

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ALFRED TRENKLER)
)
 v.) CIVIL NO. 06-10272-RWZ
)
 UNITED STATES)

**GOVERNMENT'S MOTION TO STAY ORDER OF FEBRUARY 20, 2007
AND FOR LEAVE TO FILE A RESPONSE TO THE PETITION
FOR A WRIT OF CORAM NOBIS**

The government, by United States Attorney Michael J. Sullivan, and Assistant United States Attorney Robert E. Richardson, hereby respectfully moves to stay this Court's Order of February 20, 2007 granting the petitioner Alfred Trenkler's petition for a writ of coram nobis, vacating his two concurrent life sentences, and scheduling a resentencing hearing for April 4, 2007. The government further respectfully moves for leave to file an opposition to the petition on or before March 7, 2007. In support thereof, undersigned counsel states as follows.

1. On October 28, 1991, members of the Boston Police Bomb Squad were dispatched to the Roslindale home of Thomas Shay, Sr. to investigate a suspicious object that had fallen from the undercarriage of Shay's car and was resting in his driveway. The object was in fact a bomb. More specifically, it was a sophisticated remote-controlled, radio-activated device with an explosive force supplied by several sticks of dynamite connected to two electrical blasting caps. The device exploded while it was being examined by bomb squad members. The explosion killed

Boston Police Officer Jeremiah Hurley and severely injured Boston Police Officer Frank Foley. The bomb was made by the petitioner and provided to Thomas Shea, Jr., who intended to use it to kill his father.

2. As a consequence of their actions, the petitioner and Shea, Jr. were charged in a three-count superseding indictment with conspiracy, in violation of 18 U.S.C. § 371 (Count One), receipt of explosive materials with knowledge and intent that they would be used to kill, injure, and intimidate, and cause damage to real and personal property, in violation of 18 U.S.C. § 844(d) (Count Two); and malicious destruction of property by means of explosives, in violation of 18 U.S.C. § 844(I) (Count Three).

3. The petitioner successfully moved to sever his case from that of his codefendant. Shay, Jr. was tried first and convicted by a jury of the conspiracy and malicious destruction counts. On November 29, 1993, a separate jury convicted the petitioner of all three counts. On March 8, 1994, this Court sentenced him to concurrent life sentences on Counts Two and Three and to a sixty-month concurrent sentence on the Count One conspiracy charge.

4. The defendant appealed his convictions, alleging that this court had erred in making several evidentiary rulings at trial. On July 18, 1995, the First Circuit affirmed the convictions. See United States v. Trenkler, 61 F.3d 45 (1st Cir.

1995).

5. On December 22, 1995, the petitioner filed a motion for a new trial or, alternatively, an evidentiary hearing based on newly discovered evidence. On November 19, 1996, while that motion was pending, he filed a second motion for a new trial, alleging a different ground for relief, as well as a motion for inquiry into possible juror misconduct. This Court denied those motions, respectively, on February 4, 1997 and May 22, 1997. On January 6, 1998, in an unpublished decision, the First Circuit affirmed the denial of the motions for new trial. 134 F.3d 361 (Table), 1998 WL 10265 (1st Cir. 1998).

6. On January 5, 1999, the petitioner filed a petition pursuant to 28 U.S.C. § 2255 to set aside his conviction, alleging ineffective assistance of counsel at trial. This Court denied the petition, ruling that because it had been filed after April 24, 1997, the date the First Circuit has held that the one-year limitations period for § 2255 petitions expires for prisoners whose convictions became final before the Antiterrorism and Effective Death Penalty Act was enacted, it was out of time. The Court rejected the petitioner's claim that the pendency of his various new trial motions had tolled the limitations period, and it declined to apply the doctrine of equitable tolling under the facts and circumstances that were presented. On October 16, 2001, the First Circuit affirmed this Court's rulings on appeal.

See Trenkler v. United States, 268 F.3d 16 (1st Cir. 2001).

7. In October 2002, while being held in the United States Penitentiary at Allenwood, Pennsylvania, the petitioner filed in the Middle District of Pennsylvania a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. Citing the recently-decided Supreme Court case Jones v. United States, 529 U.S. 848 (2000), the petitioner asserted that the conduct for which he was convicted was no longer a crime. The district court denied the motion and the defendant appealed. On December 18, 2003, in an unpublished decision, the Third Circuit affirmed the district court's ruling. See Trenkler v. Pugh, 83 Fed.Appx. 468 (3d Cir. 2003). Before both the district court and the Third Circuit, the government was represented by an AUSA from the District of Massachusetts.

8. As the foregoing indicates, over a ten-year period following the petitioner's conviction at trial, the government vigorously and successfully opposed all of the petitioner's efforts to obtain conviction relief. Those included his direct appeal, two motions for a new trial, a consolidated appeal of the denial of those motions, a habeas petition, the appeal of the denial thereof, a second habeas petition in the Middle District of Pennsylvania, and the appeal of the denial thereof. Because one Boston Police officer was killed and another maimed, while in the line of duty, as a direct consequence of the petitioner's

heinous criminal acts, the government has always been fully committed to preserving the petitioner's convictions and the two life sentences that were justly imposed upon him.

9. On November 6, 2006, defense counsel Joan M. Griffin, who had not previously represented the petitioner, filed the instant petition for a writ of coram nobis. It was conjoined with a motion for her appointment as counsel and a request that she be permitted to further brief the issues raised in the petition. That pleading was served by mail upon the United States Attorney's Office ("USAO").

10. At that time of the USAO's receipt of the coram nobis petition, none of the Assistant United States Attorneys ("AUSAs") who had previously been involved in any of the prior stages of litigation pertaining to the petitioner were any longer with the USAO. As a consequence of internal discussions within the USAO, it was decided that an AUSA from a different unit than the other two units from which all of the prior involved AUSAs had been drawn would be assigned to represent the government in the coram nobis proceedings. The matter was assigned to an AUSA within that new unit before the petition was docketed in the ECF system. It was the expectation of all who were involved in making that assignment that the USAO would file a responsive pleading within such time as the Court might direct. The newly assigned AUSA fully intended to do so.

11. In an order dated November 15, 2006 and docketed on November 20, 2006, this Court directed the government to respond by January 5, 2007 to the coram nobis petition. Through institutional inadvertence within the USAO, the assigned AUSA apparently never received notice of that order. As a consequence, the government failed to file a responsive pleading by the date set by the Court. On January 26, 2007, after three weeks had passed beyond the original deadline, the Court graciously issued a new order granting the government an additional week still, until February 2, 2007, to file a responsive pleading. It further stated that if no such pleading were filed by that date, it would rule on the petition "without opposition." Unfortunately, within the USAO that order met the same fate as its predecessor and it was apparently never received by the assigned AUSA. Obviously, the USAO regrets the unacceptable communication failure and lapse in its usual practice.

12. On February 20, 2007, this Court granted the petition for a writ of coram nobis, vacated the petitioner's two concurrent life sentences, and scheduled resentencing for April 4, 2007. It was only upon notification of the Court's order doing so that the USAO became aware of its failure to file a memorandum, as it had always intended to do, vigorously opposing the petitioner's efforts to reduce his sentence.

13. The government now seeks to have the Court stay its order and grant the government leave to file an opposition to the coram nobis petition by March 7, 2007. Because the defendant stands convicted of conduct that resulted in the death of one Boston Police officer and the serious injury to another, the case is too important to the deceased victim's family, to the surviving victim, and to the public at large to warrant resolution of the coram nobis petition without the Court having the benefit of briefing by the government.

WHEREFORE, the government respectfully requests that the Court allow the instant motion.

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

By: /s/ James Lang
JAMES LANG
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent to the registered participants as identified in the Notice of Electronic Filing (NEF) and copies will be sent to those indicated as non-registered participants.

/s/ James Lang
James Lang
Assistant U.S. Attorney

Date: February 21, 2007

