

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT  
OF MISSOURI WESTERN DIVISION

United States of America, Plaintiff,

-vs-

Robert Emmet O'Malley, Defendant.

No. 14,459.

ORDER

It is hereby ordered as follows:

1. That the Probation Officers of this Court will ascertain from the Warden of the United States penitentiary at Leavenworth, Kansas, on what day and at what hour Robert Emmet O'Malley will be released from confinement in the penitentiary under the sentence in this case. They (or such one or more of them as the Chief Probation Officer shall designate) will present themselves on that day and hour at the Warden's office in the penitentiary to receive the said O'Malley into their custody. They will transport him by automobile to Kansas City, Missouri, and conduct him to the office of the Probation Officers in the United States Court House in Kansas City.

2. Before the date of O'Malley's release from confinement in the penitentiary the Probation Officers will ascertain whether he has complied with certain conditions of the probation granted as to the second count of the indictment, that is, whether he has paid the fine imposed and whether he has paid the tax and civil penalty assessed (or such amount as the Department of the Treasury shall have agreed to accept in full settlement of his liability).<sup>\*</sup> If it shall be ascertained that these conditions have not been complied with, the Probation Officers will at once produce O'Malley in open court and move for revocation of his probation and for execution of the two years' additional penitentiary sentence imposed on the second count of the indictment.

3. If it shall be ascertained that the conditions of probation mentioned in Paragraph 2 of this Order have been complied with, then the Probation Officers will proceed to give the said O'Malley full and complete instructions concerning the additional conditions of his probation.

4. When O'Malley has been fully instructed touching the conditions of his probation,

then, on the same day, in the office of the Probation Officers, in

\*The determination of the Department of the Treasury as to what amount O'Malley should pay in full settlement will be considered as a prima facie showing of his ability to pay that amount, a showing not to be overcome except by a showing that neither O'Malley nor his immediate family, out of moneys received from O'Malley, had the ability to pay that amount. If this provision of this order should be interpreted as a modification of the conditions of probation as originally imposed, then those conditions are accordingly modified.

the United States Court House, the Probation Officers will surrender the custody of the said O'Malley either to the Sheriff of the City of St. Louis (or his agent) or to the Sheriff of Jackson County (or his agent), as shall have been agreed by the prosecuting authorities of the City of St. Louis and Jackson County. If they do not agree, then the Probation Officers will surrender the custody of O'Malley to the Sheriff of the City of St. Louis (or his agent). The exclusive custody of this Court and of the Probation Officers for this Court will be suspended for the purpose of permitting the prosecution in St. Louis or Jackson County or in any state court in Missouri of any indictment or information against O'Malley and for the service of any sentence of imprisonment imposed in any such court, if any sentence shall be imposed. Such suspension of custody shall be only for the periods of time required for the purposes here stated.

5. For the purpose of giving notice of this Order the clerk of this court immediately will send a copy of the Order and the subjoined Memorandum to the United States Attorney, to the Warden of the United States Penitentiary at Leavenworth, to O'Malley, to his counsel in this case, to the Sheriff of the City of St. Louis and to the Sheriff of Jackson County, Missouri.

6. It is not anticipated that there will be the slightest interference on the part of any person, official or private, with the execution of this Order or any part of it. If there should be any attempt at interference or any interference, the person or persons so attempting to interfere or so interfering will be taken into custody and be brought forthwith before

this Court to be dealt with according to law. If O'Malley himself shall violate any part of this order or voluntarily consent to its violation it will be considered that the conditions of his probation have been broken.

7. This Order establishes the procedure to be followed hereafter in similar cases in which sentences were imposed by the undersigned judge.

SO ORDERED.

Merrill E Otis, Judge.

FILED FEB 16 1940

A. L. ARNOLD, Clerk,

By W.W. Caster, Deputy

#### MEMORANDUM

It is desirable that there should be subjoined to the foregoing Order a few words of explanation.

As in the earlier case of Thomas J. Pendergast and the later case of John J. Pryor, so in the case of O'Malley, it was ordered at the time of sentence that the custody of the Court under the conditional probation granted as to one count of the indictment should begin immediately on the prisoner's release from institutional custody. The two custodies, that of the Attorney General in the penitentiary and that of the Court under the conditional probation, pass into each other with no break between them. While we have heretofore announced that the custody of the Court will not be permitted to interfere with any prosecution in the state courts, it must be obvious that no state prosecution or any incident thereof can be allowed to hamper the execution of an order of the Federal Court. Before O'Malley will be released to state authorities it must first be determined whether he has complied with those conditions probation which were required, when he was sentenced, to be "promptly" complied with. Moreover, before he is released to state authorities, there must be opportunity for the Probation Officers to instruct him fully as to the conditions and limitations of his custody under probation.

Paragraph 6 was added to the Order because of repeated statements in the press in which the superior right of the Court to prior custody of O'Malley on his release from the

penitentiary was unintentionally overlooked. It was desirable to give appropriate warning.

Merrill E. Otis

Judge