

Nos. 17-1500/2279

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
May 28, 2019
DEBORAH S. HUNT, Clerk

DERRICK HILLS,

Petitioner-Appellant,

v.

UNITED STATES OF AMERICA,

Respondent-Appellee.

ORDER

BEFORE: MOORE and GIBBONS, Circuit Judges.*

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the cases. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

^{*}The third member of this panel, Judge Keith, died on April 28, 2019. This order is entered by the quorum of the panel. 28 U.S.C. § 46(d).

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

Nos. 17-1500/2279

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Feb 06, 2019
DEBORAH S. HUNT, Clerk

DERRICK HILLS,)
)
Petitioner-Appellant,)
)
v.) ON APPEAL FROM THE UNITED
) STATES DISTRICT COURT FOR
) THE EASTERN DISTRICT OF
) MICHIGAN
UNITED STATES OF AMERICA,)
)
Respondent-Appellee.)
)
)

O R D E R

Before: KEITH, MOORE, and GIBBONS, Circuit Judges.

Derrick Hills, a Michigan resident proceeding pro se, appeals district court orders denying his post-judgment motion to dismiss his criminal case for lack of jurisdiction and his petition for a writ of error coram nobis. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

In 2014, a jury convicted Hills of five counts of contempt of court. The district court sentenced him to 46 months of imprisonment on each count, to run concurrently. We affirmed, and the United States Supreme Court denied Hills's petition for a writ of certiorari. *United States v. Hills*, No. 14-1361 (6th Cir. Nov. 5, 2015) (order), *cert. denied*, 137 S. Ct. 141 (2016) (mem.).

In 2016, Hills filed a 28 U.S.C. § 2255 motion to vacate his sentence and a motion to dismiss the criminal charges for lack of jurisdiction. In separate orders, the district court denied the motion to dismiss and the § 2255 motion. Both the district court and this court denied Hills's request for a certificate of appealability to challenge the denial of his § 2255 motion, and this court affirmed the denial of his motion to dismiss. *See Hills v. United States*, Nos. 16-2073/2101, 2017 WL 3221278, at *3-4 (6th Cir. Feb. 10, 2017).

I. Appeal No. 17-1500

In March 2017, Hills filed another motion to dismiss the criminal charges for lack of jurisdiction. He argued that the district court lacked jurisdiction "because the judicial district of eastern Michigan was not owned by the federal government and jurisdiction had not been ceded over that land as required by 40 U.S.C. § 3112[c]."¹ He further argued that he "could not have been 'punished' as necessary and proper because the power to 'punish' is an enumerated power, which enumeration proves it is a delegated power, and the Tenth Amendment expressly reserves undelegated powers to the states or to the people." The district court denied the motion "for lack of merit." Hills appealed, and his appeal was docketed as case number 17-1500.

II. Appeal No. 17-2279

In August 2017, Hills filed a petition for a writ of error coram nobis. He first argued that his convictions were invalid because the attorney who prosecuted him had not been properly appointed as a Special Assistant United States Attorney and because he was not charged by indictment. He also reiterated his arguments regarding jurisdiction and the federal government's authority to punish him. Finally, Hills argued that 18 U.S.C. § 3231, which gives federal district courts original jurisdiction over "all offenses against the laws of the United States," is invalid because it was not properly enacted. The district court summarily denied the motion "for lack of merit." Hills appealed, and his appeal was docketed as case number 17-2279.

In his now-consolidated appeal, Hills argues that the district court failed to provide adequate explanations for denying his motion to dismiss and his petition for writ of error coram nobis. He also contends that the district court lacked jurisdiction over his criminal proceeding because he was not charged by indictment. Next, Hills argues that his sentence exceeded the

statutory maximum penalty authorized by law because contempt is a misdemeanor, rather than a felony, offense. Finally, he contends that the sole prosecutor—a staff attorney from the office of the United States Trustee—lacked standing to prosecute him because he was not properly appointed as a Special Assistant United States Attorney.

When reviewing denials of motions to dismiss for lack of jurisdiction, we generally apply a clear-error or abuse-of-discretion standard to review factual determinations and a de novo standard of review to legal determinations. *See United States v. Grenier*, 513 F.3d 632, 635-36 (6th Cir. 2008). Similarly, we review petitions for writs of error coram nobis de novo, but we will “uphold the [district] court’s factual findings unless they are clearly erroneous.” *Pilla v. United States*, 668 F.3d 368, 372 (6th Cir. 2012).

Although the district court did not explain its conclusions that Hills’s motions were meritless, we “may affirm the district court on any ground supported by the record.” *United States v. Phillips*, 752 F.3d 1047, 1049 (6th Cir. 2014). Here, Hills’s motion to dismiss was not properly before the district court because Federal Rule of Criminal Procedure 12 provides that a defendant may file “[a] motion that the court lacks jurisdiction . . . at any time *while the case is pending*.” Fed. R. Crim. P. 12(b)(2) (emphasis added). Because a final judgment had been entered and Hills’s direct appeal was adjudicated well before he filed his motion to dismiss, his criminal case was no longer “pending” when the motion was filed. *See Griffith v. Kentucky*, 479 U.S. 314, 321 n.6 (1987).

With respect to the denial of Hills’s coram nobis petition, all of the issues that Hills raises in his appellate brief—the lack of an indictment, the length of his sentence, and the prosecutor’s standing—were raised on direct appeal, and this court concluded that those arguments were meritless. *United States v. Hills*, No. 14-1361, slip op. at 2-4, 6-7 (6th Cir. Nov. 5, 2015) (order). Because these arguments could have been—and, in fact, were—raised on direct appeal, they were not properly raised in Hills’s coram nobis petition. *See Rocha v. United States*, 23 F. App’x 475, 477 (6th Cir. 2001). In any event, Hills has not identified any extraordinary circumstances that would have warranted issuing a writ of error coram nobis. *See United States v. Waters*, 770 F.3d 1146, 1147 (6th Cir. 2014).

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Accordingly, we **AFFIRM** the district court's orders.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt
Deborah S. Hunt, Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Derrick Hills,

Petitioner,

v.

Case No. 12-12254

United States of America,
Respondent.

Sean F. Cox
United States District Court Judge

ORDER

**DENYING PETITION FOR WRIT OF ERROR COREM NOBIS
AND DENYING AS MOOT REQUEST TO PROCEED IN FORMA PAUPERIS**

Following a jury trial, Derrick Hills (“Hills”) was convicted of criminal contempt in violation of 18 U.S.C. § 401(3) and sentenced to 46 months in prison. His conviction and sentence were affirmed on direct appeal (*see* Docket Entry No. 139) and the United States Supreme Court denied Hills’s petition for writ of certiorari. (*See* Docket Entry No. 166).

Thereafter, Hills filed a Motion to Vacate Sentence, brought pursuant to 28 U.S.C. § 2255. This Court denied that motion in an Opinion & Order issued on June 14, 2016 and declined to issue a certificate of appealability. Thereafter, the United States Court of Appeals for the Sixth Circuit also declined to issue a certificate of appealability in an Order issued on February 10, 2017. (*See* Docket Entry No. 168).

On March 30, 2017, Hills filed a *pro se* motion seeking to dismiss this action for lack of jurisdiction. (Docket Entry No. 169). This Court denied that motion in an Order issued on April 12, 2017. (Docket Entry No. 170).

Thereafter, Hills filed a Notice of Appeal, appealing this Court's denial of his Motion to Dismiss (Docket Entry No. 171). Hills has also filed an application seeking to proceed *in forma pauperis*. (Docket Entry No. 176).

On August 8, 2017, this Court issued an order ruling that, to the extent that Hills is asking the district court to allow him to proceed *in forma pauperis* on appeal, that motion was denied because an appeal of the Court's order cannot be taken in good faith.

On August 29, 2017, Hills filed an order to proceed *in forma pauperis* (Docket Entry No. 180), presumably in order to file the "Petition For Writ of Error Coram Nobis" that he filed that same day, which raised issues already addressed by this Court. (Docket Entry No. 179).

IT IS ORDERED that Hills's Petition For Writ of Error Coram Nobis is **DENIED** for lack of merit and that his August 29, 2017 motion seeking to proceed *in forma pauperis* is **DENIED AS MOOT**.

IT IS SO ORDERED.

Dated: October 13, 2017

s/Sean F. Cox

Sean F. Cox
U. S. District Judge

I hereby certify that on October 13, 2017, the foregoing document was served on counsel of record via electronic means and upon Derrick Hills via First Class mail at the address below:

Derrick Hills
171667
19644 Renfrew
Detroit, MI 48221

s/J. McCoy

Case Manager

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Derrick Hills,

Petitioner,

v.

Case No. 12-12254

United States of America,
Respondent.

Sean F. Cox
United States District Court Judge

ORDER DENYING
MOTION TO DISMISS (D.E. NO. 169)

Following a jury trial, Derrick Hills (“Hills”) was convicted of criminal contempt in violation of 18 U.S.C. § 401(3) and sentenced to 46 months in prison. His conviction and sentence were affirmed on direct appeal (*see* Docket Entry No. 139) and the United States Supreme Court denied Hills’s petition for writ of certiorari. (*See* Docket Entry No. 166).

Thereafter, Hills filed a Motion to Vacate Sentence, brought pursuant to 28 U.S.C. § 2255. This Court denied that motion in an Opinion & Order issued on June 14, 2016 and declined to issue a certificate of appealability. Thereafter, the United States Court of Appeals for the Sixth Circuit also declined to issue a certificate of appealability in an Order issued on February 10, 2017. (*See* Docket Entry No. 168).

On March 30, 2017, Hills filed a *pro se* motion seeking to dismiss this action for lack of

jurisdiction. (Docket Entry No. 169). The Court hereby DENIES the motion for lack of merit.

IT IS SO ORDERED.

Dated: April 12, 2017

s/Sean F. Cox

Sean F. Cox
U. S. District Judge

I hereby certify that on April 12, 2017, the foregoing document was served on counsel of record via electronic means and upon Derrick Hills via First Class mail at the address below:

Derrick Hills
14865039
19644 Renfrew
Detroit, MI 48221

s/J. McCoy

Case Manager

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Derrick Hills,

Petitioner,

v.

Case No. 12-12254

United States of America,
Respondent.

Sean F. Cox
United States District Court Judge

JUDGMENT

For the reasons set forth in an Opinion & Order issued this date, IT IS ADJUDGED that
Petitioner's Motion to Vacate Sentence is DENIED.

S/Sean F. Cox
Sean F. Cox
United States District Judge

Dated: June 14, 2016

I hereby certify that a copy of the foregoing document was served upon counsel of record on June 14, 2016, by electronic and/or ordinary mail.

S/Keisha Jackson
Case Manager

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Derrick Hills,

Petitioner,

v.

Case No. 12-12254

United States of America,
Respondent.

Sean F. Cox
United States District Court Judge

OPINION & ORDER
DENYING § 2255 MOTION AND
DECLINING TO ISSUE A CERTIFICATE OF APPEALABILITY

In March 2014, following a jury trial, Derrick Hills (“Hills”) was convicted of criminal contempt in violation of 18 U.S.C. § 401(3) and sentenced to 46 months in prison. His conviction and sentence were affirmed on direct appeal. The matter is now before the Court on Hills’s *pro se* Motion to Vacate Sentence, brought pursuant to 28 U.S.C. § 2255. Because the files and records of the case conclusively show that Hills is entitled to no relief as to the claims in this § 2255 motion, an evidentiary hearing is not necessary and the matter is ripe for a decision by this Court. For the reasons set forth below, the Court denies the motion and declines to issue a certificate of appealability.

BACKGROUND

Judge Steven Rhodes, a judge for the United States Bankruptcy Court for the Eastern District of Michigan, filed a report and recommendation in this Court recommending that Hills be prosecuted for criminal contempt for repeatedly violating orders entered by the bankruptcy

court. Thereafter, this Court entered an order for Hills to show cause why he should not be held in contempt under 18 U.S.C. § 401(3). That show cause order referenced the bankruptcy judge's detailed report and recommendation, which was attached to the order, and stated the facts underlying the criminal contempt charges. In that same order, pursuant to Fed. R. Civ. P. 42(a)(2), this Court requested that the United States Attorney's Office appoint an attorney for the Government to prosecute the contempt. (D.E. No. 4).

Richard Roble ("Roble"), who identified himself as an Assistant United States Attorney, filed a notice of appearance and prosecuted the case on behalf of the Government, along with Assistant United States Attorney Craig Weier.

During the proceedings, the Government expressed the belief that any trial should be a bench trial. This Court disagreed and concluded that Hills had the right to jury trial. This Court scheduled a plea cutoff date, that it extended at least once. Ultimately, however, Hills chose to proceed to trial and requested a jury trial.

The jury convicted Hills on all five counts of contempt for having violated all five of the bankruptcy court orders. This Court sentenced Hills to forty-six months of imprisonment and imposed a \$25,000.00 fine.

Hills filed a direct appeal. In his appeal, Hills's arguments included: 1) "the district court lacked subject-matter jurisdiction over his case because the government never filed an indictment or complaint and he was never arraigned," 2) his attorney performed ineffectively; and 3) Richard Roble was not authorized to act as a prosecutor. *See United States v. Hills*, Case No. 14-1361 at 2 (6th Cir. Nov. 5, 2015). The Sixth Circuit affirmed. Although the panel declined to reach the merits of Hills' s ineffective-assistance-of-counsel claims on direct appeal,

it rejected all of his other arguments.

Thus, “[f]inding no errors in the district court proceedings,” the Sixth Circuit affirmed Hills’s conviction and sentence. (3/25/16 Order from Sixth Circuit in Case No. 14-1361). Thereafter, acting *pro se*, Hills filed a petition for *en banc* rehearing, which was denied. (*Id.*). Hills also filed several other motions, including a motion to recall the mandate, which were all denied by the Sixth Circuit. (*Id.*).

On March 1, 2016, Hills filed a *pro se* motion seeking relief under 28 U.S.C. § 2255. In it, Hills asserts three grounds for relief.

First, Hills argues that his due process rights were violated at trial because Roble was not appointed to act as a Special Assistant United States Attorney. (Hills’s motion, D.E. No. 141 at Pg ID 2300). Hills’s motion acknowledges that he raised this issue in his direct appeal. (*Id.*).

Second, Hills asserts that his due process rights were violated at trial because he was prosecuted without adequate procedural protections. (*Id.* at Pg ID 2301). Specifically, he asserts that he was “tried, convicted, sentenced and incarcerated without the record showing that Petitioner was informed of his rights at an arraignment or otherwise, without being given an opportunity to enter a guilty plea, without an indictment, information, or complaint as required by Rule 58 of the Federal Rules of Criminal Procedure and without an opportunity to choose to have a jury trial before a magistrate judge as provided by Rule 58.” (*Id.*) Although Hills notes this ground was raised in his direct appeal, he asserts that some aspects of the claim were not known to him at that time. (*Id.*).

Third, Hills asserts that his attorney, Stephon Johnson, provided ineffective assistance of counsel. (D.E. No. 141 at Pg ID 2303). Specifically, Hills claims that Mr. Johnson’s

performance was deficient in that Johnson “allowed Petitioner to be tried, convicted, sentenced and incarcerated” although: 1) Petitioner’s prosecutor lacked standing and appointment from the Attorney General,” 2) “Petitioner lacked an indictment, information, complaint, not guilty plea and the opportunity to have a jury trial before a magistrate judge,” 3) “[a]ll contempts are universally classified as misdemeanors and not felonies.” (*Id.*). “Also, Johnson allowed the Petitioner to be convicted of five counts of criminal contempt although the bankruptcy court only referred four counts to the court.” (*Id.*).

On March 1, 2016, Hills also filed a motion asking this Court to appoint counsel for him, release him on bond, dismiss this action, and recuse itself. (D.E. No. 142). This Court denied that Motion in an Order issued on April 4, 2016. (D.E. No. 145).¹

After this Court ordered the Government to file a response to Hills’s § 2255 Motion by May 2, 2016, Hills filed a motion asking this Court to not allow the Government to file a brief after May 2, 2016. (D.E. No. 146).

The Government filed a timely response in opposition to Hills’s Motion on April 29, 2016. (D.E. No. 149).² Hills filed a reply brief on June 6, 2016.

STANDARD OF REVIEW

A prisoner who moves to vacate his sentence under § 2255 must show that the sentence was imposed in violation of the Constitution or laws of the United States, that the court was without jurisdiction to impose such sentence, that the sentence was in excess of the maximum

¹Hills has since filed a motion seeking reconsideration of those rulings. The Court shall deny that motion for lack of merit.

²As a result, Hills’s motion asking the Court to not allow a response after May 2, 2016 is moot.

authorized by law, or that it is otherwise subject to collateral attack. 28 U.S.C. § 2255.

To prevail on a § 2255 motion, “a petitioner must demonstrate the existence of an error of constitutional magnitude which has a substantial and injurious effect or influence on the guilty plea or the jury’s verdict.” *Humphress v. United States*, 398 F.3d 855, 858 (6th Cir. 2005). A movant can prevail on a § 2255 motion alleging non-constitutional error only by establishing a “fundamental defect which inherently results in a complete miscarriage of justice, or an error so egregious that it amounts to a violation of due process.” *Watson v. United States*, 165 F.3d 486, 488 (6th Cir. 1999).

Defendants seeking to set aside their sentences pursuant to 28 U.S.C. section 2255 have the burden of establishing their case by a preponderance of the evidence. *McQueen v. U.S.*, 58 F. App’x 73, 76 (6th Cir. 2003). It is well established that when a defendant files a section 2255 motion, he or she must set forth facts establishing entitlement to relief. *Green v. Wingo*, 454 F.2d 52, 53 (6th Cir. 1972); *O’Malley v. United States*, 285 F.2d 733, 735 (6th Cir. 1961). “Conclusions, not substantiated by allegations of fact with some probability of verity, are not sufficient to warrant a hearing.” *Green*, 454 F.2d at 53; *O’Malley*, 285 F.2d at 735 (citations omitted).

Because the files and records of the case conclusively show that Petitioner is entitled to no relief as to the claims in this § 2255 motion, an evidentiary hearing is not necessary and the matter is ripe for a decision by this Court.

ANALYSIS

In his Motion to Vacate Sentence, Hills presents three grounds for relief. This Court shall consider each in turn.

I. Hills's First Ground For Relief – His Assertion That His Due Process Rights Were Violated Because Roble Was Not Appointed To Act As A Special Assistant United States Attorney.

Hills argues that his due process rights were violated at trial because Roble was not appointed to act as a Special Assistant United States Attorney. (Hill's motion, D.E. No. 141 at Pg ID 2300). Hill's motion acknowledges that he raised this same issue in his direct appeal. (*Id.*).

As the Sixth Circuit has explained, absent highly exceptional circumstances, a § 2255 motion cannot be used to relitigate issues that were raised and addressed on direct appeal:

A § 2255 motion may not be used to relitigate an issue that was raised on appeal absent highly exceptional circumstances.” *United States v. Brown*, 62 F.3d 1418 (6th Cir.) (unpublished) (citations omitted), *cert. denied*, 516 U.S. 942, 116 S.Ct. 377, 133 L.Ed.2d 301 (1995). *See also Giraldo v. United States*, 54 F.3d 776 (6th Cir.) (unpublished) (“It is well settled that a § 2255 motion may not be employed to relitigate an issue that was raised and considered on appeal absent highly exceptional circumstances, such as an intervening change in the law.”), *cert. denied*, 516 U.S. 892, 116 S.Ct. 240, 133 L.Ed.2d 167 (1995); *Ford v. United States*, 36 F.3d 1097 (6th Cir.1994) (unpublished) (same), *cert. denied*, 514 U.S. 1031, 115 S.Ct. 1390, 131 L.Ed.2d 241 (1995); *Kelly v. United States*, 977 F.2d 581 (6th Cir.1992) (unpublished) (“The remainder of Kelly’s arguments on appeal attempt to relitigate the issues involved in his motion to suppress evidence. The issues were raised and answered on direct appeal. Kelly is not now entitled to relitigate those issues in a motion to vacate sentence under 28 U.S.C. § 2255. A federal prisoner may not relitigate in a § 2255 motion to vacate sentence claims that were raised and considered on direct appeal.”).

DuPont v. United States, 76 F.3d 108, 110-11 (6th Cir. 1996).

On direct appeal, Hills argued that Roble was not authorized to act as a prosecutor.

United States v. Hills, Case No. 14-1361 at 2 & 6 (6th Cir. Nov. 5, 2015). Although the appellate court concluded that Hills had waived the issue by not raising it before the district court, it went on to reject the claim on its merits: “Roble was working as a Special Assistant United States Attorney during his involvement in the criminal contempt proceedings. Thus,

Rule 42(a)(2)'s general requirement that 'contempt be prosecuted by an attorney for the government' was met. Fed. R. Crim. P. 42(a)(2)." *Id.* at 7.

Hills has not identified any exceptional circumstances, or any intervening change in the law that would allow him to relitigate this issue in his § 2255 motion.³

II. Hills's Second Ground For Relief – Additional Alleged Due Process Violations

Hills asserts that his due process rights were violated at trial because he was prosecuted without adequate procedural protections. Specifically, he asserts that he was "tried, convicted, sentenced and incarcerated without the record showing that Petitioner was informed of his rights at an arraignment or otherwise, without being given an opportunity to enter a guilty plea, without an indictment, information, or complaint as required by Rule 58 of the Federal Rules of Criminal Procedure and without an opportunity to choose to have a jury trial before a magistrate judge as provided by Rule 58." (*Id.*)

Although Hills notes this ground was raised in his direct appeal, he asserts that some aspects of the claim were not known to him at that time. (*Id.*).

To the extent that Hills asserts that his due process rights were violated due to the lack of an indictment or arraignment, that issue was presented in Hills's direct appeal and rejected by the Sixth Circuit. The appellate court explained that:

The procedure for initiating a contempt proceeding, set forth in Federal Rule of Criminal Procedure 42, is "pretty summary" and does not require an indictment. *United States v. Arredondo*, 349 F.3d 310, 316 (6th Cir. 2003); *see Bullock v. United States*, 265 F.2d 683, 691 (6th Cir. 1959). Instead, Rule 42(a) provides

³And even if Hills had raised the issue here for the first time, the claim fails on the merits for the reasons stated in the Government's Brief (D.E. No. 149 at Pg ID 2360-62) and its supporting documents (D.E. No. 149-3, United States Attorney Barbara McQuade's letters appointing Roble as a Special Assistant United States Attorney and Appointment Affidavits).

that “[a]ny person who commits criminal contempt may be punished for that contempt after prosecution on notice.” Fed. R. Civ. P. 42(a). Notice must be given “in open court, in an order to show cause, or in an arrest order,” and must “(A) state the time and place of the trial; (B) allow the defendant a reasonable time to prepare a defense; and (C) state the essential facts constituting the charged criminal contempt and describe it as such.” Fed. R. Crim. P. 42(a)(1).

United States v. Hills, Case No. 14-1361 at 3 (6th Cir. Nov. 5, 2015). The appellate court went on to explain that:

The district court’s order to show cause and the attached report and recommendation generally satisfied the notice requirements of Rule 42(a)(1). Although the place of the trial was not specifically stated in the show-cause order, Hills’s substantial rights were not affected because he ultimately appeared at trial. A statement of particulars, filed by the government nine months before trial began, set forth all five orders that Hills allegedly violated, including the April 7, 2009, order finding Hills in further contempt, and clearly explained how Hills violated each order. In sum, Hills received the notice to which he was entitled, and any error in failing to meet the exact requirements of Rule 42 did not affect his substantial rights.

Id. Accordingly, Hills cannot show that his due process rights were violated by virtue of that there no indictment or arraignment.

Hills’s argument that he was not given the opportunity to enter a guilty plea is belied by the record. (See, e.g. D.E. No. 18, 1/4/13 Order setting a “plea cutoff” date of April 5, 2013; D.E. No. 31, 6/5/13 Order extending plea cutoff date to June 28, 2013). This Court specifically discussed extending the plea cut off and the trial date at the May 28, 2013 Status Conference that Hills attended. Hills was given ample opportunity to plead guilty, he simply chose not to do so and elected to proceed to a jury trial.

Hills’s final argument is that he was denied due process because he was not given the “opportunity to choose to have a jury trial before a magistrate judge as provided by Rule 58.” (Hills’s § 2255 motion at Pg ID 2301). Fed. R. Crim. P. 58, by its terms, applies to “petty

offenses and other misdemeanor cases and on appeal to the district judge in a case tried by a magistrate judge.” Fed. R. Crim. P. 58(a)(1). As the Sixth Circuit noted, Hills was charged with contempt under 18 U.S.C. § 401(3) and the proceeding was governed by Fed. R. Civ. P. 42. Thus, Hills’s reliance on Fed. R. Crim. P. 58 is in error.

III. Hills’s Third Ground For Relief – Ineffective Assistance Of Counsel

As his third and final ground for relief, Hills claims that his trial counsel, Mr. Johnson, provided ineffective assistance of counsel to him.

The familiar United States Supreme Court decision in *Strickland v. Washington*, 466 U.S. 688 (1984) governs this Court’s analysis of ineffective assistance of counsel claims. “In *Strickland*, the Supreme Court articulated a two-component test that must be satisfied for a defendant to demonstrate that a counsel’s performance was so defective as to require reversal of a conviction” *Lint v. Preselnik*, 542 F. App’x 472, 475 (6th Cir. 2013). “First, the defendant must show that counsel’s performance was deficient.” *Strickland*, 466 U.S. at 687. “Second, the defendant must show that the deficient performance prejudiced the defense.” *Id.*

To establish deficient performance, the defendant must show that “counsel’s representation fell below the objective standard of reasonableness.” *Lint*, 542 F. App’x at 475, citing *Strickland*, 466 U.S. at 688. Judicial scrutiny of counsel’s performance is highly deferential, and this Court must apply the strong presumption that counsel’s representation fell within the wide range of reasonable professional conduct. *Lint*, 542 F. App’x at 475-76, citing *Strickland*, 466 U.S. at 689. “Strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable.” *Strickland*, 466 U.S. at 690. Thus, Petitioner must “overcome the presumption that, under the circumstances, the challenged

action might be considered sound trial strategy.” *Bell v. Cone*, 535 U.S. 685, 698 (2002) (citation and internal quotations omitted).

To establish prejudice, the defendant must show that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Strickland*, 466 U.S. at 694. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Id.* The likelihood of a different result “must be substantial, not just conceivable.” *Lint*, 542 F. App’x at 476, citing *Harrington v. Richter*, 131 S.Ct. 770, 792 (2011).

Here, Hills cannot establish any deficient performance by Mr. Johnson, let alone prejudice.

Hills claims that Mr. Johnson’s performance was deficient in that Johnson “allowed Petitioner to be tried, convicted, sentenced and incarcerated” without objecting to the prosecutor’s (Roble) lack of standing to prosecute the case, the lack of an indictment, or the lack of an opportunity for Hills to plead guilty. Hills also faults Johnson for not having raised that “[a]ll contempts are universally classified as misdemeanors and not felonies.” (*Id.*). Finally, Hills complains that “Johnson allowed the Petitioner to be convicted of five counts of criminal contempt although the bankruptcy court only referred four counts to the court.” (*Id.*).

Hills cannot show that Johnson’s performance was deficient for not having objected to the lack of an indictment or an alleged lack of opportunity to plead guilty. As discussed above, any such objections would have been entirely without merit and would have been overruled by this Court. *Lucas v. O’Dea*, 179 F.3d 412, 420 (6th Cir. 1999) (“Only in a rare case will a court find ineffective assistance of counsel based upon a trial attorney’s failure to make an objection

that would have been overruled under the then-prevailing law.”) (citation and internal quotation marks omitted).

Hills’s assertion that all contempts are universally classified as misdemeanors, and therefore subject to a maximum sentence of one year in prison, is simply not an accurate statement of the law. Indeed, the Sixth Circuit rejected such a contention in affirming Hills’s 46-month sentence in his direct appeal:

Next, Hills argues that his forty-six-month sentence was improper because criminal contempt under § 401(3) is a Class B misdemeanor, not a felony offense. Both the text of § 401 and binding precedent hold that the severity of any fine or imprisonment imposed for criminal contempt is within the district court’s discretion. 18 U.S.C. § 401; *Frank v. United States*, 395 U.S. 147, 149 (1969); *United States v. Sternman*, 433 F.2d 913, 914 (6th Cir. 1970) (per curiam). Accordingly, Hills has not shown that the district court erred by imposing a forty-six-month sentence.

United States v. Hills, Case No. 14-1361 at 4 (6th Cir. Nov. 5, 2015). Thus, Johnson did not provide ineffective assistance of counsel by not having made a meritless legal argument during the proceedings below.

Finally, Hills faults Johnson for allowing him to be convicted of five counts of criminal contempt when the Bankruptcy allegedly only referred four counts. As the Sixth Circuit noted, the jury convicted Hills on all five counts of contempt for having violated five different orders. Contrary to Hills’s unsupported allegation, all five of the orders were described in the report and recommendation that was attached to the show cause order issued by this Court. In addition, a “statement of particulars, filed by the government nine months before trial began, set forth all five orders that Hills allegedly violated, including the April 7, 2009, order finding Hills in further contempt, and clearly explained how Hills violated each order.” *United States v. Hills*, Case No. 14-1361 at 3 (6th Cir. Nov. 5, 2015). Again, Johnson did not provide ineffective

assistance of counsel by failing to make an objection that had no legal or factual support.

Accordingly, the Court finds Hills's ineffective assistance claims without merit and shall deny his § 2255 motion.

IV. Certificate Of Appealability

A certificate of appealability must issue before a petitioner may appeal the district court's denial of his § 2255 Motion. 28 U.S.C. § 2253(c)(1)(B); Fed. R. App. P. 22(b). Section 2253 provides that a certificate of appealability may issue only if a petitioner makes a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). As the United States Supreme Court has explained this standard:

... the petitioner need not show that he should prevail on the merits. He has already failed in that endeavor. Rather, he must demonstrate that the issues are debatable among jurists of reason; that a court could resolve the issues [in a different manner]; or that the questions are adequate to deserve encouragement to proceed further.

Barefoot v. Estelle, 463 U.S. 880, 893 n.4 (1983). As the Court has stated, “[w]here a district court has rejected the constitutional claim on the merits, the showing required to satisfy 2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

This Court concludes that reasonable jurists would not find the Court's assessment of Hills's due process or ineffective assistance of counsel claims debatable or wrong. The Court shall therefore decline to issue a certificate of appealability.

CONCLUSION & ORDER

For the reasons set forth above, **IT IS ORDERED** that Hills's § 2255 Motion is **DENIED**. **IT IS FURTHER ORDERED** that the Court **DECLINES TO ISSUE** a Certificate of Appealability.

IT IS FURTHER ORDERED that Hills's remaining motions are **DENIED** for lack of merit and/or as **MOOT**.

IT IS SO ORDERED.

S/Sean F. Cox
Sean F. Cox
United States District Judge

Dated: June 14, 2016

I hereby certify that a copy of the foregoing document was served upon counsel of record on June 14, 2016, by electronic and/or ordinary mail.

S/Keisha Jackson
Case Manager

Judge: Cox, Sean F.
 MJ: Michelson, Laurie J.
 Filed: 04-05-2012 At 12:35 PM
 REPORT AND RECOMMENDATION TO HOLD D
 ERRICK HILLS IN CRIMINAL CONTEMPT (LG)

UNITED STATES BANKRUPTCY COURT
 EASTERN DISTRICT OF MICHIGAN
 SOUTHERN DIVISION

In re:

Tamica Shante Grissett,

Debtor.

Case No. 07-41510
 Chapter 7
 Hon. Steven Rhodes

FILED
 APR 05 2012
 CLERK'S OFFICE
 DETROIT

In re:

Carl Anson Taylor,

Debtor.

Case No. 07-41810
 Chapter 7
 Hon. Steven Rhodes

In re:

Willie James Grant,
 Sonja Darlene Anderson-Grant,

Debtors.

Case No. 07-43263
 Chapter 7
 Hon. Steven Rhodes

Saul Eisen, United States Trustee,

Plaintiff,

vs.

Derrick Hills,

Defendant.

Adv. Case No. 07-4210

[Adversary Case Nos. 07-4210, 07-4268
 And 07-4332 jointly administered under
 Case No. 07-4210, per order Directing
 Consolidation of Cases entered by the
 Court on June 26, 2007.]

Report and Recommendation
to Hold Derrick Hills in Criminal Contempt

Before the Court is the United States Trustee's "Motion to Find Derrick Hills in Further
 Contempt and For Other Relief," filed on March 6, 2009. (Docket #95) The Court now issues this
 report and recommendation to the District Court to hold Hills in criminal contempt under 18 U.S.C.

§ 401(3).

Procedural Background

This proceeding began on March 8, 2007, when the United States Trustee filed Adversary Proceeding 07-4210 seeking a permanent injunction and other penalties against Hills alleging that he had violated numerous provisions of 11 U.S.C. § 110, §§ 526-528 and had engaged in the unauthorized practice of law. The adversary proceeding was then jointly administered with two other similar adversary proceedings that the United States Trustee filed against Hills in other debtors' bankruptcy cases. (A.P. Nos. 07-4268 and 07-4332).

On April 07, 2009, this Court entered an "Order Finding Derrick Hills in Further Contempt and for Further Proceedings." (Docket #100) This order stated:

- A. Derrick Hills is in contempt for his violations of the:
 - i. Consent Judgment for Injunctive Relief;
 - ii. Interim Order;
 - iii. Order Clarifying Interim Order; and
 - iv. Order Regarding U.S. Trustee's Motion for Summary Judgment Relating to U.S. Trustee's Motion for Contempt.
- B. Derrick Hills shall appear before this Court on April 20, 2009 at 10:00 a.m., to report his activities and his progress toward complying with all requirements and sanctions.
- C. At that hearing, the Court will establish future dates and will require Hills' attendance for the same purposes.
- D. At that hearing, Derrick Hills shall appear before this Court to Show Cause why he should not be incarcerated for his contempt.
- E. At that hearing, the Court will consider other financial sanctions, including:
 - i. Disgorgement of fees charged by Hills to assisted persons
 - ii. Payment of additional funds to assisted persons; and
 - iii. Costs and Fines.

An adjourned hearing was held on these matters on August 20, 2009.

Findings of Fact

1. On October 16, 2007, the Court entered a “Consent Judgment for Injunctive Relief.”

(Docket #39) This order stated:

IT IS ORDERED that Derrick Hills is hereby permanently enjoined from actions as a Bankruptcy Petition Preparer as defined by 11 U.S.C. § 110(a)(1).

IT IS FURTHER ORDERED that this Order does not prohibit Derrick Hills from working as an employee under the direct supervision of an attorney as permitted under 11 U.S.C. §110(a)(1).

2. Two weeks later, on November 1, 2007, the United States Trustee filed a Motion for Contempt and Other Relief, contending that Derrick Hills continued to function as a Bankruptcy Petition Preparer, continued the unauthorized practice of law and continued to violate §§ 526-528. (Docket #41) Following a hearing, the Court entered an “Interim Order” relating to this motion on March 18, 2008. (Docket #40) This order stated:

For the reasons stated on the record in open Court on March 17, 2008, it is hereby ordered the Defendant Derrick Hills is prohibited from providing any “bankruptcy assistance” to any “assisted person” or prospective “assisted person.” For purposes of this order, the terms, “assisted person” and “bankruptcy assistance” shall have the meanings established in 11 U.S.C. §§ 101(3) and 101(4A), respectively. The remainder of the relief sought by the United States Trustee shall be considered at trial.

3. On April 16, 2008, Hills filed an “Ex Parte Motion to Clarify Interim Order.” (Docket #80) Following a hearing, the Court entered an “Order Granting Motion To Clarify Interim Order” on May 6, 2008. (Docket #87) This order stated:

For the reasons stated on the record in open court on May 5, 2008, it is hereby ordered that defendant Derrick Hills' motion to clarify interim order is granted and the defendant is permitted to work under the direct supervision of one or more attorneys. Each such employment is permitted with the following conditions:

1. The attorney shall be the attorney of record in all cases in which the defendant performed services and the clients in those cases shall not proceed *pro se* on the basis of the services that the defendant performed on behalf of the client.
2. The attorney shall sign all papers on which the signature of the attorney of record is required.
3. In each case filed, the attorney shall be responsible for the attorney's obligations under the attorney's retainer agreement with the debtor. These responsibilities shall include providing legal advice to the debtor; preparation of all necessary papers; attendance at the meeting of creditors; and responding to motions and attendance at hearings on motions, and the requirements of 11 U.S.C. §§ 526, 527 and 528.
4. The attorney shall comply with all ECF requirements.
5. The attorney shall bear full responsibility for all of the defendant's actions in all cases.
6. The attorney shall comply with all ethical restrictions of sharing of compensation with non-attorneys.
7. The attorney shall comply with all ethical restrictions regarding advertising and solicitation of cases.
8. The attorney shall disclose any sharing of compensation as required by F.R.Bankr.P. 2016 and the corresponding local rule.
9. The defendant shall give a copy of this order to any attorney who employs him upon the commencement of his employment, and shall file in this adversary proceeding a notice of any such employment, including the name, address and phone number of the employing attorney.
10. The attorney shall strictly limit the defendant's responsibilities as an employee such that the defendant shall not provide any legal

advice and such that all of the defendant's work shall be under the direct supervision of the attorney employing the defendant.

11. Except as provided in this order, the provisions of this Court's interim order dated March 18, 2008, shall remain in full force and effect.

4. On October 8, 2008, the Court entered an "Opinion Regarding U.S. Trustee's Motion for Summary Judgment Relating to U.S. Trustee's Motion for Contempt" (Docket #90) and an "Order Regarding U.S. Trustee's Motion for Summary Judgment Relating to U.S. Trustee's Motion for Contempt." (Docket #91) This order stated:

For the reasons set forth in the Court's opinion entered this date, the U.S. Trustee's motion for summary judgment relating to the U.S. Trustee's motion for contempt is granted in part, as follows:

1. Within 60 days, Derrick Hills shall pay the sum of \$2,000 to each of the 79 debtors listed on the U.S. Trustee's Exhibits 1 and 2.
2. Within 60 days, Derrick Hills shall refund to each of the 79 debtors the sum of \$250.
3. Within 60 days, Derrick Hills shall pay to the office of the U.S. Trustee the sum of \$10,000.
4. Derrick Hills is permanently enjoined from providing any bankruptcy related services to any individuals. This injunction is subject to the modification that the Court approved in an order entered on May 6, 2008, upon the agreement of the U.S. Trustee.
5. Derrick Hills shall provide at least three days' written notice to the Chief Judge of the Bankruptcy Court of his intent to appear in the Clerk's Office.
6. The U.S. Trustee's request for an award of its costs is denied.

5. On March 6, 2009, the United States Trustee filed its "Motion for Contempt Against Derrick Hills," which is now before the Court. (Docket #95) This motion asserts:

11. Hills has continued his actions in a variety of ways designed to evade detection.

12. Hills has willfully violated specific, clear, and unequivocal court Orders and should be found to be in further contempt.

Hills Has Continued to Provide Bankruptcy Assistance.

13. The Consent Judgment, Exhibit A, permanently enjoins Hills from acting as a Bankruptcy Petition Preparer.

14. The Interim Order, Exhibit B, prohibits Hills from providing any bankruptcy assistance to any assisted person or prospective assisted person.

15. At the meeting of creditors in the case of Clayton John-Laneir Steele, Case Number 08-71560, the Debtor testified, under oath, as follows:

Q. Okay. So you didn't pay anyone to assist you in preparing the petition, schedules and statements?

A. Yes, as a matter of fact, Derrick Hills.

Q. Derrick Hills?

A. Yes. (Indiscernible.)

Q. (Interrupting.) And when did you do that?

A. December – no, I'm sorry, I believe it was the middle of quarter of December.

* * *

Q. Okay. Now, where we were was you had indicated that you had Derrick Hills assist you with the preparation of the petition and schedules; correct?

A. Sure.

Q. How much did you pay him to do that?

A. Paid him \$300.

Transcript of Clayton John-Laneir Steele of § 341 Meeting of Creditors, pages 4-5, attached as Exhibit F.

16. In early December of 2008, after the Orders, Hills charged Frank and Cynthia Lucas \$50 for Bankruptcy forms. Their sworn testimony is attached as Exhibit G and makes it clear Hills charged them for

Bankruptcy assistance in the form of goods or services. At an absolute minimum, he sold them the forms in violation of this Court's Order. Pages 4-8

17. Izella Hayes testified unequivocally that Hills assisted her. The transcript of her meeting of creditors, attached as Exhibit H, demonstrates how he continues to violate this Court's orders and to practice law.

Q. And what did he tell you about himself?

A. He said -- he said that -- his name and that he's a paralegal, and he can help us with our paper, prepare our paper, but he said he couldn't go to court with us when we go. Paralegals are not allowed to go, but that we can assist you with your papers is what he said.

Q. Okay. Did you -- so did you hire him for the \$400?

A. Yes.

Q. Okay. Have you ever filed bankruptcy before?

A. No.

Q. So did you have questions about the process?

A. Yes. I asked him exactly how did it go, you know, and -- because I was reading my books and going on the Internet. And he explained to me that -- that -- what'd happen. You know -- like I said, he said he help, assist with our papers, and he checked over our papers. And he told us that I'll be, you know, coming down here in front of you, you know. And he said, you know, you'll be asking me some questions, just tell the truth. You know, have all my receipts and everything. But he said don't say anything about he helped me assist in preparing my papers.

Transcript of Izella Marie Hayes § 341 Meeting of Creditors, pages 5-7.

Hills Has counseled Clients to Make False Oaths and Deceive Trustees and the United States Trustee about His Role in Their Cases.

18. Hills has instructed his clients to conceal his role.

19. In addition to the her testimony above, Hayes testified further about Hills' instructions to conceal his role.

Q. Okay. And did you ask him why you shouldn't talk about that?

A. Yeah. I asked him why. He said because he was undercutting the

attorneys, something like that.

Transcript of Izella Marie Hayes § 341 Meeting of Creditors, page 7.

20. She reiterated her testimony that Hills had instructed her to lie about his involvement;

Q. Okay. And when you filled out this document that we talked about earlier, the declaration under penalty of perjury where you circled "no" --

A. Uh-huh.

Q. -- indicating that nobody helped you with your bankruptcy --

A. Uh-huh.

Q. -- who -- did Derrick tell you to circle "no" for that?

A. Yes.

Q. Okay. And did he tell you why you needed to circle "no" for that?

A. He said because he couldn't come in and -- and -- he said he couldn't come here and be at the meeting, and he said that he -- he wasn't allowed to -- how did he put it -- how did he put that? He said he couldn't be down here because he wasn't an attorney, and he wasn't allowed to give legal -- legal advice.

Q. He told you that?

A. Uh-huh.

Q. Yes?

A. Oh, I'm sorry.

Q. You have to say yes.

A. Yes.

Q. Okay. And you -- you mentioned earlier that he -- he told you when you're here at this meeting not to mention that he helped you?

A. Yes.

Q. Okay. And I think the reason you gave, or that he gave you was something about undercutting attorneys?

A. Uh-huh.

Q. Do you recall exactly what he said about that?

A. He said he was under -- he said the -- he wasn't supposed to. He -- how did he put that.

Q. What did you understand that he meant by that?

A. That he was -- when he said that, that he was like -- attorneys charge, like I said, 1,200, 1,300. And he would charge me 400. And he said that they were -- you guys were really getting on him about doing that.

Q. He said who was getting on him about doing that?

A. He was getting a lot of complaints down here about him

undercutting the attorneys.

Q. Did you -- did you find it strange that he didn't want you to use his name at all?

A. Yeah.

Transcript of Izella Marie Hayes § 341 Meeting of Creditors, pages 20-22.

Hills Appears to Be Involved in New Marketing Arrangements

Business cards

21. Derrick Hills has created business cards advertising his services. A copy of one is attached as Exhibit I. The card itself says he is a "Bankruptcy Paralegal" and also concedes that he is a "Debt Relief Agency."

Referral arrangement from another source.

22. Hills has apparently teamed up with an entity operating under at least the following names;

- a. CS & R,
- b. CS & R Social Security disability, and
- c. Disability Advocates of America, LLC.

23. The Website for this entity, www.csrdisability.com advertises, among other services, chapter 7 bankruptcies for \$400. Copies of the web pages are attached as Exhibit J.

24. Izella Hayes testified that her contact with Hills was initiated by him after she had contacted CS & R; and that she believed CS & R was a legitimate enterprise because she found them at social services. Her testimony establishes that she contacted this entity and received a return call from Derrick Hills, who then charged her \$400 to prepare her bankruptcy. Transcript of Izella Marie Hayes § 341 Meeting of Creditors, pages 4-6, 10-11, and 19-20.

25. She added that at the time she met with Hills, he had three other clients with him.

Q. Okay. And did you call the phone number?

A. Yes.

Q. And who did you talk to?

A. At the -- at the time I don't recall the guy name I spoken to, but he -- one day I had got a phone call, and -- by this guy named Derrick Hill, and he said that --

Q. Excuse me. So this is after you called the phone number.

A. C.S. and R., uh-huh, that he calls me back.

Q. Okay.

A. And he said a friend of his worked there and referred me to Derrick.

Q. Okay.

A. And I said okay. He said are you -- I'm a paralegal. And he said I can help you prepare your papers.

Q. Okay.

A. And then I said well, how much do you charge? He said \$400. So I said okay. So he had me meet him at the Westland library with three other people, and he sat down, and he told us a little about himself, and he --

Q. And what did he tell you about himself?

A. He said -- he said that -- his name and that he's a paralegal, and he can help us with our paper, prepare our paper, but he said he couldn't go to court with us when we go. Paralegals are not allowed to go, but that we can assist you with your papers is what he said.

Transcript of Izella Marie Hayes § 341 Meeting of Creditors, pages 5-6.

Traffic Court

26. In recent months, the Bankruptcy Court has seen a large number of pro se cases filed by individuals seeking relief from driver responsibility fees.

27. The documents in these cases have generally been filed at the Clerk's Office by nondebtors.

28. The practice became so widespread the Clerk's office started taking information regarding the filing of these cases.

29. One of the non-debtor filers left a sheet of "Directions" revealing that Derrick Hills is at the heart of this operation as well. The "Directions" are attached as Exhibit K. The Directions sheet instructs clients to assert that "Derrick Hills told you" in response to a certain question that might be asked by an individual at the

Secretary of State office.

30. The Direction sheet further states, "IF BY CHANCE YOU DON'T FOLLOW THESE STEPS THERE IS ABSOLUTELY NO REFUNDS!!!!!!!" (Sic). Implicitly confirming there is a payment for these services.

31. The intake date on the Pro Se Filing Information Form accompanying the Directions Sheet is well after the all of the orders enjoining Hills' actions. The Pro Se Filing Information Form contains personally identifiable information and is not attached; but would be available for in camera inspection.

Failure to Notify an Attorney Employer of the Injunction and the Court of His Employment

32. The original Consent Judgment for Injunctive Relief prohibited Hills from acting as a non-attorney Bankruptcy Petition Preparer. It did not prohibit him from working for an attorney.

33. After the Interim Order was entered, Hills asked for a clarification regarding his continued ability to work for an attorney. His request was granted, and the Court clarified that he would be able to work for an attorney under carefully delineated conditions.

34. Paragraph 9 of the Court's Order Granting Motion to Clarify Interim Order, Exhibit C, imposes clear requirements that Hills,

- a. Give a copy of the Order to any attorney who employs him, and
- b. File a notice of any such employment in this adversary proceeding.

35. In the summer of 2008, Hills entered into some type of employment arrangement with attorney, Marvin Cooke.

36. In the case of Carmen Ricci, Case Number 08-61085, Derrick Hills charged the Debtor \$350 for some portion of the Bankruptcy case, including preparing the documents, and arranged for the Debtor to pay an additional \$350 for other services that would be performed by Cooke.

37. The Debtor stated, under oath;

Q. Mr. Ricci, you said that you paid Derrick Hills to help you with your case, is that right?

A. Yes, sir.

Q. How much did you pay him?

A. 350.

Q. Okay. Did you pay him by check?

A. Check.

Q. Did he cash the check?

A. That day, yes.

Q. And you remember what day – what day that was?

A. I have a check –

Mrs. Ricci: July 10th

The Witness: July 10th.

(Discussion off the record.)

By MR. RANDEL:

Q. Okay. On this check the date is July 10th. Is that – is that the date that you paid him?

A. Yeah. That's actually the date that he came over and wrote everything up for me and paid him and he went and cashed it that day.

Q. And is it – did you meet him before that day or was that the day you met him?

A. That's the first time I ever met him.

Q. And what did he do for the \$350?

A. Just prepared the documents, and from there he was going to have Marvin A. Cook do the rest, which I paid him a certified check of \$350.

THE TRUSTEE: Did you pay Derrick Hill \$350?

THE WITNESS: Yes, sir.

THE TRUSTEE: And you also paid another 350?

THE WITNESS: yes, his – yes.

THE TRUSTEE: So you paid 700 total; is that correct?

THE WITNESS: Yeah.

THE TRUSTEE: Just so I understand.

THE WITNESS: Yes.

THE TRUSTEE: Okay. Thank you.

THE WITNESS: Uh-huh. And then –

BY MR. RANDEL:

Q. Did he ever tell you that he was under a court order that said he couldn't provide – he couldn't provide any bankruptcy services to you?

A. No, he never said nothing like that to me.

Transcript of Carmen Ricci § 341 Meeting of Creditors Transcript, pages 9-10, attached as Exhibit L.

38. According to Cooke, Hills never presented him with a copy of the Order and never told him about its existence. The transcript of the meeting of creditors in the case of Selena Tobe is attached as Exhibit M.

39. Hills never filed a notice that he had entered into any arrangement with an attorney.

40. As such, Hills has violated paragraph 9 of the Order Granting Motion to Clarify Interim Order.

Failure to Pay United States Trustee

41. The Court's Order Regarding U.S. Trustee's Motion for Summary Judgment Relating to U.S. Trustee's Motion for Contempt required that Derrick Hills pay the United States Trustee the sum of \$10,000 within 60 days of its October 8, 2008 issue date.

42. As of February 27, 2009, Hills has made no payment toward that obligation.

Failure to Refund \$250 per Debtor or to Pay \$2,000 per Debtor.

43. That Order required that, for each of 79 debtors identified, Derrick Hills refund \$250 and pay \$2,000.

44. There is reason to believe he has failed to pay any of that obligation.

45. The United States Trustee sent out a mass inquiry to each of the 79 individuals on February 25, 2009.

46. Of the 35 responses received at the time of this motion, none had received any payment from Derrick Hills.

47. Based upon those responses and his other actions in violation of this Court's Orders, it is highly unlikely he has paid any of the

obligation to those who have not responded.

48. Under other circumstances it might be reasonable to expect an individual to need additional time to fully comply with a substantial financial obligation like this. In this case, Hills has not made a request for additional time or demonstrated any efforts on his part to partially comply.

Continued Pattern of Action

49. As demonstrated above Hills continues his pattern of providing assistance, practicing law, and failing to provide contracts or disclosures. He has added inducing others to lie about his involvement in their cases.

50. The original injunction and the subsequent Orders finding him in contempt and imposing remedies have been unsuccessful in deterring or preventing his actions. If anything, he has become more brazen.

51. Hills' actions are an affront to the Court. He was found in contempt and remedies were imposed specifically to prevent the actions he now undertakes with complete disregard for the Court's Orders or authority.

6. The United States Trustee attached to its contempt motion the following exhibits:

Exhibit A October 16, 2007 Consent Judgment for Injunctive Relief

Exhibit B March 18, 2008 Interim Order

Exhibit C May 6, 2008 Order Granting Motion to Clarify Interim Order

Exhibit D October 8, 2008 Opinion Regarding U.S. Trustee's Motion for Summary Judgment Relating to U.S. Trustee's Motion for Contempt

Exhibit E October 8, 2008 Order Regarding U.S. Trustee's Motion for Summary Judgment Relating to U.S. Trustee's Motion for Contempt

Exhibit F Transcript of February 11, 2009 § 341 Meeting of

Creditors of Clayton John-Laneir Steele, Case No. 08-71560

Exhibit G Transcript of February 11, 2009 § 341 Meeting of Creditors of Frank and Cynthia Lucas, Case No. 08-69945

Exhibit H Transcript of February 18, 2009 § 341 Meeting of Creditors of Izella Marie Hayes, Case No. 09-40840

Exhibit I Copy of Derrick Hills business card

Exhibit J Copy of web pages of www.csrdisability.com

Exhibit K Sheet of "Directions" left by non-debtor

Exhibit L Transcript of October 16, 2008 § 341 Meeting of Creditors of Carmen Ricci, Case No. 08-61085

Exhibit M Transcript of November 13, 2008 § 341 Meeting of Creditors of Selena Marie Tobe, Case No. 08-63609

7. These exhibits, the evidence adduced at the various hearing and the records of the Court fully establish each and every fact that the United States Trustee has alleged in its motion for contempt and the Court so finds.

8. On October 16, 2009, the United States Trustee filed a "Supplement to 'Further Proceedings' on Contempt Order." (Docket #114) This supplement alleges:

1. On April 7, 2009 the Court issued its Order Granting United States Trustee's Motion for Order Finding Derrick Hills in Further Contempt And For Further Proceedings.

2. The Order required Derrick Hills to appear and, among other things, Show Cause why he should not be incarcerated for his contempt.

3. After some delays and adjournments, the hearing was held on August 20, 2009.

4. At the hearing, Hills, through counsel, conceded violation of the

Court's Orders. Counsel for Hills asserted that the Court should consider his involvement, and his ability to advise Mr. Hills when fashioning its remedy. He stated,

Your Honor, I don't doubt it, and I don't doubt that this Honorable Court made that very clear, but I'm kind of under the -- how shall I say it? I'm under the limitations of what my client's impression of that was. I will, however, instruct my client at this point to not prepare them under any of these circumstances that we've just discussed and make it abundantly clear to him that this is not what he should be doing as a bankruptcy petition preparer; that a corporation does not shield him, but that your orders was rather straightforward in saying that it's only operating with an attorney.

Transcript of Hearing on Evidentiary Hearing on Order Finding Derrick Hills in Further Contempt and for Further Proceedings and Order Setting Conditions of Release, Pg. 5, Line 4-14.

Mr. Harris further stated:

Your Honor, I realize the Court is in a very difficult position. I realize that we've got a situation here where a preparer does not seem to understand the importance of this Court's orders. We cannot have an orderly society if we do not have the citizens following the orders of the Court. I would plead at this point that I would like to talk to Mr. Hills in terms of making it very clear to him in terms of the parameters and that if failing to do that I would probably not be opposing to any recommendation that the Justice Department would make in terms of more restrictive sanctions. I think that I have a little bit of communicative ability with him that I could possibly make it very clear to him the parameters of what this Court is suggesting.

Transcript of Hearing on Evidentiary Hearing on Order Finding Derrick Hills in Further Contempt and for Further Proceedings and Order Setting Conditions of Release, Pg. 7 Lines 9 through 22. A copy of the Transcript is attached as Exhibit 1.

5. The Court took the matter under advisement.
6. Since the date of that hearing, Mr. Hills has done at least the

following:

a. Stated in Court to Judge Shapero on an Order to Show Cause, that he is permitted to prepare Bankruptcy Petitions because he has a separate legal entity, Crane and Shore, Inc., as follows:

Secondly, Your Honor, Judge Rhodes has found myself in contempt, the consent judgment from October of 2007. Subsequent to that, my assertion is that the assistance that has been rendered since then has been as a separate entity which is Crane and Shore, Incorporated, a legally registered corporation within the State of Michigan.

Transcript of Hearing on Application to Waive Filing Fee, *In Re Brown*, Case No. 09-64129, Pg. 9, Line 25 and Pg. 10, Lines 1-5. A copy of the Transcript attached as Exhibit 2.

- b. Employed others to work for him as Bankruptcy Petition Preparers;
- c. Created and provided to clients a new "Memorandum of Understanding" between himself or his company and clients. A copy of a Memorandum is attached as Exhibit 3.
- d. Created and used new signs soliciting business explicitly referencing bankruptcy. A copy of a sign is attached as Exhibit 4.
- e. Appeared in the meeting rooms where Meetings of Creditors are held and counseled Debtors;
- f. Said to an attorney for the United States Trustee, "I just want you to know I'm through f-cking around;"
- g. Attended Hearings on Orders to Show Cause for Debtors and other Bankruptcy Petition Preparers in his employ;
- h. Told at least one panel trustee that he was not going to stop preparing petitions;
- i. Failed to comply and is in contempt of a September 30, 2009 Court Order issued by Judge Shefferly to repay a client \$2,000. A copy of the Order is attached as Exhibit 5.
- j. Failed to make payment of any financial obligations imposed by

this Court in its prior Orders;

9. The United States Trustee attached to its Supplement of October 16, 2009, the following exhibits:

Exhibit 1 Transcript of Hearing on Evidentiary Hearing on Order Finding Derrick Hills in Further Contempt and for Further Proceedings and Order Setting Conditions of Release.

Exhibit 2 Transcript of Hearing on Application to Waive Filing Fee, *In Re Brown*, Case No. 09-64129

Exhibit 3 Copy of a Memorandum of Understanding between Derrick Hills himself or his company and clients.

Exhibit 4 Copy of sign

Exhibit 5 Copy of September 30, 2009 Order Requiring Debtor's Bankruptcy Petition Preparer to Return Payment to Debtor

10. These exhibits fully establish each and every fact that the United States Trustee has alleged in its Supplement of October 16, 2009, and the Court so finds.

11. On November 19, 2009, the United States filed a "Second Supplement to 'Further Proceedings' on Contempt Order." (Docket #116) This Second Supplement states:

1. On April 7, 2009 the Court issued its Order Granting United States Trustee's Motion for Order Finding Derrick Hills in Further Contempt And For Further Proceedings.

2. The Order required Derrick Hills to appear and, among other things, Show Cause why he should not be incarcerated for his contempt.

3. After some delays and adjournments, the hearing was held on August 20, 2009.

4. At the hearing Hills was represented by counsel, Donald Harris.

5. Harris conceded violation of the Court's Orders but asked the Court to consider his perceived ability to convince Hills to obey the Court's Orders. The matter was taken under advisement.
6. Since Harris's statement Hills has continued to violate the Court's Orders.
7. A Supplement detailing some of Hills post-hearing actions was filed by the United States Trustee on October 16, 2009. The purpose of that Supplement was to provide insight to the Court on the ineffectiveness of Harris's attempts to induce Hills to comply with the Orders.
8. Since that Supplement Hills' actions have continued unabated.
9. More importantly, Hills recently made statements further demonstrating the ineffectiveness of Harris's counsel and of the current sanctions against him.
10. Hills appeared before Judge Shapero in an evidentiary hearing on October 27, 2009.
11. At that hearing, Hills stated in response to allegations that he has continued to violate the Orders, "And as God is my witness, I will continue to do that as long as 11 USC 110 is an actual law. That's all I have to say." Transcript of Evidentiary Hearing, *In Re Brown*, Case No. 09-64129, Pg. 16, Lines 2 -3. Transcript availability discussed at Docker number 26.
12. He added, "I have associates and gathering more as we speak. If I drop dead right now, this is going to continue." Transcript of Evidentiary Hearing, *In Re Brown*, Case No. 09-64129, Pg. 32, Lines 2-4.
12. The United States Trustee attached to its Second Supplement of November 19, 2009, the following exhibit:

Exhibit 1 Transcript of Hearing on Evidentiary Hearing before Judge Walter Shapero, *In Re Brown*, Case No. 09-64129 held on October 27, 2009

13. This exhibit fully establishes the facts that the United States Trustee has alleged in its Second Supplement of November 19, 2009, and the Court so finds.

14. On February 23, 2010, the United States filed a "Third Supplement to 'Further Proceedings' on Contempt Order." (Docket #122) This Third Supplement states:

10. Despite his assertions to the contrary, since the Second Supplement, Hills' actions have continued unabated.

11. Recently, a Debtor, Timprince Graves, Case No.10-40977-TJT, filed on January 14, 2010 revealing assistance by Alton Jenkins and not Derrick Hills, provided a copy of an email she received from Derrick Hills.

12. It highlights his brazen continued violation of this Court's injunction and is attached as Exhibit 1.

13. According to the Debtor, Hills sent the email in November, 2009 and went in to receive his services in January 2010. The transcript of her meeting of creditors is attached as Exhibit 2.

14. In the email Hills tells prospective clients:

a. His name, address, phone number, and the corporate name of Crane and Shore, Inc.,

b. His fee for filing chapter 7 bankruptcy,

c. That he has "SUCCESSFULLY HELPED HUNDREDS OF CLIENTS,"

d. That his success rate is 99.9%,

e. That, "YOU WILL BE EMPOWERED AND EDUCATED TO SUCCESSFULLY COMPLETE CHAPTER 7 BANKRUPTCY WITHOUT A LAWYER!"

f. That "AT CRANE AND SHORE, INC. YOUR DOCUMENTS ARE PREPARED THE SAME WAY AS AT THE LAWYER'S OFFICE."

- g. ". . . THEY BEGIN TO REPRESENT YOU AND ANSWER ALL OF THE LEGAL QUESTIONS SO YOU WON'T HAVE TO. THAT IS ONE REASON WHY YOU WILL BE ABLE TO COMPLETE BANKRUPTCY WITHOUT A LAWYER,"
- h. That the Debtor will not need to "HAVE KNOWLEDGE OF LAW OR LEGAL AFFAIRS,"
- i. Hills' perception of what will happen at the meeting of creditors, including, "ALL YOU MUST DO TO SUCESSFULLY (sic) COMPLETE THIS HEARING IS KNOWHOW TO SPEAK AND UNDERSTAND ENGLISH AND APPEAR AT THE HEARING!" (emphasis in original),
- j. Which documents the Client must provide to Crane and Shore, Inc.,
- k. The Client has the option to leave his information and have his papers prepared in his absence,
- l. What the clients should bring to the meeting of creditors,
- m. That ". . . PROBLEMS GENERALLY CAN BE ELIMINATED . . .," and
- n. That clients should "NOT PAY ANY MONEY TOWARD [certain] TYPES OF DEBTS,"

15. The United States Trustee attached to its Third Supplement of February 23, 2010, the following exhibits:

Exhibit 1 Email provided by Debtor Timprince Graves at the 341 Meeting of Creditors held on February 10, 2010

Exhibit 2 Transcript of 341 Meeting of Creditors held on February 10, 2010 *In re Timprince Graves.*

16. These exhibits fully establish the facts that the United States Trustee has alleged in its

Third Supplement of February 23, 2010, and the Court so finds.

Conclusions of Law

17. 18 U.S.C. § 401(3) states, "A court of the United States shall have power to punish by fine or imprisonment, or both, at its discretion, such contempt of its authority, and none other, as... (3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command."

18. Derrick Hills is in contempt of this Court's orders in each of the ways alleged by the United States Trustee and found herein by the Court.

19. Criminal contempt proceedings are therefore warranted and recommended against Derrick Hills.

Not for Publication

Signed on April 04, 2012

/s/ Steven Rhodes
Steven Rhodes
United States Bankruptcy Judge