

APPENDICES

APPENDIX A

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : CRIMINAL ACTION
: :
v. : :
: :
: : No. 13-206-1
CHRISTIAN DIOR WOMACK : :

ORDER

AND NOW, this 12th day of July, 2017, upon consideration of Defendant's Pro Se "Motion Pursuant to 5 U.S.C. §§ 701-06 of the Administrative Procedure Act" (Doc. No. 236); Defendant's Pro Se "Petition for Ancillary Hearing Pursuant to 28 U.S.C. § 1367(a)" (Doc. No. 239); Defendant's Pro Se "Motion Requesting the Court to Order [the] Government to Respond to Docket No. 236 within 14 Days" (Doc. No. 240); Defendant's Pro Se "Petition for Completeness of the Record Pursuant to Federal Rules of Evidence Rule 1001" (Doc. No. 241); Defendant's Pro Se "Motion to Amend and/or Supplement Pursuant to Federal Rules of Civil Procedure 15" (Doc. No. 242); Defendant's Pro Se "Petition to the Court through its Committee on Grievances to Compel a Member of the Bar of this Circuit to Show Cause" (Doc. No. 243); Defendant's Pro Se "Petition to the Court to Schedule Conference for Ancillary Petition Pursuant to the Eastern District of Pennsylvania Local Rule 16.1(b)" (Doc. No. 246); and, Defendant's Pro Se "Petition to the Court to Correct Clerical Mistake in Judgment of Commitment Order Pursuant to Federal Rules of Criminal Procedures [sic] 36" (Doc. Nos. 248, 249); I find as follows:

1. Defendant pled guilty to three counts of sex trafficking by force and was sentenced to life in prison. His judgment of sentence was affirmed on appeal. See United States v. Womack, 646 F. App'x 258, 259 (3d Cir. 2016), cert. denied, 137 S. Ct. 521 (2016). Defendant continues to flood the docket with pro se filings, the most recent batch



pertaining to two issues: (1) alleged improprieties during the counsel appointment process, and counsel's alleged promise to obtain a sentence of no more than 15 years; and (2) the Government's alleged failure to perform its duties in investigating witness tampering and threats during Defendant's criminal case.

2. As to the first issue, the docket reflects the following: in April 2013, Defendant submitted a financial affidavit in support of his request for CJA resources, and a United States Magistrate Judge appointed CJA counsel to represent him. (See Doc. Nos. 8, 9, 12.) On May 23, 2013, a privately retained attorney entered an appearance on Defendant's behalf. (Doc. No. 23.) As a result, the CJA-appointed attorney filed a motion to withdraw as counsel on June 3, 2013, which I granted on June 5, 2013. (Doc. Nos. 24, 25.)
3. On March 24, 2014, Defendant sent a letter to this Court seeking to "relieve" his privately retained attorney from this case. (Doc. No. 59.) Approximately one month later, on April 22, 2014, Defendant filed a motion to appear pro se, again requesting that I "remove" his private counsel "from this matter completely." (Doc. No. 67.) Counsel filed a motion to withdraw on May 20, 2014. (Doc. No. 79.)
4. Following a status hearing on May 29, 2014, I granted counsel's motion to withdraw in an Order dated June 5, 2014. (Doc. No. 83.) However, I determined that "back-up" counsel would "nonetheless [be] appropriate," and issued a separate Order (also dated June 5, 2014) appointing Kenneth Edelin, Esq. as back-up counsel to Defendant.¹ (Doc. No. 82.) In light of the extensive colloquy during the May 29, 2014 hearing, I concluded that Defendant's request to proceed pro se was made knowingly, voluntarily, and intelligently, and therefore, I granted his motion to appear pro se in a subsequent Order dated July 2, 2014. (Doc. No. 103.)

¹ Mr. Edelin was selected from the approved list of CJA attorneys that is on file with the Clerk of Court.

5. During his guilty plea hearing on July 23, 2014, Defendant orally moved to have Mr. Edelin's status converted from back-up counsel to counsel of record. (See Doc. No. 136; Guilty Plea Hr'g Tr. 14:19-22.) I granted Defendant's request and appointed Mr. Edelin as CJA counsel prior to accepting Defendant's guilty plea. (Id. at 14:23-25.) Mr. Edelin's appointment was subsequently memorialized in an Order dated July 24, 2014, the following day. (Doc. No. 137.)
6. A few days later, Mr. Edelin sent correspondence to this Court dated July 28, 2014 requesting termination of his CJA appointment, explaining that Defendant had privately retained him. Accordingly, on August 14, 2014, I vacated my previous Order appointing Mr. Edelin as CJA counsel. (See Doc. No. 140.) Mr. Edelin did not submit any requests for CJA compensation for services rendered between July 23, 2014 (the date on which Mr. Edelin was appointed as counsel of record) and August 14, 2014 (the date on which Mr. Edelin's CJA appointment was vacated).
7. Defendant now requests that the \$10,000 retainer paid to Mr. Edelin for his private representation be returned because Mr. Edelin allegedly violated his obligations under the Criminal Justice Act (CJA) when he accepted payment from Defendant's family prior to seeking this Court's authorization to terminate his CJA appointment. Defendant further insists that Mr. Edelin "conveyed" to his family that he could obtain a sentence of imprisonment for Defendant of between ten (10) and fifteen (15) years if they paid Edelin \$10,000, but Defendant would have to plead guilty. (Doc. No. 243 at 1.) Defendant also asks that Mr. Edelin be ordered to show cause why his conduct did not violate the Pennsylvania Rules of Professional Conduct and this District's CJA Plan regarding solicitation of funds by CJA counsel.

8. Defendant cites to In re Singer, 185 F. Supp. 2d 313 (S.D.N.Y. 2002) in support of his arguments. In Singer, a CJA-appointed-attorney entered into a private retainer agreement with his client, and accepted fees from the client over the course of four years—without court authorization. The attorney never disclosed to the court during any proceedings that he was appearing other than as CJA counsel. As a result, the attorney was suspended from practice in the Southern District of New York for one year.
9. Section 18 U.S.C. § 3006A(f) of the Criminal Justice Act states that “[w]henever the ... court finds that funds are available for payment from or on behalf of a person furnished representation, it may authorize ... that such funds be paid to the appointed attorney ... to carry out the provisions of this section. Except as so authorized or directed, no such person or organization may request or accept any payment or promise of payment for representing a defendant.” Similarly, the current version of the CJA Plan for the Eastern District of Pennsylvania states in relevant part that “[n]o appointed counsel may request or accept any payment or promise of payment for assisting in the representation of a defendant; unless such payment is approved by order of Court[.]” (E.D. Pa. CJA Plan, Sec. V(D).)
10. Additionally, Local Rule of Criminal Procedure 1.2 dictates that Local Rule of Civil Procedure 83.6, which pertains to attorney conduct and disciplinary enforcement, applies to all criminal cases. Local Rule of Civil Procedure 83.6 in turn states that where alleged misconduct of an attorney comes to a judge’s attention—and that misconduct, if substantiated, would warrant discipline—the judge shall refer the matter to the Chief Judge who shall issue an order to show cause. Loc. R. Civ. P. 83.6(V)(A).

11. Here, I conclude that Defendant's accusations against Mr. Edelin are easily distinguishable from the attorney in Singer, and do not warrant referral to the Chief Judge for further investigation. As noted above, a brief period of just a few days elapsed from the time in which Mr. Edelin was appointed as CJA counsel until the time in which he requested termination of his CJA appointment. And, unlike Singer, Mr. Edelin expressly sought and obtained this Court's approval to appear as a privately retained attorney. In fact, the only correspondence and/or filing that this Court received from Mr. Edelin during his extremely short appointment as CJA counsel was his letter requesting that his CJA appointment be terminated. I reiterate that Mr. Edelin did not request any compensation in his capacity as CJA counsel between July 23, 2014 and August 14, 2014.

12. Based on the unique circumstances of this case, and given Mr. Edelin's near-simultaneous communications with this Court on this issue, I conclude that any referral to the Chief Judge is unwarranted. Therefore, Defendant's various petitions and motions pertaining to this issue will be denied.

13. Additionally, to the extent that Defendant claims Mr. Edelin "conveyed" to him and/or his family that Edelin could secure a sentence of no more than 15 years, I note that this assertion is contradicted by Defendant's guilty plea colloquy:

The Court: [Mr. Womack, you're] just going to plead guilty and leave ... the sentencing issue in my hands; is that correct, sir?

Mr. Womack: Yes.

The Court: [A]re you pleading guilty of your own free will?

Mr. Womack: Yes.

The Court: Did anyone force you or threaten you to plead guilty?

Mr. Womack: No.

The Court: We've been through the possible penalties and mandatory minimums, but in an abundance of caution, I'm going to ask [the Government] to review those with you [Mr. Womack] now, please.

The Government: ... [T]he total possible sentence is a mandatory minimum of 15 years. If [Counts one, two, and three] are ordered consecutive, it would be 45 years, a maximum term of life, a mandatory term of supervised release of 5 years up to life, a fine of \$250,000 per count for a total of \$750,000 and a special assessment of \$100 per count for a total of \$300.

The Court: Do you understand all of that, sir?

Mr. Womack: Yes.

The Court: Sir, do you understand that no one can guarantee you what sentence you will receive from me?

Mr. Womack: Yes.

The Court: Do you understand if I impose a more severe sentence than you expect, you will not be allowed to withdraw your plea? Do you understand that?

Mr. Womack: Yes.

(Guilty Plea Hr'g Tr. 18:18-21; 19:15-24; 20:5-23) (emphasis added). Therefore, Defendant's motions and petitions on this issue will be denied as well.

14. Regarding the second issue—Defendant's allegation that the Government did not intervene when certain defense witnesses were threatened—Defendant argues that he had a “protected interest” derived from 18 U.S.C. § 1512 (which prohibits witness tampering), and that the Government violated his Fifth and Sixth Amendment rights.

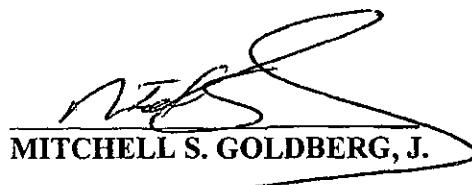
15. To the extent that Defendant argues that he has a private right of action under § 1512, I observe that “a private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another.” Linda R.S. v. Richard D., 410 U.S. 614, 619 (1973).

Additionally, no adverse testimony was ever offered against Defendant by the Government in this case because, as noted, he pled guilty. Moreover, notwithstanding his request for various documents, Defendant does not elaborate on or otherwise explain how the Government's conduct has any bearing on the sentence he is serving. For all these reasons, Defendant's various filings and document requests pertaining to the second issue will be denied.²

16. Regarding all of Defendant's other miscellaneous petitions and motions, such as correction of perceived clerical mistakes in the judgment of commitment, and supplementing the record, I will deny these submissions as meritless.

WHEREFORE, it is hereby **ORDERED** that Defendant's various Pro Se Motions and Petitions (Doc. Nos. 236, 239, 240, 241, 242, 243, 246, 248, 249) are **DENIED**.

BY THE COURT:



MITCHELL S. GOLDBERG, J.

² I observe that Defendant has not filed a petition for habeas corpus relief arguing that his incarceration and/or sentence are being carried out in violation of the United States Constitution.

APPENDIX B

NOT PRECEDENTIAL

**UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

No. 17-3053

UNITED STATES OF AMERICA

v.

CHRISTIAN DIOR WOMACK,
a/k/a Gucci Prada

Christian Dior Womack,
Appellant

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(E.D. Pa. No. 2-13-cr-00206-001)
District Judge: Honorable Mitchell S. Goldberg

Submitted Pursuant to Third Circuit LAR 34.1
September 5, 2018
Before: SHWARTZ, KRAUSE and FUENTES, Circuit Judges
(Opinion filed: September 11, 2018)

OPINION*

PER CURIAM

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

Christian Womack, proceeding pro se, appeals an order of the United States District Court for Eastern District of Pennsylvania denying post-judgment motions in his criminal case. We will affirm the District Court's order with a modification.

Womack pleaded guilty to sex trafficking by force and was sentenced to life in prison. We affirmed the judgment on direct appeal. United States v. Womack, 646 F. App'x 258, 259 (3d Cir. 2016) (non-precedential). Womack then filed motions in District Court related to claims that the Government failed to act when his witnesses were threatened, see Docket Entry Nos. 236, 240, 241, and 242, and that his attorney violated the District Court's Criminal Justice Act Plan and the Pennsylvania Rules of Professional Conduct. See Docket Entry Nos. 239, 243, and 246. The District Court denied these motions and this appeal followed.¹

We have jurisdiction to review the District Court's post-judgment order pursuant to 28 U.S.C. § 1291. United States v. Stewart, 452 F.3d 266, 272 (3d Cir. 2006).²

We first address the Government's contentions that the District Court lacked jurisdiction to entertain Womack's motions. We agree that jurisdiction was lacking as to

¹The District Court also denied in its order Womack's motions asserting that his judgment contains a clerical mistake. This ruling is not at issue.

²To the extent the 60-day period applicable to civil appeals applies, this appeal is timely as the District Court granted Womack's motion to reopen the time to file his appeal. To the extent the 14-day period applicable to criminal appeals applies, the Government does not argue that the appeal is untimely. United States v. Muhammad, 701 F.3d 109, 111 (3d Cir. 2012).

Womack's motion claiming that the Government failed to act when persons threatened his witnesses in violation of 18 U.S.C. § 1512 and his motions related thereto. Womack purportedly brought his motion under the Administrative Procedures Act, but he challenges his conviction therein. He asserts that the threats caused his witnesses to decline to testify and caused him to plead guilty, and that his conviction is the product of unfair procedures. He claims violations of his Fifth and Sixth Amendment rights and states that he is suffering the loss of his liberty as a result.

Because Womack challenges the validity of his conviction, he was required to seek relief pursuant to 28 U.S.C. § 2255. See Okereke v. United States, 307 F.3d 117, 120 (3d Cir. 2002) (with limited exception, § 2255 is the presumptive means by which federal prisoners can challenge their convictions as unconstitutional). Indeed, Womack has filed a § 2255 motion challenging his conviction on this basis. Although Womack also complains that Offices of the Department of Justice have not responded to his correspondence raising the Government's alleged misconduct, his correspondence does not bring his claim outside the purview of § 2255. We will thus modify the District Court's order to reflect that these motions are dismissed for lack of jurisdiction.

Womack does not challenge his conviction in the remaining motions at issue, which allege that his attorney violated the District Court's Criminal Justice Act Plan and the Pennsylvania Rules of Professional Conduct. We conclude that the District Court properly entertained these motions in light of its inherent authority to discipline attorneys who appear before it and find no abuse of discretion in the denial of relief. See In re Surrick, 338 F.3d 224, 229 (3d Cir. 2003).

As set forth in the District Court's order, Womack changed his representation numerous times. He was initially appointed CJA counsel. He then retained counsel and the District Court granted the CJA attorney's motion to withdraw. Womack later sought to remove his privately-retained attorney and appear pro se. The District Court granted counsel's motion to withdraw and appointed Kenneth Edelin, a CJA attorney, as back-up counsel. At his guilty plea hearing on July 23, 2014, Womack sought to have Edelin represent him and the District Court appointed Edelin as CJA counsel. On July 28, 2014, Edelin wrote the Court seeking termination of his CJA appointment because Womack had retained him. The District Court vacated the CJA appointment.

Womack claims that Edelin asked his family for \$10,000 on July 23, 2014 at the courthouse and told his family that he would be able to obtain a 10 to 15 year sentence with such a payment. He asserts that Edelin improperly requested and accepted payment without the District Court's prior authorization, seeks return of the payment, and asks that Edelin be ordered to show cause why his conduct did not violate the CJA Plan and the Pennsylvania Rules of Professional Conduct.

The District Court recognized that CJA counsel may not request or accept payment for representing a defendant without court approval, see 18 U.S.C. § 3006A(f); E.D. Pa. CJA Plan, Sec. V(D) (as amended 6/12/13), but concluded that Womack's allegations did not warrant referral to the Chief Judge under its local rules for issuance of a show cause order. Distinguishing In re Singer, 185 F. Supp. 2d 313 (S.D.N.Y. 2002), relied upon by Womack, the District Court explained that only a few days elapsed from when Edelin was appointed as CJA counsel until he requested termination of his

appointment, that he sought and obtained the Court's approval to appear as a privately-retained attorney, and that he did not request compensation in his capacity as CJA counsel. The District Court also noted that Womack's claim that counsel said that he could secure a sentence of no more than 15 years if paid is contradicted by his guilty plea colloquy, during which he said that he understood that no one could guarantee him the sentence he would receive from the court.

The record supports the District Court's decision. We also agree that Singer, where a CJA attorney had not sought the court's approval to appear as a privately-retained attorney and had accepted payments from the defendant for four years, is distinguishable. Womack primarily argues on appeal that the District Court abused its discretion because Edelin did not obtain court approval before he was retained, but as the District Court noted, Edelin's communications with the Court were close to simultaneous with his retention.

Womack also argues that the District Court erred in dismissing his petition for an ancillary hearing, in which he sought return of the monies paid to Edelin, without addressing its merits, but this is incorrect. The basis for Womack's petition for an ancillary hearing was the same as the basis for his petition for an order directing Edelin to show cause why disciplinary action should not be taken against him. The District Court denied both petitions for the same reasons. To the extent Womack contends that the District Court did not address his argument that the fee agreement with Edelin is void,

this argument does not appear to have been raised in his petition for a hearing.³

Accordingly, we will modify the District Court's order to reflect that Womack's motions regarding threats to his witnesses are dismissed for lack of jurisdiction and affirm the order as modified.

³Because the District Court did not conduct a hearing, we conclude it is unnecessary to address the party's arguments as to whether the District Court had ancillary jurisdiction.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 17-3053

UNITED STATES OF AMERICA

v.

CHRISTIAN DIOR WOMACK,
a/k/a Gucci Prada

Christian Dior Womack,
Appellant

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(E.D. Pa. No. 2-13-cr-00206-001)
District Judge: Honorable Mitchell S. Goldberg

Submitted Pursuant to Third Circuit LAR 34.1
September 5, 2018
Before: SHWARTZ, KRAUSE and FUENTES, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Eastern District of Pennsylvania and was submitted on September 5, 2018. On consideration whereof, it is now hereby

ORDERED and ADJUDGED by this Court that the judgment of the District Court entered July 13, 2017 is hereby modified in part and affirmed as modified. All of the above in accordance with the opinion of this Court.

ATTEST:

s/Patricia S. Dodszuweit
Clerk

DATED: September 11, 2018

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 17-3053

UNITED STATES OF AMERICA

v.

CHRISTIAN DIOR WOMACK,
a/k/a Gucci Prada

Christian Dior Womack,
Appellant

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for the Eastern District of Pennsylvania
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ATTEST:

s/Patricia S. Dodszuweit
Clerk

DATED: September 11, 2018



Certified as a true copy and issued in lieu
of a formal mandate on November 7, 2018

Teste: *Patricia S. Dodszuweit*
Clerk, U.S. Court of Appeals for the Third Circuit

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 17-3053

UNITED STATES OF AMERICA

v.

CHRISTIAN DIOR WOMACK,
a/k/a Gucci Prada

Christian Dior Womack,
Appellant

(E. D. Pa. No. 2-13-cr-00206-001)

SUR PETITION FOR REHEARING

Present: SMITH, Chief Judge, McKEE, AMBRO, CHAGARES, JORDAN, HARDIMAN, GREENAWAY, JR., VANASKIE, SHWARTZ, KRAUSE, RESTREPO, BIBAS, and FUENTES, * Circuit Judges

The petition for rehearing filed by appellant, in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the

* Pursuant to Third Circuit I.O.P. 9.5.3., Judge Fuentes's vote is limited to panel rehearing.

circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

s/ Julio M. Fuentes
Circuit Judge

Dated: October 30, 2018

CJG/cc: Christian Dior Womack
Michelle Morgan, Esq.