 889-90 (10th Cir. 2012). In this case the Tenth Circuit in all probability will set aside William's special condition that he ". . . shall not participate in any form of polygraph related activity . . ." Unless it is substantially modified. A simple and easy change would be for the Court to impose a condition that Williams shall not use the polygraph to engage in witness tampering or a scheme to defraud the government.

Accordingly Williams requests that the Court remove the current condition prohibiting his participation in any form of polygraph related activity or modify the condition consistent with the Tenth Circuit law.

Respectfully Submitted:



Doug Williams

Pro Se

CERTIFICATE OF SERVICE

I mailed a copy of this Motion to:
U.S. Attorney's Office
200 Northwest Fourth Street
Oklahoma City, OK 73102
