

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

UNITED STATES OF AMERICA,)
)
)
Plaintiff,)
) Case No. 08-00026-03/05-CR-W-FJG
vs.)
)
DELMON L. JOHNSON,)
)
Defendant.)

DEFENDANT DELMON JOHNSON'S
SUPPLEMENTAL MOTION IN LIMINE TO DOCUMENT #236
PREVIOUSLY FILED ON 6/29/09

COMES NOW, Defendant, Delmon Johnson by and through his attorney, Darren E. Fulcher, and submits his Supplemental Motion in Limine to prohibit the government from introducing and eliciting testimony or evidence of Defendant Delmon Johnson's prior felony conviction. In support of his motion, Mr. Johnson states as follows:

I. BACKGROUND

Mr. Johnson is being charged in One Count Conspiracy to illegally distribute controlled substances; One Count of Conspiracy to launder illegally obtained proceeds; and Four Counts of illegal distribution of a controlled substance. The approximate time frame of the alleged charges are from August 2004 to October 2005.

The government seeks to use for purposes of impeachment, Mr. Johnson's prior felony conviction for Theft of Mail by a Postal Employee which was entered on August 14, 1998. Mr. Johnson was not incarcerated for said offense.

II. RELEVANT LAW AND ARGUMENT

Pursuant to Federal Rules of Evidence 609(b), evidence of conviction of a crime is not admissible if a period of more than ten (10) years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date.

Further, Rule 609(b) “establishes what is in effect a rebuttable presumption against the admissibility of prior convictions more than ten years old.” *United States v. Felix*, 867 F.2d 1068, 1073 (8th Cir. 1989); *United States v. Reeves*, 730 F.2d 1189, 1196 (8th Cir. 1984); *United States v. Singer*, 660 F.2d 1295, 1300 (8th Cir. 1981). The Eighth Circuit has echoed the sentiment of the Senate Judiciary Committee that “convictions over ten years old generally do not have much probative value and should be admitted very rarely and only in exceptional circumstances.” *Reeves*, 730 F.2d at 1196 n.7, (quoting S. Rep. No. 1277, 93rd Cong., 2d Sess., reprinted in 1974 U.S. Code Cong. & Admin. News 7051, 7061-62).

In this case, the government is attempting to introduce or enter in to evidence of Mr. Johnson, felony conviction for Theft of Mail while he was a postal employee. The conviction occurred almost twelve years ago and Mr. Johnson was never incarcerated for the offense. The conviction has no relevant or similar conduct to the charges presented before the Court. There is no probative value with the introduction of this evidence, and therefore the probative value can not outweigh the prejudicial harm it would cause if presented to the jury.

III. CONCLUSION

WHEREFORE, Defendant Delmon Johnson respectfully request the Court enter an Order precluding evidence, testimony or argument related to Mr. Johnson’s prior felony conviction herein and any other relief this Court deems just and proper.

Respectfully Submitted,

Fulcher & Brooks, LLC.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was delivered on June 14, 2010, to the CM-ECF system of the United States District Court for the Western District of Missouri for electronic delivery to all counsels of record.

 /s/ Darren E. Fulcher
Darren E. Fulcher
Attorney for Defendant