

**IN THE CIRCUIT COURT OF HINDS COUNTY, MISSISSIPPI
FIRST JUDICIAL DISTRICT**

MISSISSIPPI DEPARTMENT OF HUMAN SERVICES **PLAINTIFF**

VS. **CASE NO. 25CI1:22-cv-00286-EFP**

MISSISSIPPI COMMUNITY EDUCATION CENTER, INC., et al **DEFENDANTS**

**PLAINTIFF MISSISSIPPI DEPARTMENT OF HUMAN SERVICES’S RESPONSE TO
DEFENDANT JOHN DAVIS’S MOTION TO STAY**

Plaintiff Mississippi Department of Human Services (“MDHS”) submits this Response to the Motion to Stay of Civil Action [Dkt. 105] filed by Defendant John Davis and states as follows:

INTRODUCTION

John Davis has pleaded guilty to state and federal charges.¹ There is no Mississippi case providing for a stay of a civil suit pending sentencing in a parallel criminal case. Federal law holds that once a civil defendant has pleaded guilty to criminal charges, a stay is unnecessary to protect the defendant from the government’s gaining an unfair advantage in the criminal trial from admissions made in the civil case. Davis’s motion to stay this entire case—including the claims pending against the thirty-seven other defendants—should be denied.

ARGUMENT

Under federal law, “[T]he granting of a stay of civil proceedings due to pending criminal investigation is an extraordinary remedy, not to be granted lightly.” *United States v. Simcho*, 326 F. App’x 791, 792 (5th Cir. 2009). It is the burden of the party seeking the stay to overcome the

¹ See Exhibit “A,” Federal Plea Agreement; Exhibit “B,” Order of Nolle Prosequi (stating that Davis had entered a global plea agreement to plead guilty to five counts of Conspiracy and thirteen counts of Fraud Against the Government in State Court by way of a Bill of Information). Davis is set to be sentenced on February 2, 2023 in federal court.

“**strong presumption in favor of discovery**” and demonstrate why a stay is warranted. *United States v. Gieger Transfer Serv.*, 174 F.R.D. 382, 385 (S.D. Miss. 1997) (emphasis added).

None of the cases Davis cites are on point, because none address a defendant who has pleaded guilty. The weight of federal authority holds that when a defendant has pleaded guilty to criminal charges, a stay of a parallel civil case is *not* warranted.

De’Omilia Plastic Surgery, PC v. Sweeton, Civil Action No. 12-06415 (FLW), 2013 U.S. Dist. LEXIS 163601, at *7-8 (D.N.J. Nov. 18, 2013), is one such case. In *De’Omilia*, a civil breach of contract and fraud suit, the defendant entered a plea agreement with the U.S. Attorney’s office on parallel charges. *Id.* at *3-4. She moved to stay the civil case against her and her corporation. *Id.* The Court found that although the issues raised in the plea agreement and the civil complaint were the same, “[T]here will be no criminal trial, and thus no concern that the government may be unfairly advantaged by any admissions she makes in the course of the civil action.” *Id.* at *7. The *De’Omilia* court relied on *Arden Way Assocs. v. Boesky*, 660 F. Supp. 1494 (S.D.N.Y. 1987), in which the Court rejected a stay of civil proceedings when the defendant had “negotiated and cooperated with the Government and entered a plea of guilty as part of an arrangement, thereby substantially decreasing if not extinguishing the risk of his further prosecution.” *Id.* at 1499.

Although a criminal defendant’s Fifth Amendment protection extends into the sentencing phase, *Mitchell v. United States*, 526 U.S. 314, 325 (1999), the greatest risk of self-incrimination recedes once a defendant pleads guilty to criminal charges. Therefore, in *Russ v. Ecklund Logistics, Inc.*, No. 19-CV-2719 (DSD/JFD), 2022 U.S. Dist. LEXIS 67599 (D. Minn. Apr. 12, 2022), a court lifted a stay in the civil case upon receiving notice that defendant had pleaded guilty to criminal charges (but before sentencing). The *Russ* court found, “The Court does not minimize Mr. Michaels’s interest in the severity of his sentence, but the chief harm against which his Fifth

Amendment right could have potentially played a role in protecting him—being found guilty of a crime—has now come to pass.” *Id.* at *4. Likewise, in *In re N.J. Tax Sales Certificates Antitrust Litig.*, Civil Action No. 12-1893 (MAS) (TJB), 2014 U.S. Dist. LEXIS 154977, at *40-41 (D.N.J. Oct. 31, 2014), the Court found that a stay was not warranted after the defendant had pleaded guilty to criminal charges and awaited sentencing.

Overall, Davis’s guilty pleas substantially alter the calculus of the six factors federal courts weigh in determining whether a stay is warranted: “(1) the extent to which the issues in the criminal case overlap with those presented in the civil case; (2) the status of the criminal case, including whether the defendants have been indicted; (3) the private interests of the plaintiffs in proceeding expeditiously, weighed against the prejudice to plaintiffs caused by the delay; (4) the private interests of and burden on the defendants; (5) the interests of the courts; and (6) the public interest.” *United States ex rel. Magee v. Lockheed Martin, Corp.*, No. 1:09CV324-HSO-JMR, 2010 U.S. Dist. LEXIS 84982, at *12 (S.D. Miss. July 16, 2010). On the whole, these factors weigh strongly against a stay.

1. Extent of Overlap of the Issues

There is no denying that MDHS’s civil complaint and Davis’s state and federal guilty pleas overlap. But MDHS’s civil complaint covers more transactions than Davis’s guilty pleas, and it also seeks to hold thirty-seven other defendants liable. Further, the *De’Omilia* court found that although the extent of overlap is ordinarily the most important factor, when the defendant has pleaded guilty, this factor’s importance diminishes. 2013 U.S. Dist. LEXIS 163601, at *7-8. In fact, because Davis may have agreed to plead guilty to specific criminal allegations to obtain the benefit of the plea agreement—which allows him to serve his sentence in federal, not state,

prison—Davis “should not be able to benefit further from such admissions by delaying the civil case against” him. *Id.* at *7. This factor, therefore, weighs against a stay.

2. Status of the Criminal Case

Often, defendants seek a stay when they find they are the target of a criminal investigation. In those cases, indictment is a key factor in determining whether to stay the case. *See, e.g., Lockheed Martin*, 2010 U.S. Dist. LEXIS 84982, at *15. But when a defendant has been entered a plea agreement, “there is no need to stay the civil proceeding to avoid the quandary of choosing between waiving the defendant’s Fifth Amendment rights or effectively forfeiting the civil case.” *De’Omilia*, 2013 U.S. Dist. LEXIS 163601, at *9. This factor also weighs against a stay.

3. Interest of the Plaintiff versus Prejudice of Delay to MDHS

Davis seeks a stay of the *entire* case, not merely the claims against him. MDHS has a strong interest in proceeding against the other thirty-seven defendants. The Department of Justice will expect MDHS to repay misspent TANF funds. Expeditious recovery of those funds is therefore strongly in the interest of MDHS and the State taxpayers as a whole. No matter what restitution Davis may ultimately be sentenced to repay, Davis alone cannot do so.

Delay will prejudice MDHS’s ability to recover those funds. While this case languishes, assets that could pay judgments may be (wrongfully) transferred and lost, leading to more expense and effort for MDHS to be made whole. And civil lawsuits are more like milk than wine: they do not improve with age. Memories fade, witnesses move, phones are replaced, and evidence becomes more and more difficult to obtain. This factor weighs against a stay.

4. Private Interests of John Davis

The burden is on Davis to demonstrate how his interests will be harmed without a stay. Davis asserts three interests, none of which now warrant a stay. First, he claims that the scope of

discovery in the civil action is broader than the criminal, so the prosecution could gain an unfair trial advantage. That is no longer a concern, since there will be no trial. Second, he contends he should not be forced into deciding whether to defend the civil suit, waiving his Fifth Amendment rights, or invoking his Fifth Amendment rights and drawing an adverse inference. Again, the “chief harm against which his Fifth Amendment right could have potentially played a role in protecting him—being found guilty of a crime—has now come to pass.” *Russ*, 2022 U.S. Dist. LEXIS 67599, at *4.

Finally, Davis raises the “gag order,” but the case in which that order was entered has been closed pursuant to the Order of Nolle Prosequi. *See* Exhibit “B.” Further, that “gag order” prohibited Davis and his counsel from “discussing or commenting on any aspect of this criminal case with the media until such time as it has concluded.” This does not prohibit Davis from discussing the civil case, nor does it in any way impact his ability to obtain a fair trial in the civil case. In sum, Davis does not meet his burden of specifically demonstrating how his interests will be harmed, and this factor weighs against a stay.

5. Interest of the Courts and the Public Interest

The Court has an interest in the timely adjudication of matters upon its docket, and the Public has an interest in the timely recovery of misspent public funds. As Davis notes, “the conviction of a civil defendant as a result of the entry of plea...can contribute significantly to the narrowing of issues...and promote settlement of civil litigation.” *See* Davis’s Memorandum [Dkt. 106] at 6. Judicial efficiency and the public’s interest are best served by denying a stay.

CONCLUSION

The primary reason Davis sought a stay was to avoid prejudice to his criminal defense. Now that he has pleaded guilty, that reason is gone. MDHS respectfully asks that Davis's Motion to Stay be denied.

Respectfully submitted,

MISSISSIPPI DEPARTMENT OF HUMAN
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CERTIFICATE OF SERVICE

I hereby certify that I have this date filed the foregoing with the Court's MEC system,
which sent notice to all counsel of record.

This the 11th day of October, 2022.

/s/ Kaytie M. Pickett
KAYTIE M. PICKETT