

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
	:	
v.	:	
	:	Case No.: 21-CR-508-1 (BAH)
LUKE WESSLEY BENDER	:	
	:	
Defendants.	:	

**GOVERNMENT’S RESPONSE TO SUPPLEMENT
TO DEFENDANT’S SENTENCING MEMORANDA**

On April 17, 2023, defendant Luke Wessley Bender submitted a supplemental filing primarily dedicated to arguing that he should be sentenced for his felony crime, obstruction of an official proceeding under 18 U.S.C. § 1512(c)(2), commensurate with defendants convicted solely of misdemeanors. This Court has previously rejected as unpersuasive similar arguments by a defendant convicted of the same felony for his conduct on January 6, 2021. *See United States v. Herrera*, No. 1:21-cr-619 (BAH), Sent. Tr. at 78-80.

Mr. Bender also faults the Government for arguing that his Criminal History Category under-represented the seriousness of his actual criminal history. *See* ECF No. 124 at 5 n.2. However, included in his footnote is information that confirms the Government’s position. Since the Presentence Investigation Report was issued in this case, Mr. Bender was convicted and sentenced to a term of probation for one of the offenses that was pending at the time of the original PSR. *See id.*; *see also* ECF No. 99 at ¶ 75. An internet search reveals that Mr. Bender pleaded guilty on February 28, 2023 to “Injuring, etc., any property, monument, etc.,” in violation of Virginia Code § 18.2-137.¹ *See* Ex. A, B.

The February 28, 2023 conviction was not represented in the Presentence Investigation

¹ As here, Mr. Bender was represented by attorney Christopher Macchiaroli. *See* Ex. A.

report and therefore was not counted towards Mr. Bender's Criminal History Category. *See* ECF No. 99 at ¶¶ 69, 75. However, the conviction appears to be countable when considering to U.S.S.G. §§ 4A1.1(c); 4A1.1, cmt. n.4; and 4A1.2 cmt. n.1. With the corresponding one point addition to Mr. Bender's total criminal history score, Mr. Bender would have a score of four, resulting in a Criminal History Category of III. *See* ECF No. 99 at ¶ 69; U.S.S.G. Ch. 5, Pt. A. Accordingly, Mr. Bender's new Guidelines Range would be 27 to 33 months. *Id.*

The Government submits that a sentence of imprisonment of 30 months remains appropriate when considering the factors set forth in 18 U.S.C. § 3553(a).

Respectfully submitted,

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