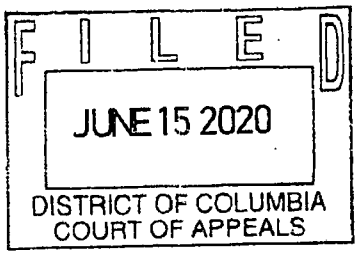
District of Columbia
Court of Appeals



No. 19-CO-952

CHARLES J. JORDAN,
Appellant,

v.

2005 FEL 3698

UNITED STATES,
Appellee.

BEFORE: Glickman and Thompson, Associate Judges, and Nebeker, Senior Judge.

JUDGMENT

On consideration of appellee's motion for summary affirmance; the opposition thereto; appellant's motion for release to home confinement pending appeal and supplement thereto; appellant's brief and limited appendix; and the record on appeal; it is

ORDERED that appellee's motion for summary affirmance is granted. *See Watson v. United States*, 73 A.3d 130 (D.C. 2013); *Oliver T. Carr Mgmt., Inc. v. Nat'l Delicatessen, Inc.*, 397 A.2d 914, 915 (D.C. 1979). Appellant's claim that the perceived defect in grand jury proceedings deprived the trial court of subject matter jurisdiction is without support. Here, the trial court correctly concluded that no right existed for appellant to have challenged the selection of the individual grand jurors. Initially, Super. Ct. Crim. R. 6 specifically limits grand jury attendees to include "the attorneys for the government, the witness being questioned, interpreters when needed, and a court reporter or an operator of a recording device." Although appellant is correct that he may raise challenges to individual grand jurors, such challenges are specifically limited to the grand juror's legal qualifications, namely the individual's "citizenship, residence, age, health, character, and ability to read, write, speak and understand the English language." *United States v. Knowles*, 147 F. Supp. 19, 20-21 (D.D.C. 1957). To the extent appellant contends he should have been permitted to raise a challenge to the grand jurors' legal qualifications in person, "[n]o provision is made for peremptory challenges of grand jurors and no such challenges are permitted. Likewise no voir dire examination exists in respect to

grand jurors." *Id.* at 20. We subsequently adopted this holding in *Reed v. United States*, 383 A.2d 316, 322 (D.C. 1978). Finding no due process violation in the grand jury selection process, the Superior Court had subject matter jurisdiction over the charged offenses. *See* D.C. Code § 11-923 (2012 Repl.) ("The Superior Court has jurisdiction over all criminal cases pending in the District of Columbia."); *Gorbey v. United States*, 54 A.3d 668, 706 (D.C. 2012) ("[T]he Superior Court has jurisdiction over cases involving violations of the D.C. Code.") (citation omitted); *Adair v. United States*, 391 A.2d 288, 290 (D.C. 1978) ("[A]s the party asserting lack of jurisdiction, [appellant] bears the burden of presenting the facts that would establish that lack.") (citation omitted). It is

FURTHER ORDERED that appellant's motion for release to home confinement pending appeal is denied as moot. It is

FURTHER ORDERED and ADJUDGED that the order on appeal is affirmed.

ENTERED BY DIRECTION OF THE COURT:

Julio A. Castillo

JULIO A. CASTILLO
Clerk of the Court

Copies e-served:

Honorable Julie H. Becker

Director, Criminal Division

Elizabeth Trosman, Esquire
Assistant United States Attorney

cml

Copy mailed:

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SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

UNITED STATES OF AMERICA	:	
	:	
Plaintiff,	:	**Case No. 2005 FEL 003698**
	:	
v.	:	
	:	
CHARLES JORDAN,	:	
	:	
Defendant.	:	

ORDER DENYING DEFENDANT'S MOTION TO CHALLENGE JURISDICTION, VACATE JUDGMENT, AND DISMISS AND FOR IMMEDIATE RELEASE

Pending before the Court is Defendant Charles Jordan's "Motion to Challenge the Jurisdiction and Motion to Vacate Judgment and Motion to Dismiss and Motion to Reverse & Dismiss Indictment for Fed. R. Crim. P. 6 Violations & Lack of Jurisdiction and Motion to Dismiss pursuant to Rule 60(b)(6) and Motion to Dismiss pursuant to Rule 6(b)(2) and Code § 11-1910 and Motion for Immediate Release," filed June 5, 2019. In his motion, Defendant contends that the court lacked jurisdiction to try his case and convict him because he was not brought to attend the grand jury selection. For the reasons set forth below, the Defendant's motion is denied.

On March 22, 2006, a grand jury returned a five-count indictment against Defendant in connection with a homicide that took place in June 2005. On December 8, 2006, a jury found Defendant guilty of first-degree murder while armed, possession of a firearm during a crime of violence, and carrying a pistol without a license. Defendant appealed, and the Court of Appeals affirmed the trial court's judgment. Defendant subsequently filed a motion to vacate his conviction pursuant to D.C. Code § 23-110, alleging ineffective assistance of counsel. The trial

Exhibit 4

court denied that motion on August 21, 2017, and the Court of Appeals affirmed on April 8, 2019.

Two months later, Defendant filed this motion. For the first time, he alleges that his indictment was defective because he "was not brought to court to attend at the selection of the grand jury, in violation of due process of law." Def.'s Mot. at 4. He also contends that the process violated his rights because "there is no evidence that the indictment in the above captioned case was voted on in open court, nor is there evidence that after presentment, the indictment was drafted and resubmitted to the grand jury for approval." *Id.* at 6.

For several reasons, Defendant's motion lacks merit. First, contrary to his claim, nothing in either the federal or Superior Court grand jury rule entitles a defendant to be present at the grand jury proceedings. *See* SCR-Crim. 6(d); Fed. R. Crim. Pro. 6(d). The language Defendant quotes on page 4 of his motion – "Defendants in custody shall be brought to court to attend at the selection of the grand jury" – comes not from the rule but from the Advisory Committee Notes to Rule 6 of the federal rules. The full comment, contained in the 1944 notes, reads as follows:

> Challenges to the array and to individual jurors, although rarely invoked in connection with the selection of grand juries, are nevertheless permitted in the Federal courts and are continued by this rule, *United States v. Gale*, 109 U.S. 65, 69–70; *Clawson v. United States*, 114 U.S. 477; *Agnew v. United States*, 165 U.S. 36, 44. It is not contemplated, however, that defendants held for action of the grand jury shall receive notice of the time and place of the impaneling of a grand jury, or that defendants in custody shall be brought to court to attend at the selection of the grand jury. Failure to challenge is not a waiver of any objection. The objection may still be interposed by motion under Rule 6(b)(2).

Fed. R. Crim. Pro. 6(b) advisory committee's note (1944) (emphasis added). This comment undermines rather than supports Defendant's argument.

Second, even if the grand jury process had violated the rule in some way, Defendant's motion is not timely. *See* SCR-Crim. 12(b)(3) (requiring motions alleging "an error in the grand

jury proceeding" to be brought before trial). "When a defendant has been found guilty of the charges in the indictment, 'the petit jury's verdict [has] rendered harmless any conceivable error in the charging decision that might have flowed from the violation.'" *Chambers v. United States*, 564 A.2d 26, 29 (D.C. 1989) (quoting *United States v. Mechanik*, 475 U.S. 66, 73 (1986)). Moreover, Defendant's motion does not describe any prejudice he suffered as a result of any alleged defect in the grand jury process, and his claim that any such flaw deprived the Court of jurisdiction is not correct. *See United States v. Williams*, 341 U.S. 58, 66 (1951) ("[T]hat the indictment is defective does not affect the jurisdiction of the trial court to determine the case presented by the indictment.").

Accordingly, it is this 24th day of September, 2019, hereby

ORDERED that Defendant's Motion is **DENIED.**

Julie H. Becker
Associate Judge

Copies to:

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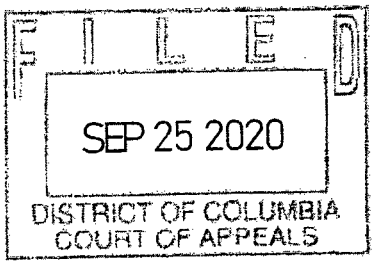
Defendant

District of Columbia
Court of Appeals



No. 19-CO-952

FEL3698-05

CHARLES J. JORDAN,

Appellant,

v.

UNITED STATES,

Appellee.

BEFORE: Blackburne-Rigsby, Chief Judge; Glickman, * Thompson, * Easterly, and Deahl, Associate Judges; Nebeker, * Senior Judge.

ORDER

On consideration of appellant's petition for rehearing or rehearing *en banc*, and it appearing that no judge of this court has called for a vote on the petition for rehearing *en banc*, it is

ORDERED by the merits division* that the petition for rehearing is denied. It is

FURTHER ORDERED that the petition for rehearing *en banc* is denied.

PER CURIAM

Associate Judges Beckwith and McLeese did not participate in this case.

Copies to:

Honorable Julie H. Becker

Director, Criminal Division

No. 19-CO-952

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de