

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

UNITED STATES OF AMERICA,)
)
v.) CRIM. NO. 83-0255-1
)
JEFFREY S. GLATZ,)
)
Defendant.)

MEMORANDUM OPINION

This matter is before the Court on Defendant's motion for unconditional early discharge of probation nunc pro tunc and for a set aside certificate pursuant to the Federal Youth Corrections Act. For the reasons set forth below, this motion will be DENIED.

BACKGROUND

In 1983, Jeffrey S. Glatz plead guilty to stealing ten thousand dollars from the United States government while he was working for the Central Intelligence Agency. Finding that the Defendant had potential for rehabilitation, this Court sentenced Jeffrey Glatz to two years of supervised probation under the Youth Corrections Act. As special conditions of his probation, Glatz was to perform 300 hours of community service and continue with psychiatric treatment.

Although he satisfied the community service requirement, Glatz unilaterally failed to continue psychiatric treatment. He continually missed appointments throughout the summer of 1984, and

was ultimately discharged by his psychiatrist, Dr. Galler. Further, Glatz upset his ex-girlfriend to the extent that she complained to the probation office. Mr. Glatz, distraught about their relationship, threatened to post signs around campus announcing that she had given birth to a child and was good in bed.

Although the probation office ultimately decided not to charge Glatz with violation of probation, Probation Officer Hannigan recommended that Glatz be denied early discharge and the setting aside of his conviction. This Court concurred with this recommendation, and declined to Order an early discharge. Probation ended on December 8, 1985, and Glatz was informed that he would not receive the full benefits of the Youth Corrections Act due to his marginal adjustment.

In late 1989 or early 1990, Glatz filed a petition with the Court asking for early discharge nunc pro tunc and that his conviction be set aside. The government has filed a response, to which the Defendant has replied.

DISCUSSION

This Court will deny Glatz' petition for two reasons. First, the remedy of nunc pro tunc is not available where no oversight occurred. Second, this Court's denial of early discharge in 1985 was proper.

Entry of orders Nunc pro tunc, which literally means "then for now", allows Courts to retroactively correct court records to achieve justice. See Black's Law Dictionary 964 (5th Ed. 1979).

Nunc pro tunc orders are generally limited to those instances where a court acts to correct a clerical error or oversight. Federal courts have granted a nunc pro tunc early discharge under the Youth Corrections Act (YCA), but only where clerical error was the cause for the failure to timely effect the discharge. United States v. Fryer, 545 F.2d 11, 13, n.3 (6th Cir. 1976). Nunc pro tunc does not allow parties to mount general challenges to prior court decisions. Review of lower court decisions is properly reserved to the appellate process.

The Supreme Court has adopted this position with respect to the YCA. In Tuten v. United States, 460 U.S. 660 (1983), the Supreme Court considered the operation of § 5021(b) of the YCA. The Court held that the statute requires an unconditional discharge before the completion of probation, if the conviction is to be set aside. Where the sentencing court does not exercise its discretion to discharge the defendant, the conviction will not be set aside. Id. at 667.

The Supreme Court explicitly noted that the trial court should consider the defendant's conduct during probation when deciding whether to set aside the conviction. The Tuten Court noted that a motion for nunc pro tunc early discharge is appropriate where the court failed to grant an early discharge due to oversight. Id. at 668. Defendant Glatz does not allege that this Court's refusal to grant a set aside of his conviction resulted from oversight. Therefore Defendant's motion must be DENIED.

Furthermore, review of the record in this case establish that

early discharge was properly denied. While Defendant Glatz has acquired an admirable record since his completion of probation in 1985, this record is irrelevant. In reviewing the 1985 decision to deny Glatz, an early discharge, this Court will only look at Glatz' conduct during his two years of probation.

The record establishes that Glatz discontinued psychiatric treatment without consulting his probation officer or the Court. Continued treatment was an explicit special condition of probation. Moreover, Glatz' threatening conduct toward his ex-girlfriend, while not criminal, was inappropriate for an individual on probation. Finally, the record reveals that probation officers Long and Hannigan both recommended to the Court that Mr. Glatz' conviction not be set aside.

In light of this record, and the fact that early unconditional discharge is left to the discretion of the trial judge, this Court cannot conclude that the 1985 denial of early discharge was erroneous.

Because Glatz has failed to allege error based upon oversight or clerical mistake, the remedy of nunc pro tunc discharge from probation is not available. Moreover, a review of the record in this case established that this Court's decision not to set aside Glatz' conviction was correct. Defendant Glatz's motion will therefore be DENIED.

Let the Clerk send a copy of this Memorandum Opinion and the accompanying Final Order to the Defendant, at his Hermosa Beach

address, and to counsel of record.

DATE

UNITED STATES DISTRICT JUDGE