

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

UNITED STATES OF AMERICA

PLAINTIFF

v.

CASE NO. 4:15CR00001-01 BSM

MICHAEL A. MAGGIO

DEFENDANT

ORDER

Defendant Michael Maggio's amended motion to withdraw his plea of guilty and to dismiss the information [Doc. No. 32] is denied; and his motion to withdraw his guilty plea [Doc. No. 21] is denied.

I. INTRODUCTION

On January 9, 2015, Maggio appeared, waived indictment, and entered a plea of guilty to Count 1 of the information, charging him with bribery concerning programs receiving federal funds in violation of Title 18, United States Code section 666(a)(1)(B). Maggio was a Circuit Court Judge who essentially admitted that he sold his office by substantially reducing a jury verdict in exchange for campaign donations. Before delving into the specific facts of Maggio's case, it is important to note that the government was not required to establish a connection between the bribery in question and the federal funds establishing jurisdiction under section 666(b) to establish that Maggio violated section 666. *United States v. Hines*, 541 F.3d 833, 835–36 (8th Cir. 2008)(citing *United States v. Sabri*, 326 F. 3d 1941 (8th Cir. 2003), *aff'd*, 541 U.S. 600 (2004)).

In *Sabri*, the Supreme Court affirmed the Eighth Circuit's denial of a facial challenge

to section 666. In *Hines*, the appellant challenged the application of section 666 to his particular situation. *Hines* is compelling because it addressed a situation similar to the one presented here. In *Hines*, a deputy sheriff was found guilty of violating section 666 by accepting bribes from moving companies and other property owners for the deputy's performance of their eviction-related services. *Hines*, 541 F.3d at 835. The deputy challenged the rationality of applying section 666 to him because "he was not entrusted with the disbursement of any money, federal or otherwise; his dealings were purely local and could not jeopardize in any significant manner the integrity of federal programs; and the federal monies given to [the county] did not reach his department." *Id.* at 836. The Eighth Circuit denied his challenge because "the statute does not require, as an element to be proved beyond a reasonable doubt, a nexus between the activity that constitutes a violation and federal funds." *Id.*

Based on *Sabri* and *Hines*, it is clear that section 666 can apply to Maggio's actions. Accordingly, Maggio's contention that it is unconstitutional to apply section 666 to the facts of this case is not compelling. The only issues to be resolved, therefore, are whether Maggio freely entered into his guilty plea with full knowledge of his rights, the law, and the consequences he faced for pleading guilty; and whether the government has provided a factual basis for a section 666 violation.

I. BACKGROUND

At his plea hearing, Maggio was questioned at length about his competency and his

ability to enter the plea. *See* Plea Hr'g Tr. [hereinafter "Plea Tr.,"] 2:16–4:1, Doc. No. 10. Maggio was found competent to proceed with the plea. He was then advised of his right to require the government to seek an indictment on the charges contained in the information. Plea Tr. 4:2–19. He was also advised as to the charge to which he intended to plead guilty. Plea Tr. 4:24–5:23; *see also* Plea Agreement 1–2, Doc. No. 4. Maggio was then asked the following:

QUESTION: ... Now, that's what the government intends to charge you with. Do you wish to waive indictment?

MAGGIO: Yes.

QUESTION: Okay. And have you discussed waiving indictment with [your attorney]?

MAGGIO: Yes.

QUESTION: Okay. And do you understand your right to go to the grand jury?

MAGGIO: Yes.

QUESTION: And have any threats or promises been made against you, Mr. Maggio, to get you to waive indictment?

MAGGIO: No.

Plea Tr. 5:21–6:13. Maggio waived indictment and proceeded to enter a plea of guilty on the information. *Id.*

Maggio was advised of his rights and the waiver of certain rights resulting from his guilty plea. Plea Tr. 6:25–10:22. He stated several times that he understood his rights and the waivers associated with the plea. *See* Plea Tr. 9:8 (trial rights), 9:13 (loss of various civil rights), 9:23 (waiver of right to have sentence imposed modified). Maggio was then specifically advised as to the maximum sentence allowed under the law as follows:

... the penalty for bribery concerning programs receiving federal funds is not more than ten years of imprisonment, a fine of not more than \$250,000, or

twice the pecuniary gain or loss, and that says pursuant to 18 U.S.C. Section 3571(d), and not more than three years of supervised release. You'll also have to pay a \$100 special assessment.

Plea Tr. 10:16–22. At this point, Maggio was advised about the role of the sentencing guidelines in federal criminal cases. Plea Tr. 11:24–12:11. He was further advised that a guidelines range is merely advisory, not mandatory, and that the judge retains the authority to impose a sentence above or below the guidelines range. Plea Tr. 11:7–11. Maggio was asked if he understood the function of the sentencing guidelines and he expressed that he understood. Plea Tr. 11:12.

After Maggio was advised on the sentencing guidelines, the Assistant United States Attorney outlined the terms of the plea agreement. Plea Tr. 12:9–23; *See generally*, Plea Agreement. Maggio was again questioned regarding his understanding of the terms of the plea agreement as stated by his lawyer and the U.S. Attorney:

QUESTION: ... Mr. Maggio, did you listen to the statements given by the U.S. Attorney and [defense counsel]?

MAGGIO: Yes, sir.

QUESTION: Were those the terms of the plea agreement you understood?

MAGGIO: Yes, sir.

Plea Tr. 13:9–15.

After it was established that Maggio understood all of the above-mentioned details regarding his plea, he was asked about his willingness to enter a plea of guilty through the following inquiries:

QUESTION: Okay. Now, having discussed all of your rights with you, do you still want to enter a plea of guilty?

MAGGIO: Yes, sir.

QUESTION: Have any threats or promises been made to you to get you to plead guilty?

MAGGIO: No, sir.

QUESTION: Are you pleading guilty because it's what you want to do?

MAGGIO: Yes, sir.

Plea Tr. 15:19–16:2. The U.S. Attorney then summarized the facts the government would prove if Maggio chose to go to trial. Plea Tr. 16:3–22:17. Maggio was then asked about the accuracy of the statements made by the U.S. Attorney and whether he still wanted to plead to the charge against him:

QUESTION: ... Mr. Maggio, did you listen to the statements given by the U.S. Attorney?

MAGGIO: Yes, sir.

QUESTION: Were her statements accurate?

MAGGIO: Yes, sir.

QUESTION: And do you understand the nature of the charge against you and the maximum penalty you face?

MAGGIO: Yes, sir.

QUESTION: And how do you plead to the information?

MAGGIO: Guilty.

QUESTION: And did you, in fact, commit the offense as charged?

MAGGIO: Yes, sir.

Plea Tr. 22:18–23:6. Based on the foregoing, it was found that Maggio had committed the offense charged in the information and was entering his “plea voluntarily with full knowledge of the facts, his rights, and the possible consequences.” Plea Tr. 23:12–13. Accordingly, Maggio’s plea was accepted, Maggio was advised about the sentencing procedures, and the hearing concluded.

More than one year after pleading guilty, Maggio moved to withdraw his guilty plea

and to dismiss the information [Doc. No. 21] claiming there was no factual basis for the plea and that his counsel was ineffective. He later amended the motion [Doc. No. 32] to abandon the ineffective assistance of counsel claim and to assert that charging him with violating 18 U.S.C. § 666 is a constitutional violation.

II. LEGAL STANDARD

A defendant may withdraw a guilty plea after the court accepts the plea but prior to sentencing if “the defendant presents a fair and just reason to withdraw.” Fed. R. Crim. P. 11(d)(2)(B); *United States v White*, 734 F.843, 848 (8th Cir. 2013). “Even if such a fair and just reason exists, before granting the motion a court must consider whether the defendant asserts his innocence of the charge, the length of time between the guilty plea and the motion to withdraw it, and whether the government will be prejudiced if the court grants the motion.” *United States v. Heid*, 651 F.3d 850, 853–54 (8th Cir. 2011). If the defendant fails to establish a fair and just reason for withdrawing the guilty plea, the district court need not address the remaining considerations. *Id.* at 854. “When a defendant has entered a knowing and voluntary plea of guilty at a hearing at which he acknowledged committing the crime, ‘the occasion for setting aside a guilty plea should seldom arise.’” *United States v. Alvarado*, 615 F.3d 916, 920 (8th Cir. 2010). “Post-plea regrets by a defendant caused by contemplation of the prison term he faces are not a fair and just reason for a district court to allow a defendant to withdraw a guilty plea.” *United States v. Teeter*, 561 F.3d 768, 770 (8th Cir. 2009).

III. DISCUSSION

A. Amended Motion to Withdraw

1. *Factual Basis for the Plea*

Maggio's amended motion to withdraw is denied because there is sufficient evidence to conclude that Maggio violated 18 U.S.C section 666(a)(1)(B). The lack of an adequate factual basis for a guilty plea is a fair and just reason to withdraw the plea. *Heid*, 651 F.3d at 856. Federal Rule of Criminal Procedure 11(b)(3) requires a court to determine that there is a factual basis for a guilty plea before entering a judgment on the plea. "A guilty plea is supported by an adequate factual basis when the record contains 'sufficient evidence at the time of the plea upon which a court may reasonably determine that the defendant likely committed the offense.'" *United States v. Cheney*, 571 F.3d 764, 769 (8th Cir. 2009) (quoting *United States v. Gamble*, 327 F.3d 662, 664 (8th Cir. 2003)). Facts outlined by the prosecutor in her summary of the plea agreement, a colloquy between the defendant and the court, and stipulated facts are sufficient to find a factual basis for a plea. *United States v. Brown*, 331 F.3d 591, 595 (8th Cir. 2003).

Maggio asserts that there is no factual basis to support his plea. To establish a factual basis for the plea, the record must show that: (1) Maggio was an agent of Twentieth Judicial District of the State of Arkansas; (2) Maggio corruptly solicited or accepted or agreed to accept something of value in connection with the business, transaction, or series of transactions of the Twentieth Judicial District; (3) the business, transaction, or series of

transactions involved something valuing \$5,000 or more; and (4) the Twentieth Judicial District received benefits pursuant to a federal program in excess of \$10,000 in the calendar year 2013–2014. 18 U.S.C. § 666.

- a. Maggio was an agent of the Twentieth Judicial District of the State of Arkansas

Maggio first contends that “[t]here is no factual record on which this Court could conclude that [he] was an agent of the State of Arkansas.” *See* Post Hr’g Br. at 2–3, Doc. No. 37. Notwithstanding this contention, Maggio stipulated in his plea agreement that “[d]uring his tenure as circuit judge for the State of Arkansas, Twentieth Judicial District, [he] was an agent of the State of Arkansas and the Twentieth Judicial District....” Plea Agreement ¶ 5. Moreover, when the U.S. Attorney concluded her summarization of the plea agreement at the plea hearing, Maggio acknowledged making this stipulation knowingly and voluntarily. Plea Tr. 17:7–8; 22:19–23. Therefore, the record establishes that Maggio was an agent of the Twentieth Judicial District of the State of Arkansas. *See United States v. Martin*, 777 F.3d 984, 993 (8th Cir. 2015) (a knowing and voluntary stipulation to an element of a statutorily charged offense is sufficient to establish that element).

- b. Maggio accepted a bribe in connection with the business, transaction, or series of transactions of the Twentieth Judicial District of the State of Arkansas

Maggio contends the government cannot prove that he explicitly agreed to remit a verdict in exchange for a campaign contribution. In the plea agreement, however, Maggio agreed that based on his communication with a certain Individual B, he “understood that ...

Individual B was reminding Maggio to make a favorable ruling to Individual A and Company A because of Individual A's financial support of Maggio's campaign." *See* Plea Agreement ¶ 5. Maggio also agreed that, based on a different communication with Individual B, he "understood that Individual B was advising Maggio that, in exchange for Maggio's ruling in favor of Company A and Individual A, Individual A would provide campaign donations to Maggio." *Id.* Finally, the plea agreement provides that "Maggio reduced the judgment against Company A from [\$]5.2 million to \$1 million." *Id.* Indeed, Maggio confirmed the accuracy of these statements following the U.S. Attorney's summarization of the plea agreement. Plea Tr. 19:6–25; 22:19–23. These facts are sufficient to establish an explicit agreement. *See United States v. Siegelman*, 640 F.3d 1159, 1172 (11th Cir. 2011) (in convicting a state official for bribery regarding campaign contributions, an explicit agreement to take or forego some specific action in exchange for a campaign donation may be implied from the official's words and actions).

Maggio also contends that his "rulings were not 'in connection with any business, transaction, or series of transactions' of any [s]tate, local, or county government or any agency." In support this contention, Maggio relies on *United States v. Whitfield*, 590 F.3d 325 (5th Cir. 2009). The court in *Whitfield*, however, did not hold that, as a matter of law, a judge who accepts a bribe in exchange for a favorable ruling in a civil case cannot be convicted under section 666. The *Whitfield* court addressed a very specific situation in which two state judges accepted bribes in exchange for favorable rulings and were charged as

agent's of the Administrative Office of the Court ("AOC"). *Id.* at 342, 344–45. In *Whitfield*, the Fifth Circuit merely held that the state judges could not be convicted under section 666 as agents of the AOC because "[t]he bribes that [they] accepted in conjunction with their handling of [judicial cases] clearly had no connection with any business, transaction, or series of transactions of the AOC." *Id.* at 346.

As discussed in subpart a, above, Maggio is bound by his stipulation that he was "an agent of the State of Arkansas and the Twentieth Judicial District." Plea Agreement ¶ 5(F). Maggio also stipulated that as an agent, "he presided over ... civil ... cases in Faulkner, Van Buren, and Searcy counties." *Id.* Maggio is also bound by his stipulation that in one of his civil cases in Faulkner County, he "accepted individual A's financial support of his campaign ... intending to be influenced and remit the judgment against Company A." *Id.* Unlike the judges in *Whitfield*, Maggio was charged as an agent of the Twentieth Judicial District of Arkansas. Accordingly, Maggio's stipulation that he presided over civil cases in Faulkner County and accepted financial support in exchange for reducing a judgment in a case filed in the Twentieth Judicial District, is sufficient to conclude that Maggio accepted that bribe in connection with the business or transaction of the Twentieth Judicial District of the State of Arkansas.

- c. The Twentieth Judicial District of the State of Arkansas received benefits pursuant to a federal program in excess of \$10,000 in the previous one-year period

Maggio's post-hearing brief indicates that he has abandoned this challenge and is now

conceding the Twentieth Judicial District received federal funds. *See* Post Hr’g Br. at 5. In addition to this concession, Maggio stipulated that “the United States would show that in calendar years 2013 and 2014, the State of Arkansas, Twentieth Judicial District, received over \$10,000 in federal funding.” Plea Agreement ¶ 5(F); Plea Tr. at 22:6–9, 18–23. Maggio’s stipulation is sufficient to establish this element under section 666.

2. *Constitutional Violation*

As set forth in the Introduction, Maggio’s contention that charging him with a section 666 violation is unconstitutional is not compelling. Moreover, as discussed in subpart 1, an adequate factual basis exists to conclude reasonably that Maggio committed the offense as charged. Therefore, Maggio’s constitutional claim is denied.

B. Amended Motion to Dismiss the Information

Maggio’s amended motion to dismiss the information is denied because, as discussed herein, he has failed to present a fair and just reason to withdraw his plea.

IV. CONCLUSION

Maggio’s motions to withdraw his guilty plea [Doc. No. 21] and his amended motion to withdraw his guilty plea and to dismiss the information [Doc. No. 32] are denied for the reasons set forth above. A sentencing hearing is set for March 24, 2016, at 1:30 pm.

IT IS SO ORDERED this 10th day of March 2016.


UNITED STATES DISTRICT JUDGE