

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

ORDER

07-cr-157-bbc

v.

DEANDRE J. BISHOP,

Defendant.

Defendant has written again to the court asking for a copy of the transcript of his October 9, 2009 resentencing to be prepared at government expense, under 28 U.S.C. § 753(f), which provides in relevant part:

Fees for transcripts furnished in proceedings brought under section 2255 of this title to persons permitted to sue or appeal in forma pauperis shall be paid by the United States . . . if the trial judge or a circuit judge certifies that the suit or appeal is not frivolous and that the transcript is needed to decide the issue presented by the suit or appeal..

On this occasion, defendant says that he needs the transcript so that he can show that at his original sentencing on April 3, 2008, the court indicated its desire to have his state sentence run concurrently with his federal sentence, but failed to make this clear at the resentencing. Defendant's request for transcripts at government expense will be denied because he has not shown a non-frivolous reason for taking an appeal or filing a motion for

post conviction relief under 28 U.S.C. § 2255.

When defendant was resentenced after a remand from the court of appeals, I made it explicit that his new sentence was to run consecutively to his state sentence, which was imposed after his original sentencing in this court. Defendant argues that this was an impermissible ruling because the court had said after the original sentencing that it was not opposed to running the federal sentence concurrently with the federal sentence. Apr. 15, 2008 order, dkt. #28, at 2. He contends that running the amended sentence consecutively to the state sentence after resentencing has the effect of penalizing him for his appeal.

Assuming for the purpose of this motion that defendant is correct when he says that a longer sentence at resentencing would have been an illegal penalty, he is wrong when he says that the second sentence was longer than the first. At defendant's original sentencing, he was given a term of imprisonment of 188 months, with no provision for running his sentence concurrently with a yet-to-be-imposed state sentence. Subsequently, he received a state court sentence of ten years' imprisonment. At the federal court resentencing, defendant's 188-month sentence was reduced to the five-year minimum mandatory sentence to which he was subject and ordered to be served consecutively to the state sentence. Thus, at defendant's original sentencing, he received a sentence of 188 months; by law, that sentence had to be served consecutively to the state sentence (which had not been imposed), because I did not order the federal sentence to be served concurrently with the state sentence. 18 U.S.C. § 3584 ("Multiple terms of imprisonment imposed at different times run consecutively unless the court orders that the terms are to run concurrently.") At his

resentencing, defendant received a sentence of 60 months, to be served consecutively to his state sentence. The net reduction was 128 months. This hardly constitutes a penalty.

In summary, defendant has not shown that he has any non-frivolous reason to appeal his October 9, 2009 resentencing. Therefore, he has no need for a transcript of that proceeding.

If defendant wishes, he may obtain a copy of the transcripts at his own expense by writing directly to the Court Reporters Office, United States District Court, 120 N. Henry Street, Madison, WI, 53703, (608) 255-3821.

ORDER

IT IS ORDERED that defendant Deance J. Bishop's motion for preparation of a transcript of his October 9, 2009 resentencing at government expense under 28 U.S.C. §753(f) is DENIED without prejudice.

Entered this 17th day of February, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge