

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division

UNITED STATES OF AMERICA

v

2:19-cr-000171

ROBERT JAMES McCABE, et al

Defendant,

MOTION AND MEMORANDUM
TO DISMISS THE INDICTMENT
FOR FAILUTRE TO ALLEDGE QUID PRO QUO

COMES NOW, the Defendant, by Counsel, and moves the Court to dismiss the indictment against him pursuant to F.R.C.P. 12 (b) (1) for failure to allege facts that constitute a prosecutable offense.

1. That the defendant is charged in an eleven count indictment alleging conspiracy to commit money laundering.
2. That to properly charge bribery the prosecution must allege and prove a specific set of facts, i.e.; that Mr. McCabe and Mr. Boyle engaged in a quid pro quo involving an agreement to preform specific acts exchanging for benefits. *McDonnell v. United States*, 136 S. CT. 2355 (2016). In addition, the Supreme Court made clear that the government must allege and ultimately prove that the public official (McCabe) agreed to undertake, at the time of the alleged quid pro quo, specific official actions in exchange for the bribes, ID.

The indictment returned against this defendant fails in that it generally alleges activities over the course of thirteen years, none of which are specific enough to comply with *McDonnell*. It

merely alleges that the defendant “solicited things of value” from his codefendant and that “in exchange for these items, McCabe agreed to preform official actions....to benefit Boyle” on an “as needed” basis. In paragraphs 7 and 17, the indictment is silent as to when, where or the specific terms as such, it runs afoul of the teachings of *McDonnell* and must be dismissed.

Respectfully submitted,

Robert James McCabe
By Counsel

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CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of February, 2020, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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