

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHN MCQUILKIN,

Defendant.

CRIMINAL ACTION

No. 94-356-02

MEMORANDUM

I.

Under 29 U.S.C. § 504, persons convicted of certain crimes are prohibited from holding various positions within labor unions for a period of 13 years following their release from imprisonment. On July 27, 2010, McQuilkin filed a pro se “Motion for Relief by Reduction of the Length of Disability,” dkt. 144, which the court construed as a motion, under 29 U.S.C. § 504, to “set[] a lesser period” of disability. The government responded by noting that, because McQuilken’s conviction was for distribution of methamphetamine, he did not fall under the § 504 prohibitions. Dkt. 149. Specifically, the government reasoned that § 504 applies to persons convicted of violating “narcotics laws,” but that methamphetamine does not qualify as a narcotic. The government did

note, however, that McQuilken’s conviction would, under 29 U.S.C. § 1111,¹ preclude him from holding—for a period of 13 years—positions associated with “employee benefit plans.”

McQuilken then filed a “Motion to Correct Original Motion’s Title, Section and Position in a Labor Union.” Dkt. 151. In that motion, he asks this court to reduce the length of his disability under 29 U.S.C. § 1111. Specifically, McQuilken states that he would like to run for the position of “Union Trustee” for the Cement Masons Local # 592. It is McQuilken’s view that 29 U.S.C. § 1111 precludes him from holding the Union Trustee position. Whether or not that is the case, McQuilken is still entitled, under § 1111, to seek a reduction in the length of his disability.²

II.

Under § 1111, any person convicted of, *inter alia*, “a felony violation of Federal or State law involving substances defined in section 102(6) of the Comprehensive Drug Abuse Prevention and Control Act of 1970” may not hold any of a variety of positions associated with “employee benefit plans.” *See* 29 U.S.C. § 1111(a)(1)–(3); *see also* 29 U.S.C. § 1002(1)–(3) (defining “employee benefit plan”). The government has already

¹ 29 U.S.C. § 1111 was passed as part of the Employee Retirement Income Security Act of 1947 (“ERISA”).

² Under § 1111, McQuilkin is prohibited from holding employee benefit plan positions for 13 years following his release from imprisonment. McQuilken was released on April 9, 1999, and his disability thus remains in effect until April 9, 2012.

expressed its view that McQuilken’s conviction triggers the prohibition on employee benefit plan positions.

Accordingly, the court must make a determination as to McQuilken’s eligibility for a reduction of disability. Before doing so, the court is required by statute to hold a hearing. *See* 29 U.S.C. § 1111. The burden will be on McQuilken to demonstrate that the holding of a covered employee benefit plan position would not be “contrary to the purposes this subchapter.” *Id.*³ That purpose is, *inter alia*, “to protect the interests of participants in employee benefit plans and their beneficiaries . . . by establishing standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans” *See* 29 U.S.C. § 1001. The contours of the hearing are addressed in the accompanying order.

³ “[T]his subchapter” refers to subchapter I (“Protection of Employee Benefit Rights”) of chapter 18 (“Employee Retirement Income Security Program”) of title 19 (“Labor”).

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ORDER

AND NOW, this ___ of July, 2011, for the reasons discussed in the accompanying memorandum, it is hereby **ORDERED** as follows:

1. On August 2, 2011, at 2:00 p.m., the court will hold a hearing on John McQuilkin's motion to reduce the period of disability.
2. This memorandum and order will serve as notice, as required by 29 U.S.C. § 1111, to the Secretary of Labor, the District Attorney for the City of Philadelphia, the United States Attorney for the Eastern District of Pennsylvania, and the United States Probation Office for the Eastern District of Pennsylvania. A copy of this memorandum and order will be sent, via certified mail, to each of these parties.
3. The parties will be permitted to submit affidavits and/or live testimony. To the extent live testimony is offered and permitted, each side will have an opportunity to cross-examine the other's witnesses.

4. The parties are directed to provide each other, and the court, with witness lists and copies of all exhibits on or before July 25, 2011, unless directed otherwise. The witness list shall include a brief description of each witness's expected testimony.
5. Except as otherwise provided herein, the court will follow procedures applicable to the resolution of disputed factors at sentencings. *See* United States Sentencing Guideline § 6A1.3.
6. The Clerk of Court shall send a copy of this memorandum and order to the following parties:
 - A. Secretary Hilda L. Solis
Secretary of Labor
U.S. Department of Labor
200 Constitution Ave., NW
Washington, DC 20210
 - B. R. Seth Williams
District Attorney
Office of the District Attorney, City of Philadelphia
Three South Penn Square
Philadelphia, PA 19107-3499
 - C. Emily McKillip
United States Attorney's Office
615 Chestnut Street, Suite 1250
Philadelphia, PA 19106
 - D. Kyle Watts
U.S. Probation Office
William J. Green Federal Building
600 Arch Street, Suite 2400
Philadelphia, PA 19106-1797

BY THE COURT:

Pollak, J.