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2004 JUN 29 P 3:04  
DISTRICT OF UTAH  
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In the United States District Court for the District of Utah

Central Division

United States of America,

Plaintiff,

vs.

Scott Rulon Werner,

Defendant.

ORDER

Case No. 2:03CR907DAK

Defendant Scott Rulon Werner has filed a Commercial Notice to Dismiss for Lack of Jurisdiction – Wrong Court and a Commercial Notice to Dismiss No Remedy Available.

Although they are entitled “Commercial Notice,” both notices are motions seeking dismissal of Defendant’s criminal case. Both of these notices violate the court’s prior orders warning Defendant that he would face sanctions for filing any additional frivolous motions.

Defendant’s Commercial Notice to Dismiss for Lack of Jurisdiction – Wrong Court is substantively identical to his previous motion to dismiss for lack of jurisdiction that this court denied on April 20, 2004. As this court has previously stated, this court is the court created in Article III of the United States Constitution—it is not a legislative court nor is it operating in legislative mode. In addition, the United States of America is the proper Plaintiff in this criminal action. Defendant is merely reasserting the same frivolous arguments that this court has already denied. To the extent that Defendant’s Commercial Notice can be construed a motion to dismiss for lack of jurisdiction, such motion is denied.

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This court has instructed Defendant that his arguments as to jurisdiction are preserved for appeal and should not be raised again in this court. In the court's April 20, 2004 Order, Defendant was told that the court's "ruling with respect to the jurisdiction of the court and standing of the Plaintiff to bring this action is the court's final ruling on this issue. Because of the frivolous nature of these arguments, Defendant is on notice that any further motions or arguments in this regard will result in sanctions being imposed."

Defendant's Commercial Notice to Dismiss No Remedy Available claims that the United States of America cannot pursue this criminal action against Defendant because it is in Chapter 11 bankruptcy, he is one of its creditors, and the only remedy in bankruptcy is "discharge." The court warned Defendant at the April 22, 2004 hearing in this matter that he was not to make frivolous arguments that do not apply in the criminal context. Defendant's claims of bankruptcy would relate, if at all, only to civil matters. This is a criminal prosecution against Defendant for an alleged crime. Whether the United States is bankrupt and whether Defendant is a creditor of the United States because of his participation in the Social Security system is wholly irrelevant to the present criminal proceeding. To the extent that Defendant's Commercial Notice to Dismiss No Remedy Available is construed as a motion to dismiss, the motion is denied.

Defendant's filing of these notices demonstrate to the court that Defendant has no concept of the nature of this action. Defendant makes arguments as if this is a civil dispute about money instead of a criminal prosecution for alleged crimes. The arguments in Defendant's notices also demonstrate no appreciation for the potential punishments he could face if he is convicted of the crime. In fact, his assertions that the only remedies available to the United States in this action is discharge in bankruptcy indicates that Defendant does not appreciate the

fact that the available remedy in this case is imprisonment. Because Defendant's assertions that the United States has no available remedy against him because it is in Chapter 11 bankruptcy and he is one of its creditors show a fundamental misunderstanding of the criminal charges pending against him and the possible punishments associated with such crimes, the court concludes that Defendant should not be allowed to represent himself. See *Faretta v. California*, 422 U.S. 806, 835 (1975).

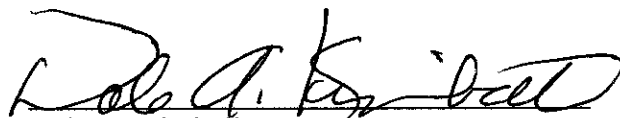
The court also considers Defendant's loss of his right to self-representation to be an adequate sanction for his continued filing of frivolous motions. This court has instructed Defendant that he "may lose the right to self-representation if he is not 'able and willing to abide by rules of procedure and courtroom protocol.'" April 23, 2004 Order (quoting *McKaskle v. Wiggins*, 465 U.S. 168, 173 (1984)). Defendant was also notified that "[t]he right of self-representation is not a license to abuse the dignity of the courtroom. Neither is it a license not to comply with relevant rules of procedural and substantive law." *Id.* (quoting *Faretta*, 422 U.S. at 834 n. 46. Defendant's filing of these frivolous motions after repeatedly being warned in court orders and court hearings not to make such repetitive frivolous motions demonstrate Defendant's inability to abide by the rules of this court. Moreover, Defendant's continual refusal to recognize the jurisdiction of this court or refrain from making repeated motions on the same subject after this court has notified him that the issue is preserved for appeal, abuses the dignity of this court. Even if Defendant could demonstrate an understanding of the nature of the charges against him and the potential punishments associated with those crimes, he has lost the right to self-representation as a sanction for his refusal to abide by the rules of this court and his abuse of the dignity of this court. If Defendant persists in filing such notices or motions, the court will

order Defendant to be detained until trial as a sanction.

Defendant's stand-by counsel, Robert Hunt, shall take over full representation of Defendant. If Mr. Hunt has any conflict or if any problem exists with his ability to represent Defendant, another attorney at the Utah Federal Defender's Office may represent Defendant. Because Mr. Hunt has been acting as stand-by counsel and receiving copies of everything in this case, the court does not believe any continuance of the September 13, 2004 trial date is necessary.

In conclusion, Defendant's Commercial Notice to Dismiss for Lack of Jurisdiction – Wrong Court is DENIED and Defendant's Commercial Notice to Dismiss No Remedy Available is DENIED. The arguments contained in these notices demonstrate that Defendant is not capable of representing himself. In any event, Defendant has lost his right to self-representation as a sanction for Defendant's inability to follow the rules and prior orders of this court. Mr. Robert Hunt, or another attorney at the Utah Federal Defender's Office, shall resume full representation of Defendant. If Defendant files any further frivolous motions, it will result in Defendant's detention pending trial.

DATED this 29th day of June, 2004.



Dale A. Kimball,  
United States District Judge

United States District Court  
for the  
District of Utah  
June 30, 2004

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:03-cr-00907

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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