

**SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

**IN RE JULIUS WILSON and KENRICK
E. ROBERTSON,**

Defendants.

PEOPLE OF THE VIRGIN ISLANDS,

Plaintiff,

v.

JALANI WILLIAMS,

Defendant.

) **SX-2009-cr-554**

) **CHARGE: 4 V.I.C. § 244; 14 V.I.C. § 581(3)**
) **(CONTEMPT OF COURT)**

ORDER

THIS MATTER is before the Court following an April 7, 2014 preliminary hearing concerning the failure of the Bureau of Corrections to comply with this Court's Orders directing it to return Defendant Jalani Williams to the Territory for resentencing. For the reasons stated below, the Court will schedule a Show Cause Hearing at which Julius Wilson, Director of the Bureau of Corrections, and Kenrick E. Robertson shall show cause why they should not be held in contempt of court for willfully violating, neglecting, or refusing to perform lawful orders of this Court.¹

¹ The Court has added an additional caption to this matter in an attempt to comply with conflicting authorities. In *Government of the Virgin Islands v. Santiago*, the Appellate Division of the District Court of the Virgin Islands noted "the long-standing significance of having an appropriate designation of parties in a criminal contempt proceeding." 37 F. Supp. 1157, 1163 (D.V.I. App. Div. 1996) (citing *Gompers v. Buck Stove & Range Co.*, 221 U.S. 418 (1911)). One judge, concurring in part and dissenting in part, agreed with the majority's concerns regarding the use of captions in criminal contempt proceedings, but proceeded further and found that former Territorial Court Rule 139(a), now Superior Court Rule 139(a), which provides that if a criminal contempt "occurs in a cause it shall be prosecuted in the cause in which it occurs" was "in violation of the law and therefore void." *Id.* at 1166 (Moore,

In a November 25, 2013 Opinion and Order, the Supreme Court of the Virgin Islands affirmed Jalani Williams's conviction for murder in the first degree, but reversed his sentence based on the decision of the Supreme Court of the United States in *Miller v. Alabama*, 132 S. Ct. 2455 (2012). *Miller* invalidating a sentence of life imprisonment without the possibility of parole for anyone who was under the age of 18 at the time the crime was committed. Because Williams was only sixteen years old when he shot and killed Almanzo Williams, the Supreme Court of the Virgin Islands vacated his sentence and ordered that this Court resentence him in accordance with the *Miller* decision. In furtherance of that Opinion, the Court, in a November 27, 2013 Order, scheduled Williams's resentencing for December 6, 2013. This Order was served on counsel for Williams as well as the Attorney General's office as substitute counsel for the People had not appeared on remand.²

On December 2, 2013, Williams's counsel requested a continuance of the hearing for ninety days to allow him to meet with his client to prepare for resentencing and also—because

C.J., concurring in part and dissenting in part) (quoting Terr. Ct. R. 139(a)). Both the majority and the concurring opinions in *Santiago* were dicta, however, in so far as the specific question the appellate court was considering was "the appropriate designation of the parties in *this* criminal contempt *appeal*." *Id.* at 1162 (emphasis added). The majority because neither the Territorial Court of the Virgin Islands nor the Territorial Court judge were parties, they had to be stricken from the caption of the case on appeal. *See id.* at 1163. Despite the discussion of the concurring judge, the majority in *Santiago* did not invalidate Rule 139(a). But the majority did hold, however, that the trial court erred by allowing the criminal contempt to be prosecuted using the same caption and docket number as the underlying action in which it occurred. *See id.* at 1162 ("Because the criminal contempt was a separate criminal action, utilization of the caption "*Government of the Virgin Islands v. Daniel Santiago and Leonico Santiago*, Crim. No. 871/1994" to prosecute the criminal contempt charge was both misleading and erroneous."). That procedure is exactly what Rule 139(a) directs. *Santiago's* holding—that criminal contempt is a separate action and should be given a separate docket number—has not been overruled by the Appellate Division or by the United States Court of Appeals for the Third Circuit, nor has the Supreme Court of the Virgin Islands disagreed with it as concerns Rule 139(a) and therefore it binding on the Superior Court. *See In re People of the V.I.*, 51 V.I. 374, 389 n.9 (2009). *Santiago* cannot be reconciled with Superior Court Rule 139(a), however, which directs that "[a] criminal contempt . . . shall be prosecuted on notice, and if it occurs in a cause it shall be prosecuted in the cause in which it occurs." Super. Ct. R. 139(a). Being caught between two possible errors—not following a court rule versus not complying with binding precedent—the Court will add an additional caption to this action, which names the parties charged with contempt but maintains the docket number for the cause in which the contempt occurred.

² The Court takes judicial notice that prior counsel for the People, Attorney Warren T. Sedar, Esq., left the employment of the Virgin Islands Department of Justice in July 2013 while this matter was on appeal.

the Bureau of Corrections had transferred Williams to a prison on the mainland—to allow the Bureau time to return Williams to the Territory. The Court orally informed the parties that it would grant the Motion but wanted to still meet with the parties in chambers on December 6, 2013 to discuss returning Williams to the Territory.

Subsequently, on February 20, 2014 the Court granted Williams's December 2, 2013 Motion *nunc pro tunc* to the date it was filed, rescheduled resentencing for March 6, 2014, directed the People to have substitute counsel file a notice of appearance, and ordered the Bureau of Corrections to return Williams to the Territory on or before March 3, 2014. This Order was served on counsel for Williams, Deputy Attorney General Bruce Z. Marshack, as well as the Bureau of Corrections. In response, the People, thorough Assistant Attorney General Cornelius Evans, filed a motion on February 26, 2014, requesting that the Court give the Bureau of Corrections until March 20, 2014 to return Williams to the Territory. In an Affidavit attached to that Motion, Kenrick Robertson stated that he is counsel for the Bureau and tasked with ensuring that the Bureau's compliance with court orders. According to Robertson, the Bureau needed additional time to return Williams to the Territory in part due to severe weather conditions in Virginia, but also because of the Bureau's preparations for a week-long visit during the first week in March 2014 by the United States Department of Justice. Robertson also explained that the employee who handles inmate travel arrangements was out sick and not expected back until February 26, 2014. Because Williams's counsel filed a February 27, 2014 Response stating that he had no objection to Bureau having until March 20, 2014 to return Williams to the Territory, and because the Court took judicial notice of the snow storms affecting the mainland this winter season, the Court granted the People's Motion in a March 4, 2014 Order and gave the Bureau until March 20, 2014 to return Williams to the Territory. In another March 4, 2014 Order, the

Court rescheduled resentencing for April 4, 2014. Both Orders were served on the Attorney General's Office, counsel for Williams, and the Bureau of Corrections.

Jalani Williams did not appear for resentencing on April 4, 2014 as ordered. Instead, on April 4, 2014, counsel for the People filed a second motion asking for a third extension of time for the Bureau to return Williams to the Territory. Because Jalani Williams must be present for resentencing, *cf. Williams v. People*, 58 V.I. 341, 352 n.9 (2013) (noting that the defendant might need to be physically present when the Supreme Court vests the Superior Court with plenary authority to revisit a sentence on remand), the Court granted the People's Motion in an April 4, 2014 Order and continued resentencing to a date to be determined after consulting with the parties. The Court also scheduled a hearing for April 7, 2014 regarding the Bureau's failure to comply with the March 6, 2014 Orders.

At the April 7, 2014 hearing, Deputy Attorney General Marshack, who again appeared on behalf of the People, called Warden Basil Richards as a witness. Richards testified that he was made aware by the Attorney General's office of the need to return Williams to the Territory but was not sure when he had to be back. Richards first learned of the March 6, 2014 Order to return Williams to the Territory on April 4, 2014, the third date the Court had set for resentencing. Richards also testified that he, as the warden, lacks the authority to order that an inmate be returned. He can only recommend that action to the director who, according to Richards, has the exclusive authority to return an inmate. Richards did communicate to both the Director and Attorney Robertson the need to return Williams to the Territory. Attorney Robertson told him, however, that the Bureau first needed a subpoena from the Attorney General's office before it could bring Williams back to the Territory for resentencing.

Based on the testimony at the hearing and the proceedings following remand from the

Virgin Islands Supreme Court, the Court finds a sufficient basis to warrant charging Julius Wilson, Director of the Bureau of Corrections, and Kenrick E. Robertson with contempt of court in violation of section 244 of title 4 of Virgin Islands Code and section 581(3) of title 14. Section 373 of title 3 provides that the Bureau of Corrections “is administered under the supervision and direction of the Director.” The Court takes judicial notice for purposes of this Order that Julius Wilson is the current Director of the Bureau of Corrections. Section 114(a) of title 3 states that the Attorney General—or assistant attorneys general designated by the Attorney General, *see* 3 V.I.C. § 113—has the authority to appear before any court, furnish legal advice to or on behalf of any department of the Executive Branch, or supervise and direct the legal business of those departments. Since section 372 of title 3 makes the Bureau of Corrections a branch of the Executive Department, it follows that the Attorney General, or an assistant attorney general so designated, is also counsel for the Bureau. Because the Attorney General’s office represents the Bureau of Corrections, the Bureau received multiple notices to return Jalani Williams to the Territory for resentencing, beginning with the November 25, 2013 Opinion of the Supreme Court of the Virgin Islands which vacated the sentence imposed by this Court’s May 17, 2012 Judgment. That Opinion became final when the Supreme Court issued its December 6, 2013 Mandate, a copy of which was served on the Solicitor General as appellate counsel for the People. Additionally, this Court’s November 27, 2013 Order, February 20, 2014 Order, and March 4, 2014 Orders each concerned resentencing and the need to return Williams to the Territory for resentencing and each—with the exception of November 27, 2013 Order—was served on the People as well as the Bureau of Corrections. Additionally, as only the Attorney General, or an assistant attorney general so designated, can furnish legal advice to the Bureau of Corrections, it is unclear what capacity Attorney Robertson serves given that he merely

identified himself, in his Affidavit, as “counsel to the Bureau of Corrections,” not as an assistant attorney general. Nonetheless, Attorney Robertson did inform the Court in that Affidavit that he is responsible for “ensur[ing] that Orders of the Court are enforced [sic].” Since this Court’s March 4, 2014 Orders were clearly not complied with, Attorney Robertson shall also face contempt charges.

Despite four Orders of this Court as well as the Opinion and Mandate of the Supreme Court, the Bureau of Corrections did not return Jalani Williams to the Territory for the April 4, 2014 hearing and, more importantly, did seek an extension of time prior until the morning of the April 4, 2014 resentencing date. The People’s April 4, 2014 Motion did not explain, however, why an extension was needed, but instead simply informed the Court “[t]hat Jalani Williams will not arrive within the Territory until April 7th, 2014.” But according to this Court’s March 4, 2014 Order, the Bureau had to return him to the Territory by March 20, 2014, not April 7, 2014. Unlike the People’s February 26, 2014 Motion in which the Bureau, through Attorney Robertson’s Affidavit, gave a basis for needing an extension of time—namely the Bureau’s ill employee, severe weather, and the visit by the USDOJ—neither the People’s April 4, 2014 Motion nor Richards’s April 7, 2014 testimony provided any explanation as to why the Bureau did not comply with this Court’s March 6, 2014 Orders to return Williams to the Territory by March 20, 2014. Additionally, Richards’s testimony that only the Director could order that an inmate be returned to the Territory does not comport with the sworn statements of Attorney Robertson in his Affidavit indicating that one reason for the delay was that the employee who coordinated inmate travel was out sick. If the Director had not ordered Williams to be returned, then the ill employee had no travel to arrange and that was not a basis for delay. If the Director had, in fact, ordered Williams to be returned, then his return travel arrangements should have

been arranged shortly after the ill employee returned to work. According to Attorney Robertson's Affidavit, that was on or about February 25, 2014. Finally, the Court notes that People have not filed anything to date to inform the Court whether Jalani Williams was, in fact, returned on April 7, 2014 as represented at the April 7, 2014 hearing. This conduct constitutes probable cause of contempt of this Court's March 6, 2014 Orders.

Although Superior Court 139(c) as well as *Santiago*, see 937 F. Supp. at 1160, directs that the Superior Court could appoint a special prosecutor, particularly in instances such as this where the persons facing contempt charges would be defended by and prosecuted by the same entity, namely the Virgin Islands Department of Justice, courts appointing a special prosecutor should be a last option, not the first. See *Young v. United States ex rel. Vuitton et Fils S.A.*, 481 U.S. 787, 801 (1987) ("a court ordinarily should first request the appropriate prosecuting authority to prosecute contempt actions, and should appoint a private prosecutor *only if that request is denied*. Such a procedure ensures that the court will exercise its inherent power of self-protection only as a last resort." (emphasis added)). Section 114(a) of title 3 vests the authority for prosecuting "offenses against the laws of the Virgin Islands" in the Attorney General. 3 V.I.C. § 114(a)(2)-(3). Additionally, section 85 of title 4 of the Virgin Islands Code directs that "the Attorney General of the Virgin Islands shall prosecute all offenses . . . in the Superior Court." For this reason, the Court will first direct the Attorney General to exercise this authority by appointing a prosecutor to prosecute these contempt charges in the name of the People of the Virgin Islands. Cf. *Young*, 481 U.S. at 801 ("courts can reasonably expect that the public prosecutor will accept the responsibility for prosecution.").

Based on the discussion above, the Court hereby

ORDERED that the Attorney General of the Virgin Islands, Vincent F. Frazer, appoint

or designate a disinterested special prosecutor **within seven (7) days** from the date of entry of this Order to prosecute these charges on behalf of the People of the Virgin Islands. The special prosecutor so appointed or designated shall be clothed with the full power of a prosecutor with respect to these charges. It is further

ORDERED that unless an amended or superseding information is filed by the special prosecutor, this Order shall serve as notice to Julius Wilson, Director of the Bureau of Corrections, and Kenrick E. Robertson (hereinafter "Defendants"), of the essential facts alleged to constitute criminal contempt. It is further

ORDERED that the Court will hold a **SHOW CAUSE HEARING** on **Thursday, May 8, 2014 at 1:00 p.m.** at which the Defendants shall appear and enter their pleas to the charges that they violated section 244 of title 4 of Virgin Islands Code and section 581(3) of title 14 of the Virgin Islands Code. If the Defendants plead not guilty, the People, through its special prosecutor, shall at that time be required to prove, beyond a reasonable doubt, the essential facts alleged to constitute criminal contempt. It is further

ORDERED that Basil Richards, Warden of the Golden Grove Correctional Facility, shall appear at the Show Cause Hearing to give testimony. It is further

ORDERED that a copy of this Order shall be personally served by Superior Court Marshal on counsel for Defendant Jalani Williams, Deputy Attorney General Bruce Z Marshack, the Bureau of Corrections, Attorney General Vincent F. Frazer, Julius Wilson, Basil Richards, and Attorney Kenrick Robertson.

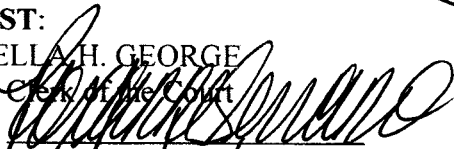
DONE AND SO ORDERED this 11th day of April, 2014.

ATTEST:

ESTRELLA H. GEORGE

Acting Clerk of the Court

By:


Court Clerk Supervisor

Dated:

4/11/14


DARRYL DEAN DONOHUE, SR.
Senior Sitting Judge