Friday, September 21. 2007

Washington, D.C.'s post and forfeit maze.

Photo from website of U.S. District Court (W.D. Mi.).Â Washington, D.C., gets thousands of demonstrators annually. With the years-long penchant by D.C. police and mayors to unlawfully arrest demonstrators, massive arrests of demonstrators are bound to put a strain on the Superior Court's lockup, where countless defendants -- even for a whole host of alleged petty offenses -- languish overnight (at best) in decrepit group cells, waiting for a bond hearing that may take place in the morning, or maybe the afternoon, or the following Monday for Saturday evening arrests. Welcome to the ugly side of Washington that tourism promoters do not want you to see, even though you could get unlawfully arrested and locked up, just as did plenty of uninvolved people during the September 2002 First Amendment-protected anti-war and anti-globalization demonstrations. Â Sometimes to reduce courthouse lockupÂ burdens from mass arrests of demonstrators, the Superior Court deputizes police to collect collateral money from arrestees outside of the courthouse's weekday operating hours; here is one such deputizing order. The governing law, which is D.C.Â Code Â§ 23-1110, permits a penalty of up to 180 days in jail for failing to appear in court after posting such collateral, which apparently usually is an amount under $100 (with $100 civil post and forfeit payment apparently having been the settlement over the Karl Rove picketer prosecutions about which I blogged last Wednesday). Sometimes, the police just arrange for the collateral payment to act as a non-criminal payment, so long as the arrestee agrees to forfeit the collateral rather than demanding a trial. When the latter approach is taken, I wonder what is the purpose for the arrest in the first place, other than as a way to get the arrestee off the street (which leads police unlawfully to detain -- and thus censor --lawful demonstrators)and to line the government treasury with more money. Â In any event, recently I was hired by a gentleman who was arrested for disorderly conduct in Washington, D.C., and was given the option to post collateral to avoid incarceration followed by a court bond hearing, and was given the option to make the case go away by forfeiting the collateral. (See this report about wrongful disorderly conduct arrests in Washington, D.C.) My client wanted a trial, instead, and hired me to proceed in that direction. Â When my client paid his collateral, he received a two-page sheet with instructionsÂ on how to avoid forfeiting the collateral. The instructionsÂ advised toÂ file a motion to that effect within ninety days of posting the collateral, with the Superior Court's criminal clerk's office. However, the instructions did not spell out the Byzantine maze that the clerk's office would tell my client to follow.Â First, the court's criminal clerk's officeÂ refused to accept the motion, as a case number had not been assigned, even though my client's collateral receipt says to file the motion with the criminal clerk's office. Next, the clerk's office said to get a signature from the opposing law office -- the D.C. Attorney General's Office -- and to go to Superior Courtroom 115 to seek a magistrate judge's authorization to have a trial. However, my client's collateral receipt merely instructs to serve a copy of the motion on the attorney general's office, and says nothing about needing to appear in person for anything, as opposed to being able to send the motion by mail to the court, with a mailed copy to the prosecutor's office. Â Worse, the prosecutor opposed giving my client a trial date, claiming that my client had knowingly and voluntarily posted collateral in his case, and that no changed circumstances had taken place to set aside any forfeiture. Fortunately, the magistrate judge saw right through such a baseless argument, and granted my client the right to have a trial. Had the judge not immediately granted the right to a trial, I would have responded that one changed circumstance is that my client paid the collateral without benefit of a lawyer present and without being before a judicial officer; therefore, his decision to pay the collateral was not an informed decision, and was made under duress between refusing to pay the collateral and to languish in the courthouse lockup, or to pay the collateral so as not to languish in the lockup. I also would have responded that the prosecutor's opposition to holding a trial is akin to Lucy van Pelt offering for Charlie Brown to kick the football, only to pull it away at the last moment. The prosecutor's opposition flies in the face of the absence ofÂ any statutory law about forfeiting the right to a trial by payingÂ collateral. The prosecutor's opposition also flies in the face of theÂ collateral receipt, which says, inter alia: "Forfeiture is final unless you (or your attorney) file a 'Motion to Set aside Forfeiture' within 90 days..." We met said ninety-day deadline, and we are proceeding to trial; the only intention of refusing to forfeit collateral should be to hold a trial, and certainly not to plead guilty. Â The foregoing procedures to obtain the right toÂ a trial afterÂ paying collateral areÂ enough of an unnecessary pain for local arrestees. Imagine the problems such a procedure would wreak on an out-of-town resident who sends in a motion to schedule a trial, only to receive a letter back from the court clerk advising to go in person (or through a lawyer) to seek a judge's authorization to schedule a trial. When faced with the relatively small collateral amount and the cost of hiring a lawyer, most out-of-state residents -- let alone local arrestees -- will just opt toÂ forfeit the collateral. However, massive forfeitures of collateral will help encourage cops to continue to unlawfully arrest people for cases that will involve paying and forfeiting collateral.
Â Sometimes I get a sense that plenty of bureaucrats do not recognize how costly it is for plenty of people to be required to come to court merely to ask permission to set a trial date. That is what the mail should be for, particularly for defendants who live hundreds of miles from the courthouse. Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00