

173 F.3d 430

Unpublished Disposition

NOTICE: THIS IS AN UNPUBLISHED OPINION.

(The Court's decision is referenced in a "Table of Decisions Without Reported Opinions" appearing in the Federal Reporter. Use FI CTA6 Rule 28 and FI CTA6 IOP 206 for rules regarding the citation of unpublished opinions.)

United States Court of Appeals, Sixth Circuit.

UNITED STATES of America, Plaintiff-Appellee,

v.

Jay MAGGI, Defendant-Appellant.

No. 98-5570. | Feb. 5, 1999.

\*\*\* Start Section

...

Before [SILER](#), [BATCHELDER](#), and [COLE](#), Circuit Judges.

### Opinion

\*1 This is a direct appeal from a judgment of conviction. This case has been referred to a panel of the court pursuant to [Rule 34\(j\)\(1\), Rules of the Sixth Circuit](#). Upon examination, this panel unanimously agrees that oral argument is not needed. [Fed. R.App. P. 34\(a\)](#).

In 1997, Jay Maggi was named in a four count indictment for tax related charges. Maggi was thereafter tried to a judge and found guilty of two counts of tax evasion, in violation of [26 U.S.C. § 7201](#). The court sentenced Maggi to a four month term of incarceration to be followed by a three year period of supervised release, the first four months of which are to be served in home incarceration. This appeal followed. The parties have briefed the issues; Maggi is proceeding without benefit of counsel.

Maggi was working for the Federal Aviation Agency as an air traffic controller in 1992 and 1993. In those years, Maggi submitted a federal income tax form W-4 in which he claimed to be exempt from the withholding requirement for one of several reasons:

- 1) Last year, I had a right to refund of all federal income tax withheld because I had no tax liability; and
- 2) This year, I expect a refund of all federal income tax withheld because I expect to have no tax liability; and
- 3) This year my income exceeds six hundred dollars and includes non-wage income [and] another person

cannot claim me as a dependent.

Maggi's employer reduced Maggi's withholding almost to zero during 1992 and 1993 after receiving Maggi's revised W-4 form. The proof at trial, however, was that Maggi did not meet the conditions described above. He in fact had substantial income from wages and interest in 1992 and 1993 while filing no income tax returns. Maggi did not testify at trial and did not seek a motion for a judgment of acquittal at the close of the government's case or his own. The court entertained arguments from the parties and found Maggi guilty of two counts of tax evasion.

On appeal, Maggi raises four issues for review:

1) Is involuntary servitude on record where the criminal proceeding was instituted to apply physical and legal coercion to compel my specific performance to a contract one of bailment (strictly a civil matter) and results in imprisonment?

2) Is not imprisonment for debt on record where the amount of prison time is based solely upon the amount of the "debt" in the form of a "1040 type tax" that is alleged to be due and owing from me to the U.S. Government?

3) Is not an arbitrary and wrongful government action (violation of due process) on record when imprisonment is imposed for failing to perform the act of making an IRS Form 1040 writing when I R S persons failed or neglected to exercise the civil remedy authority available to them to see that the government is made whole as to any "Federal income tax return" act required of me, and instead arranged for this criminal action before making and sending any of the usual letters to me that can lead up to a notice of deficiency?

\*2 4) Was I duly convicted under [26 U.S.C. Sec. 7201](#) when Congress made it ONLY applicable to the "person" defined in [26 U.S.C. Sec. 7343](#) and I have offered un rebutted proofs that I am not such person; and, if I were such person, I would have to be charged with acts of fraud against the U.S. Government before additional punishment under [Sec. 7201](#) could be lawfully applied?

Maggi's first issue lacks merit. Maggi's argument in support of this issue is that the federal income tax is unconstitutional because it is a direct, unapportioned tax.

This argument has been raised and rejected for decades. *See, e.g., Brushaber v. Union Pac. R.R. Co.*, 240 U.S. 1, 18-19 (1916), and the federal courts have subsequently affirmed that holding. *See Crowe v. Commissioner*, 396 F.2d 766, 767 (8th Cir.1968) (per curiam). Maggi also argues in connection with this issue that his imprisonment in this context violates the Thirteenth Amendment prohibition on involuntary servitude because it is for nonpayment of debts. The Thirteenth Amendment, however, is inapplicable by its own terms where the alleged involuntary servitude is imposed “as punishment for crime.”

The second issue goes to Maggi’s contention that he is being imprisoned solely for nonpayment of a debt. It is clear, however, that Maggi’s prosecution was initiated on allegations that Maggi had committed criminal violations of the United States tax code.

The third issue is that Maggi’s Fifth Amendment right to due process was somehow violated when the government proceeded against him in a criminal action without first attempting to resolve the matter through civil means. This argument is based on the Secretary’s ability under [26 U.S.C. § 6020\(b\)\(1\)](#) to manufacture a return for an individual who has failed to file one. This argument has been considered and rejected. *See, e.g., United States v. Stafford*, 983 F.2d 25, 27 (5th Cir.1993) (approving jury charge that [§ 6020\(b\)\(1\)](#) does not place burden to file on Secretary nor does it relieve taxpayer of duty to file), *United States v. Powell*, 955 F.2d 1206, 1213 (9th Cir.1991) (same).

The final issue is Maggi’s contention that his status as a federal employee removes him from the definition of a “person” who may be guilty of a felony under [26 U.S.C. § 7201](#). The term “person” as used in the tax code has been consistently, and plainly, defined as any individual. [26 U.S.C. § 7701\(a\)\(1\)](#). This appeal lacks merit.

Accordingly, the district court’s judgment is affirmed. [Rule 34\(j\)\(2\)\(C\), Rules of the Sixth Circuit](#).

#### Parallel Citations

1999 WL 96651 (C.A.6 (Tenn.)), 83 A.F.T.R.2d...