

THIRD CIRCUIT COURT OF MICHIGAN FOR THE COUNTY OF WAYNE
CRIMINAL DIVISION

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff

Honorable David A. Groner
WCCC No: 08-010496-01
08-010777-01

-v-

KWAME MALIK KILPATRICK,

Defendant

**OPINION AND ORDER REGARDING TRANSFER OF PROBATION AND
RESTITUTION**

This matter is before the Court regarding Defendant Kwame M. Kilpatrick's Motion for Transfer of Probation to the State of Texas Department of Corrections.

Facts and Procedural History

On September 4, 2008, Defendant pled guilty to two felony counts of obstructing justice one felony count of assaulting/obstructing a police officer, and entered into a sentence agreement with the following terms:

1. Serve five years of probation.
2. Serve 120 days in the Wayne County Jail.
3. Resign as Mayor of the City of Detroit.
4. Pay restitution in the amount of \$1,000,000.00, with \$20,000.00 to be paid at the time of sentencing.
5. Surrender of his State and City Pensions.

6. Prohibition from running for elected office.
7. Surrender of his law license.
8. Any other conditions set by the Court.

As of March 9, 2009, this Court was satisfied that the Defendant had properly completed requisites 2, 3 and 7. However, the remaining conditions are still pending.

On January 26, 2009, prior to his release from jail, Defendant filed a Motion for Travel, requesting a hearing date for the next day, January 27, 2009. Specifically, the motion indicated that Defendant was to be released on February 3, 2009, and needed to travel for "purposes of interviewing and contracting employment." Further, Defendant indicated that, "It is his earnest desire to pay his restitution in full before the end of his probationary period."

On January 28, 2009, the Court accommodated Defendant by hearing the untimely motion. At that time, the People stipulated to allow Defendant to travel out of the state, for purposes of the employment interview. Furthermore, all parties agreed that disclosure of the location and name of the employer could jeopardize Defendant's employment chances given the fact that, according to Defendant, he and his family had been receiving death threats. Defense counsel indicated that the interview would take place on February 4, 2009, and the Board of Directors would vote February 5, 2009, as to their decision. Based upon this stipulation, the Court issued an Order granting Defendant's request to travel to Texas, with a return date to Detroit Michigan, no later than February 9, 2009. At that time, the Court made it very clear to Defendant that the intent of granting Defendant's request was to afford Defendant the ability to secure employment in order to pay for the restitution due to the complainant, the City of Detroit.

However, on February 3, 2009, the day that Defendant was released from the Wayne County Jail, and unbeknownst to the Court, Defendant filed an Application for Transfer of his

probation supervision to Texas. On February 12, 2009, Defendant filed an emergency Motion for Travel. The Motion specifically alleged that Defendant must attend orientation and training the next day, February 13, 2009, for his new employment with Covisint in Dallas, Texas. The People filed a response and objection to Defendant's motion on February 19, 2009. The Court scheduled a hearing for this matter on February 24, 2009.

Upon receipt of the pending Motion filed February 12, 2009, the Court subsequently learned through the People's response that Defendant was hired by Covisint, a subsidiary of Compuware. It was further ascertained that the interview and Board meeting either did not occur, or occurred in a manner inconsistent with the representations made to this Court by Defendant. Additionally, the Court received a one page summary of Defendant Kilpatrick's employment expectation. (See Exhibit A.) Neither the Emergency Motion nor Exhibit A provided any information regarding: (1) Defendant's orientation; (2) Defendant's projected income; (3) Defendant's expenditures; (4) Defendant's travel obligations; and (5) Defendant's assets.

Based on this development, the Court determined that it had insufficient information to grant or deny Defendant's Motion on February 24, 2009. At that time, the Court requested that the Probation Department provide a Case Report to assist the Court in determining Defendant's employment and restitution.

On February 27, 2009, the Probation Department submitted a two page report indicating the following:

1. A letter from Ms. Perosky of Compuware, dated February 10, 2009, stating that Defendant was hired by Covisint on February 10, 2009. The letter further stated that Defendant's salary is estimated to be \$120,000.00 per year.
2. A letter from Mr. Bosh of Covisint, dated February 25, 2009, stating that Defendant completed his orientation with Covisint, and will earn \$10,000 per month plus an additional \$10,000 per month for the first six months, as a sales draw advance. Further, Defendant will be working out of the Addison, Texas office.

3. A summary of Defendant's current assets, far exceeding the amount initially indicated by Defendant at the time of his sentence.
4. The disclosure of Defendant's expenditures, including an advance payment of \$18,300.00 for 6 months rent, and the cash purchase of a vehicle for \$35,000. The report did not specify where the funds for these expenditures came from.
5. The Probation Department recommended a per month restitution payment of \$17,500.

On March 2, 2009, the Court received a letter directly from Mr. Furst of Covisint, explaining the Defendant's compensation and indicating that Defendant has been employed for the past three weeks, beginning approximately February 10, 2009. Another letter was faxed to the Probation Department on March 9, 2009, by Mr. Furst indicating that Covisint has scheduled "several important business meetings in the Dallas office for Wednesday March 11, 2009 and Thursday March 12, 2009, and it is essential that Defendant attend these meetings in person."

On March 4, 2009, this Court was notified by the Probation Department that the State of Texas approved the transfer of Defendant's probation supervision.

Later on that same day, the Court received a memo from the Probation Department indicating that Defendant made his vehicle purchase from a cash gift of \$26,000.00 from Mrs. Carlita Kilpatrick and a further cash gift of \$9,000.00, received at the time of his sentence. These cash gifts were not disclosed to the Probation Department at the time of Defendant's sentence.

Conclusion

This Court is satisfied that Defendant has secured viable employment and is in a position to pay restitution. The Court is further satisfied that the State of Texas Department of Correction's has accepted the transfer of Defendant's probation.

THEREFORE, THIS COURT GRANTS Defendant's Motion to Travel and also to transfer his probation supervision.

The Court is required to assess Defendant's ability to pay the balance of his restitution owed to the City of Detroit. What concerns this Court is Defendant's ability to secure benefits or funds as gifts to purchase cars, travel in private planes, and rent a home in an affluent Texas neighborhood. The Court would note that in their response to Defendant's motion to travel, the Prosecutors office requested \$3,000 in restitution payment.

THE COURT HEREBY ORDERS, that Defendant pay restitution of \$6,000 per month for the first six months of employment with Covisint. This amount is based on Defendant's known assets and income and is calculated on a 30% scale of Defendant's gross monthly income. Therefore as an example, if Defendant's income goes up or down after six months, the restitution amount shall be adjusted to reflect 30% of his gross monthly income. Restitution must be paid by the 15th of the month for the preceding month's restitution amount.

THE COURT FURTHER ORDERS that the Defendant pay \$10,500.00 in restitution based on the \$35,000.00 cash used to purchase the lease of the 2009 Escalade. Defendant must also pay \$5,500.00 in restitution based on the \$18,300.00 advanced by Defendant for a 6 month home lease in Texas. This amount of \$16,000.00 in restitution shall be paid by March 20, 2009.

IT IS FURTHER ORDERED THAT Defendant shall forthwith forfeit his \$7,500.00 bond and assign said funds to the City of Detroit for a partial restitution payment.

Additionally, to the extent that Defendant continues to enjoy any gifts or benefits, or receives any additional income, regardless of the source, the Court will impute the value of such gifts as income to Defendant, and thereby automatically increasing Defendant's gross income amount and hence increase the restitution amount to be paid. To that end, Defendant is obligated

to and shall disclose to the Probation Department any gifts and/or benefits Defendant receives. Defendant must furnish and disclose any and all assets that are in Defendants name and or the name of Carlita Kilpatrick. Defendant must also furnish and disclose any and all assets held by a third party for the benefit of the Defendant.

Finally, the Defendant is obligated to comply with all and any additional terms of probation placed on him by the State of Texas.

IT IS SO ORDRED.



DAVID A. GRONER
CIRCUIT COURT JUDGE

3-10-09
DATE