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U.S. v. Pegg  
M.D.Ga.,2000.

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United States District Court,M.D. Georgia,  
Valdosta Division.

UNITED STATES OF AMERICA

v.

William S. PEGG, a/k/a "Buck Pegg," a/k/a "Bucky  
Pegg," Defendant.

No. 7:97-CR-30 HL ALL.

Nov. 9, 2000.

LAWSON, J.

\*1 This matter is before the Court on the Government's Motion to Dismiss Joe H. Pegg's Amended Section 853(n) Petition [Tab 61] and Petitioner Joe H. Pegg's Petition for Leave to Serve Discovery [Tab 65]. After consideration of the Motions, and as more fully set forth below, the Motion to Dismiss is hereby granted and the Petition for Leave to Serve Discovery is hereby denied.

On June 30, 1997, William S. Pegg waived indictment and entered into a plea and immunity agreement with the United States Attorney for the Middle District of Georgia (hereinafter "the Government"). Pursuant to the terms of the agreement, Pegg voluntarily entered a plea of guilty to two substantive criminal counts, including conspiracy to possess and distribute controlled substances in violation of 21 U.S.C. §§ 841, 846, 960 and 963, and further agreed to criminal forfeiture of those assets which were proceeds of or which facilitated the substantive violations. Pegg further agreed to assist the Government in locating various assets, in exchange for which the Government agreed to recommend that Pegg be sentenced to a three-year term of probation. The Court accepted Pegg's guilty plea but deferred

acceptance of the plea agreement until after receipt of a presentence report. The plea was accepted on May 26, 1999 and judgment was entered on May 27, 1999.

On July 7, 1998, the Court entered a Superseding Preliminary Order of Forfeiture, pursuant to the terms of which Pegg's interest in \$46,463,460.20 and his interest in identified real property located in Florida were forfeited to the United States. The Order further directed that Pegg's brother, Joe H. Pegg, be given direct notice of the forfeiture as required by 21 U.S.C. § 853(n). Thereafter, on August 11, 1998, Joe H. Pegg submitted a petition in which he asserted standing to challenge the validity of the Superseding Preliminary Order of Forfeiture. The Government then moved to dismiss the petition.

After hearing argument from the parties, the Court granted the Government's Motion to Dismiss, finding that the petition failed to set forth sufficient facts to establish Joe H. Pegg's legal right, title, or interest in the forfeited property. The Court declined to accept Joe H. Pegg's argument that he should be excused from providing the specific information required by 21 U.S.C. § 853(n) because providing the required information would oblige him to incriminate himself. The petition was dismissed with prejudice on December 9, 1998.

Joe H. Pegg appealed the order dismissing his petition to the United States Court of Appeals for the Eleventh Circuit. The Eleventh Circuit affirmed the Court's conclusion that the petition was inadequate but remanded the matter with the direction that the dismissal be entered without prejudice, thereby allowing Joe H. Pegg the opportunity to amend the petition. *United States v. Pegg*, No. 98-9617, slip op. at 2-3 (11<sup>th</sup> Cir. Apr. 10, 2000). The appellate court further directed that if Joe H. Pegg desired to amend his petition, he should do so within twenty days of the entry of the mandate. *Id.* at 3.

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\*2 Consistent with the appellate decision, Joe H. Pegg timely filed an amended petition. In his amended petition, Joe H. Pegg has asserted that he has a legal right, title or interest in the \$46,463,460.23 and the Florida real properties so as to render the Superseding Preliminary Order of Forfeiture invalid. (Am.Pet.¶¶ 1, 2.) Joe H. Pegg has described the nature and extent of his interest in the property as "an ownership interest" (Am.Pet.¶¶ 4, 5), and has explained the time and circumstances of the acquisition of his interests in the property in the following manner:

6. Joe H. Pegg's right, title or interest in the property was acquired in part from funds generated by his activity as described in the Presentence Report prepared for the United States District Court for the Eastern District of Louisiana in Case Number 81-00109-01.... These activities include importation, conspiracy and other charges related to importing cannabis into the United States during the period from September 1980 through January 1981..

7. Joe H. Pegg's right, title or interest in the property was acquired in part from his interests in several profitable and legitimate business enterprises during the period from the mid 1960's up to and including 1977, as well as earnings for work performed....

8. Joe H. Pegg's right title or interest in the properties was acquired in part from monies gifted to him by his father, Harry Pegg, from approximately the middle 1970's through the early 1980's....

9. Joe H. Pegg's right title or interest in the properties was acquired in part from investment earnings....

(Am.Pet.¶¶ 6-9.) In addition to the foregoing, Joe H. Pegg has alleged as "Additional Facts" supporting his claim of ownership that the Government initially conceded that the property at one time belonged to him but that the Government later claimed that at some unspecified time Joe H. Pegg lost ownership of the property to William S. Pegg. (Am.Pet.¶ 10.)

The Government has now moved to dismiss the amended petition, arguing that despite the foregoing allegations presented in the petition, it still fails to

provide the specific information necessary to withstand dismissal. The Court agrees.

Third party interests in property subject to criminal forfeiture for violations of 21 U.S.C. §§ 841, 846, 960 and 963 are addressed by 21 U.S.C. § 853(n), which allows persons asserting legal interests in forfeited property to petition for a hearing to adjudicate their interests in the property. With respect to the form and content of the petition, 21 U.S.C. § 853(n)(3), provides as follows:

The petition shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property, any additional facts supporting the petitioner's claim, and the relief sought.

\*3 21 U.S.C.A. § 853(n)(3) (West 1999).<sup>FN1</sup> The question presented in this case is whether Joe H. Pegg's amended petition sets forth the information required by § 853(n)(3) sufficiently to withstand dismissal.

FN1. The language of § 853(n)(3) tracks the language of 18 U.S.C. § 1963(1)(3) and, therefore, case law interpreting § 1963(1)(3) is also applicable in interpreting § 853(n)(3). See, e.g., *United States v. Ribadeneira*, 105 F.3d 833, 835 n. 2 (2<sup>d</sup> Cir.1997) (following Ninth Circuit and holding that cases discussing 21 U.S.C. § 853(n)(6) and 18 U.S.C. § 1963(1)(6) could be applied interchangeably).

Those courts which have considered § 853(n)(3) or § 1963(1)(3) have held that "[i]f a third party fails to allege in its petition all requisite elements, the court may dismiss the petition without providing a hearing." *United States v. BCCI Holdings (Luxembourg), S.A.*, 814 F.Supp. 111 (D.D.C.1993) (citing *United States v. Campos*, 859 F.2d 1233, 1240 (6<sup>th</sup> Cir.1988) and *United States v. Mageean*, 649 F.Supp. 820, 825 (D.Nev.1986), *aff'd* 822 F.2d 62 (9<sup>th</sup> Cir.1987)). See also *United States v. Davis*, 724 F.Supp. 268 (S.D.N.Y.1989) (dismissing

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petition without prejudice for failure to allege sufficient information showing entitlement to forfeited funds). The Government argues that Joe H. Pegg's petition offers only vague and conclusory statements about how he came to acquire a legal interest in the forfeited property and, therefore, he has failed to provide sufficient details with respect to the requisite elements of the petition to allow him to proceed to a hearing. In opposing the Government's Motion to Dismiss, Joe H. Pegg argues that the Government is attempting to turn the pleading stage of § 853(n)(3) into the hearing stage by requiring details in the petition which a petitioner need only provide at the hearing stage. (Joe H. Pegg's Mem. Supp. Opp'n Gov't's Mot. Dismiss Am. Pet. at 5.)<sup>FN2</sup>

FN2. Joe H. Pegg also argues that proposed Federal Rule of Criminal Procedure 32.2, which will become effective December 1, 2000, supports his contention that he has satisfied the requirements of the petition. Although the proposed Rule provides, among other things, for discovery in complex cases, it does not address how much factual detail is required in a third-party petition in order for that petition to withstand a motion to dismiss. Therefore, even if the Court were to consider proposed Rule 32.2, the Rule would not alter the conclusion reached here.

Section 853(n)(3) allows interested third-parties to petition a court to modify a decree of forfeiture, based on a showing by a preponderance of the evidence, that the third-party had a superior legal, right, title or interest in the forfeited property. However, a third-party petitioner must do more than allege that the property was not that of the defendant; the third-party petitioner must affirmatively allege how he acquired his interest in the forfeited property and how that interest is superior to the interest which the defendant had in the property. As a result, in order to withstand dismissal of his claim, it appears to the Court that a third-party petitioner must offer enough detail about the nature and extent of his interest and the time and

circumstances of his acquisition of that interest to allow the Court to determine whether the petition merits a hearing.

In this case, Joe H. Pegg has offered little more than the assertion that he has an ownership interest in the property and that he acquired that interest from illegal and legal activities, as well as from monies given to him and investments made during various lengthy time periods. He has failed to establish even a threshold factual basis from which this Court can make a determination about the merits of his petition. While the Court agrees with Joe H. Pegg that he is not obliged to provide all of the details of his ownership and interest at the pleadings stage, it seems to the Court that a petitioner must do more than Joe H. Pegg has done here.<sup>FN3</sup>

FN3. Joe H. Pegg argues that he is not obligated to provide factual detail until the hearing stage of the ancillary proceeding. However, this argument begs the question: If he can provide the necessary factual detail at the hearing stage, what prevents him from providing more factual detail in the petition?

\*4 After review of the amended petition, the Court finds that it adds very little information to the petition which was previously filed and dismissed by the Court. It is the Court's determination that § 853(n)(3) requires more detail concerning the nature and extent of a petitioner's interest in the forfeited property than Joe H. Pegg's petition sets forth here. Accordingly, the Government's Motion to Dismiss the petition is granted and the petition is hereby dismissed with prejudice; Joe H. Pegg's Petition for Leave to Serve Discovery is denied.

SO ORDERED, this the 8 day of Nov., 2000.

M.D.Ga.,2000.

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