

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Criminal Action No. 2:05cr22  
(Maxwell)

DEREK D. BENEDICT,

Defendant.

**MOTION TO STAY TIME (SECOND) FOR FILING OF BRIEFS PRESENTLY DUE ON  
FEBRUARY 27, 2006 PENDING RESOLUTION OF ISSUES  
SURROUNDING RECORD ON APPEAL AND TRANSCRIPTION OF  
AUDIO RECORDING OF PROCEEDING BY DEFENDANT  
WITHOUT OBJECTION FROM UNITED STATES OF AMERICA**

On August 30, 2005, this Court allowed Mr. Benedict to proceed in Forma Pauperis, and by order entered October 26, 2005, extended the briefing time to on or before December 27, 2005.

In the companion cases of *United States of America v. Jessica N. Healy, Criminal Action No. 2:05CR23* and *Criminal Action No. 2:05CR25*, the Court entered an Order on September 27, 2005, recognizing the mandates of *FRCRPRule 58(g)(2)(c)*, which requires, in pertinent part, that "...a copy of the record of the proceedings must be made available to a defendant who establishes by affidavit an inability to pay or give security for the record..."

The Court in that Order found that no "written transcript" was required by *58(g)(2)(c)*, and Ordered that the Clerk of Court provide the defendant with a copy of the audio cassette recording on the Central Violations Bureau Hearings which were conducted by United States

Magistrate Judge John S. Kaul on June 28, 2005, at the Cranberry Mountain Nature Center in Pocahontas County, West Virginia.

Defendant Benedict has now been provided with said tapes. Nonetheless, counsel for defendant has attempted to glean the basis upon which defendant Benedict was convicted by attempting to pin point the evidence on the tapes. Said tapes are in no way indexed, are partially inaudible, have gaps of blank tape where nothing was recorded, and most importantly, although counsel for defendant has made a good faith effort to transcribe the tapes, they are largely incomprehensible in their present form, and counsel have not successfully been able to determine what testimony, exhibits, and/or evidence was utilized by the Magistrate Judge in finding this defendant guilty in the course of proceedings leading to his conviction.

It is axiomatic that a criminal conviction de hors a record supporting same is “plainly unreasonable.” [See *Cleckley II Handbook on WV Criminal Procedure (2<sup>nd</sup> Edition)*, I-500-01, 495 through 497 citing 28 USC §753(f).]

As this Court is aware, the undersigned has taken this defendant's matter, as well as that of three other defendants in related cases on a pro bono basis. Furthermore, the undersigned is expending his own resources to have his staff dutifully transcribe the audio recordings of the proceedings, which for the above referenced reasons has been a monumental task. The undersigned reports that six (6) of the seven (7) audio recordings provided to the undersigned by this Honorable Court have been transcribed. Furthermore, the undersigned agrees to provide to the United States a copy of said transcription upon completion.

The defendant has previously asked for one extension in this matter and is not asking for a second extension to merely delay the process. Instead, the undersigned has attempted to not only recognize and brief the legal issues but also create a written record of the same

contemporaneous with completion of the brief. This has been the reason for the delay, and thus the request for thirty (30) additional days to complete the transcription of the audio tapes of the proceedings and to file a brief in this matter. Finally, there is no objection from the United States of America to the extension as requested.

Respectfully Submitted,

Derek D. Benedict, Defendant

By: /s/ Patrick S. Cassidy  
Of Counsel

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**CERTIFICATE OF SERVICE**

I hereby certify that on **February 27, 2006**, I electronically filed the foregoing **MOTION TO STAY TIME (SECOND) FOR FILING OF BRIEFS PRESENTLY DUE ON FEBRUARY 27, 2005 PENDING RESOLUTION OF ISSUES SURROUNDING RECORD ON APPEAL AND TRANSCRIPTION OF AUDIO RECORDING OF PROCEEDINGS BY DEFENDANT WITHOUT OBJECTION FROM UNITED STATES OF AMERICA** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following CM/ECF participant:

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