

IN RE: ORDER CERTIFYING CASES TO DISTRICT COURT FOR FINDING OF CRIMINAL CONTEMPT, BY TANYA PETAWAY, OF PRIOR BANKRUPTCY COURT ORDERS

Case No. 1:12-mc-0028-TWP-TAB

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Petaway prepared these documents.” These seven cases are: (1) *In re Bertha Harris*, 11-14365-JKC-7A; (2) *In re Karolyn D. Robinson*, 11-10817-FJO-7; (3) *In re Teresa Ann Patterson*, 11-13625-JKC-7; (4) *In re Saressa Owens*, 11-09518-JKC-7A; (5) *In re Amanda Bible*, 11-12279-FJO-7A; (6) *In re Antoinette Renee Brooks*, 11-10826-AJM-7; and (7) *In re Tiffanie Scott-Cook*, 11-10858-AJM-7.

Moreover, in one instance, Petaway did not act as a Bankruptcy Petition Preparer because she was not paid for her services, but she still violated the injunctions by preparing documents for filing in the Bankruptcy Court. *See In re Terri A. Wells*, 11-13113-JKC-7A. In sum, as the Bankruptcy Court noted in its Order, “Petaway’s action . . . are in contempt of the Contempt Injunction, the Permanent Injunction, or both.”

From there, the Bankruptcy Court noted that there are two types of contempt: civil and criminal. Given the severity and pervasiveness of Petaway’s misconduct, the Bankruptcy Court found that “harsher sanctions accordant with criminal contempt are appropriate,” as civil sanctions “are likely to be ineffective.” However, the Seventh Circuit’s position on whether bankruptcy courts have criminal contempt powers is “unsettled.” *Cox v. Zale Del., Inc.*, 239 F.3d 910, 916 (7th Cir. 2001). As a result of the Bankruptcy Court’s possible limitations on contempt powers, it certified Petaway’s cases to this Court for possible prosecution, stating that “[e]ach of the Certified Cases warrants review by the District Court to determine whether grounds exist for the prosecution of . . . Petaway for criminal contempt of the Contempt Injunction and the Permanent Injunction pursuant to 18 U.S.C. § 401.”

With respect to criminal contempt, federal law, specifically 18 U.S.C. § 401, confers upon a court the authority to punish by imprisonment “[d]isobedience or resistance to its lawful

writ, process, order, rule, decree, or command.” 18 U.S.C. § 401(3). Conduct that violates § 401 is a crime, and, generally, “contemnors are convicted through normal criminal process.” *F.T.C. v. Trudeau*, 606 F.3d 382, 385 (7th Cir. 2010). Specifically, Federal Rule of Criminal Procedure 42(a) outlines the ordinary procedures necessary for a finding of criminal contempt, providing as follows:

(a) **Disposition After Notice.** Any person who commits criminal contempt may be punished for that contempt after prosecution on notice.

(1) **Notice.** The court must give the person notice in open court, in an order to show cause, or in an arrest order. The notice 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.

(2) **Appointing a Prosecutor.** The court must request that the contempt be prosecuted by an attorney for the government, unless the interest of justice requires the appointment of another attorney. If the government declines the request, the court must appoint another attorney to prosecute the contempt.

(3) **Trial and Disposition.** A person being prosecuted for criminal contempt is entitled to a jury trial in any case in which federal law so provides and must be released or detained as Rule 46 provides. If the criminal contempt involves disrespect toward or criticism of a judge, that judge is disqualified from presiding at the contempt trial or hearing unless the defendant consents. Upon a finding or verdict of guilty, the court must impose the punishment.

In *In re Contempt Proceedings for Bess*, 2011 WL 4916437 (E.D. Wis. Oct. 17, 2011), the District Court for the Eastern District of Wisconsin dealt with very similar circumstances in consideration of the bankruptcy courts certificate of criminal contempt, writing as follows:

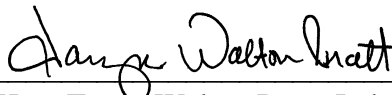
Given the nature of the criminal contempt at issue, this Court concludes Gomez Bess and Fromstein must be afforded the protections of Rule 42 of the Federal Rules of Criminal Procedure and the additional constitutional protections—substantive and procedural—that are afforded to criminal defendants. . . . Therefore, based on those highly significant considerations, the Court refers this matter to the United States Attorney for the Eastern District of Wisconsin for consideration of whether to pursue criminal contempt charges under 18 U.S.C. § 401 against Gomez Bess and Fromstein based on their conduct in the seven bankruptcy actions[.]

Id. at *2. This Court will follow the same approach.

Accordingly, this matter is REFERRED TO THE UNITED STATES ATTORNEY for the Southern District of Indiana, for consideration of whether to prosecute Petaway for criminal contempt of court under 18 U.S.C. § 401 based on her repeated violations of the Bankruptcy Court orders. Further, the Court requests that the United States provide notice as to whether they intend to pursue prosecution, within 30 days of the date of this Entry.

SO ORDERED.

Date: 04/06/2012


Hon. Tanya Walton Pratt, Judge
United States District Court
Southern District of Indiana

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