

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA

No. 22-cr-30 (TJK)

v.

ROBERT THOMAS SNOW,

Defendant.

DEFENDANT’S MOTION FOR EARLY TERMINATION OF PROBATION

On July 7, 2022, Defendant Robert Thomas Snow was sentenced to one year of probation for his first ever offense, the petit misdemeanor of Parading, Demonstrating, or Picketing in a Capitol Building. As set forth in his sentencing memorandum, and as highlighted by the Court at sentencing, while inside the U.S. Capitol on January 6, 2021, Mr. Snow:

did not break, damage, or steal any property; hurt, injure, accost, or threaten law enforcement (or anyone else); go into any private office space or proceed to the well of the House or the Senate. Mr. Snow was not involved in planning or leading any of the activities that the crowd was engaged in on January 6, 2021, nor was he associated with any of the groups reported to be responsible for aspects of what occurred that day.

As this Court also noted at sentencing, Mr. Snow cooperated with law enforcement from the moment of his initial contact with agents at his home in Arkansas (months before he was ever arrested) and, in his written letter and subsequent statements at sentencing, wholeheartedly and sincerely accepted responsibility for his conduct. Consistent with these facts and circumstances, this Court stated, on more than one occasion, that if Mr. Snow completed his community service obligations, made his restitution payments, and complied with his conditions of probation, he could move for early termination of his probation.

Since the moment the Court issued its sentence, Mr. Snow has done everything possible to complete *all* of his conditions of supervision, demonstrating how seriously he takes his probation obligations. Mr. Snow paid his special assessment and restitution payments and fulfilled his community service hours as quickly and thoroughly as possible, before he had to undergo eye surgery and additional medical treatment for existing ailments that would have hindered his ability to do so. Now, as if such history needed to be recounted again, separate and apart from his exemplary completion of his supervision requirements, Mr. Snow's recovery from surgery, his need for two additional eye surgeries, and continually declining health at 78 years of age distinguishes him from the routine defendant seeking early termination. Additionally, Mr. Snow has received serious and viable threats, but cannot adequately protect himself in his home, where he has been increasingly confined due to his medical ailments, given the condition that he cannot possess a weapon as he has been licensed and trained to do.

Notably, U.S. Probation *does not oppose* early termination in this case. The Government, however, without even acknowledging Mr. Snow's thorough and complete performance of his community service obligations within the first few weeks of his supervision, claimed that there was no basis under the law for early termination and that Mr. Snow's filing was an improper motion for a "sentence reduction." The Government's position is completely without merit, and if undersigned counsel believed the Government was going to raise such legal claims, it would have incorporated all of the case law cited below in its initial filing on behalf of Mr. Snow.

Contrary to the Government's assertion otherwise, the fact remains that the early termination of probation is entirely routine in this jurisdiction. U.S. Probation on occasion *sua sponte* seeks early termination and, absent extraordinary circumstances, the Government defers to such requests. In those cases, the parties and the Court praise performance and compliance (especially, extraordinary

dedication to community service obligations) and do not brush aside such actions as nothing more than what is expected. Termination of probation is so routine in this jurisdiction that the Court created a special filing event for such motions, and in each such much litigated, the Government has never argued that such a request was an improper motion for a sentence reduction.

In summary, notwithstanding the Government's strenuous opposition to early termination in this matter — which is completely consistent with its prior request for two weeks of jail time for a first-time 78 year old misdemeanor offender — Mr. Snow respectfully asks that this Court give effect to its own statements and reasoning when announcing its sentence, and permit Mr. Snow's probation to terminate early, as he has done everything asked of him, is hindered by continued probation, and has lived an honorable life prior to and after January 6, 2021.

For all these reasons, Mr. Snow respectfully requests that his motion for early termination be granted and that this Court issue an order granting U.S. Probation authority to return Mr. Snow's passport to him.

FACTUAL BACKGROUND

On January 4, 2022, Mr. Snow voluntarily surrendered to the Federal Bureau of Investigation ("FBI") on an Arrest Warrant relating to misdemeanor offenses. He was processed at the United States District Court for the Eastern District of Arkansas, where he was shackled for several hours. At the initial presentment held that day, the assigned judge released Mr. Snow on his personal recognizance and refused to grant all of the Government's requested conditions of release, given Mr. Snow's complete absence of a criminal history. On January 11, 2022, Mr. Snow appeared before Magistrate Judge G. Michael Harvey by video and again was permitted to remain on his personal recognizance.

On March 24, 2022, Mr. Snow entered a guilty plea to one count of Parading, Demonstrating,

or Picketing in a Capitol Building in violation of 40 U.S.C § 5104(e)(2)(G), a petit misdemeanor which carries a maximum period of incarceration of six months. At the conclusion of that proceeding, Mr. Snow was permitted to remain on his personal recognizance.

As discussed at his sentencing, while inside the U.S. Capitol, Mr. Snow did not break, damage, or steal any property; hurt, injure, accost, or threaten law enforcement (or anyone else); go into any private office space or proceed to the well of the House or the Senate. Mr. Snow was not involved in planning or leading any of the activities that the crowd was engaged in on January 6, 2021, nor was he associated with any of the groups reported to be responsible for aspects of what occurred that day.

Prior to his misdemeanor conviction in this case, Mr. Snow had no criminal history and had never been arrested before. Before being arrested, Mr. Snow fully cooperated with law enforcement at all stages of its investigation, including, but not limited to: (i) giving multiple interviews to FBI agents and full statements accounting to his presence inside the U.S. Capitol; and (ii) providing his cellphone and an item worn on January 6, 2021 to law enforcement without a search warrant. Following his arrest and arraignment, Mr. Snow remained in full compliance with his conditions of release, and moved up his status hearing so that he could enter a guilty plea *earlier* than originally anticipated in this matter.

As set forth in his Presentence Report (“PSR”), Mr. Snow is practically blind in his left eye due to a macular hole, suffers from retina bleeding, and has cataracts in both eyes. Mr. Snow suffers from arthritis conditions due to his age, which affects his back, hips, and legs. He also suffers extreme pain with shoulder disjoints (from a prior injury) and has a significant heart condition. In August 2016, he suffered a heart attack due to atherosclerosis in three arteries, which resulted in damage to the mitral valve. Mr. Snow underwent an angioplasty to place three stents in affected arteries. *See* PSR, ¶¶ 54-56 (detailing Mr. Snow’s failing medical condition).

On July 7, 2022, this Court sentenced Mr. Snow to one year of probation, with requirements that he complete 60 hours of community service, pay a special assessment of \$10.00, and pay restitution in the amount of \$500.00. During the sentencing hearing, the Court advised Mr. Snow that if he made his required payments and met his community service obligations, the Court would entertain a motion for early termination of probation.

That same day, immediately following the sentencing hearing, Mr. Snow paid his special assessment and required restitution to the Clerk of the Court. A receipt for both payments was provided to U.S. Probation and the assigned U.S. Probation officer confirmed that the required payments were made.

Between July 12 and August 10, 2022, Mr. Snow completed the required 60 hours of community service (performed with the Cleburne County Road Department). The supervising official for the community service entity completed and signed the form provided by U.S. Probation. Undersigned counsel sent the completed report to the assigned U.S. Probation officer, who subsequently confirmed receipt. Copies of the completed report and receipts of payments of all outstanding financial obligations, including, restitution, were also provided to the Government, at its request.

Consistent with his prior representations to the Court, Mr. Snow underwent macular hole retina surgery on August 11, 2022, and he was restricted from any significant movement for a period of time. Mr. Snow's additional eye surgeries are scheduled for November 7, 2022 and is awaiting to hear about further medical action from his treating cardiologist.

Given the exemplary actions undertaken by Mr. Snow to expeditiously make full restitution and complete 60 hours of community service, and in light of his continuing health problems and the Court's statements at sentencing, on August 15, 2022, Mr. Snow respectfully requested that his

probation be terminated. The Government opposed that request, claiming, that Mr. Snow's motion for early termination of probation was actually a motion to reduce sentence. Before Mr. Snow's deadline for filing a reply — wherein he could respond to that unsubstantiated position — the Court denied his motion and stated:

MINUTE ORDER as to ROBERT SNOW denying without prejudice Defendant's [36] Motion for Early Termination of Probation/Supervised Release. On July 7, 2022, this Court sentenced Defendant to one year probation, 60 hours of community service, and \$500 restitution. ECF No. 33. At the time, the Court noted that Defendant could move to terminate his probation early after completing his community service. See ECF No. 35. Defendant completed his community service and has now moved for early termination. But at this point Defendant has served only about six weeks of his one year term of probation. And he does not even try to explain how terminating his probation now is appropriate under 18 U.S.C. § 3564(c) or caselaw applying the same. Thus, it is hereby ORDERED that Defendant's motion is DENIED WITHOUT PREJUDICE.

Aug. 29, 2022 Min. Order at 1.

Still in full compliance with his supervision requirements, and having served close to three months of his term of probation (likely four months before his motion is fully adjudicated), Mr. Snow now renews his request for early termination. On October 3, 2022, undersigned counsel conferred with Mr. Snow's supervision officer and inquired, "Does U.S. Probation have any opposition to this motion for early termination?" Mr. Snow's supervision officer indicated, "none."

As discussed at length below, this Court has the discretion in the interests of justice to terminate Mr. Snow's probation and, consistent with its statements at sentencing, should exercise that discretion and terminate Mr. Snow's probation. To the extent the Court grants the instant motion, Mr. Snow also respectfully requests that his passport be returned to him, as he surrendered it to U.S. Probation in Arkansas as part of the imposition of his release conditions in this case. Mr. Snow's passport cannot be released by U.S. Probation without a Court Order.

ARGUMENT

In the case of a misdemeanor, a district court, “after considering the factors set forth in section 3553(a) to the extent that they are applicable,” may “terminate a term of probation previously ordered and discharge the defendant *at any time* . . . if it is satisfied that such action is warranted by the conduct of the defendant and the interest of justice.” 18 U.S.C. § 3564(c) (emphasis added). “The expansive phrases ‘conduct of the defendant’ and ‘interest of justice’ make clear that a district court enjoys discretion to consider a wide range of circumstances when determining whether to grant early termination.” *See United States v. Melvin*, 978 F.3d 49, 52 (3d Cir. 2020) (quoting *United States v. Emmett*, 749 F.3d 817, 819 (9th Cir. 2014)). “[E]xceptional conduct,” however, is not required to justify early termination;” rather, as United States Probation has indicated, the Court must “simply be satisfied that the termination is warranted and is in the interest of justice.” *United States v. Nelson*, No. 17-cr-424, 2022 WL 125814, at *1-2 (E.D.N.Y. Jan. 13, 2022) (citing May 12, 2009 Memorandum of the Judicial Conference Criminal Committee and the Administrative Office of the U.S. Courts, which states that “exceptional conduct” is not required to justify early termination); *United States v. Bellavance*, No. 3:10-cr-00045-BLW, 2021 WL 3669316, at *1 (D. Idaho Aug. 18, 2021) (instructing that the “court may terminate a defendant’s term of supervision ‘if it is satisfied that such action is warranted by the conduct of the defendant released and the interest of justice’” (citation omitted)).

In *United States v. Nelson*, the district court granted the defendant’s motion for early termination in consideration of the § 3553(a) factors and the circumstances of the defendant’s case. 2022 WL 125814, at *1-2. The court noted that it must be satisfied that early termination is warranted and is in the interest of justice, which was true in the defendant’s case. *Id.* at *2. Specifically, the court found “that the nature and circumstances of [d]efendant’s offense, and the need for his sentence

to adequately deter criminal conduct by him and others, as well as protect the public from harm by [d]efendant, all support early termination of his supervised release term.” *Id.* at *2 (citing § 3553(a)). Additionally, the court, upon information provided by U.S. Probation, believed that the defendant was stable in the community, had made progress towards reintegration, had complied with all conditions of supervised release, did not have a history of violence or recent arrests, did not suffer from mental health and substance abuse disorders, and was not a risk to any identifiable individual or to public safety. *Id.* Finally, the court placed great weight on the probation department’s recommendation for early termination. *Id.* Thus, the defendant’s motion was granted after serving 55 months of his 10-year supervised release term. *Id.* at *1.

In *United States v. Adamek*, the district court granted early termination and in doing so, the district court noted:

[T]he sentencing court considered the Defendant’s restitution payment to be paramount. The Defendant has paid his restitution in full. There were no special conditions related to substance abuse or to address mental health concerns. Thus, the Defendant’s need for rehabilitation does not appear to be an issue. The Court finds no information upon which it can find the Defendant is a danger to himself or others. While the payment of his entire restitution is in and of itself an important consideration, his current health and unemployment statuses are also compelling.

No. 18-cr-50186-001-PHX-DJH, 2021 WL 2555512, *1-2 (D. Ariz. May. 21, 2002); *see also Bellavance*, No. 3:10-cr-00045-BLW, 2021 WL 3669316, at *1 (“After having considered these factors, the Court concludes that the interests of justice warrant early termination of supervision. As already noted, defendant has performed very well on supervision; she does not need supervision in terms of training or medical care; and she has a fulltime job.”).

As discussed above, this Court need only find that termination “is warranted and is in the interests of justice.” *Nelson*, 2022 WL 125814, at *1-2. The following facts support the Court’s finding in that regard:

- Mr. Snow has complied with all conditions of his supervision and the obligations imposed by the Court;
- There are no additional treatment or course requirements and there is absolutely no concern for substance or mental health rehabilitation;
- There are no concerns that Mr. Snow is a danger to himself or others;
- U.S. Probation *does not oppose* the termination of Mr. Snow's supervision;
- Mr. Snow's eye surgery and anticipated medical treatment have limited his mobility, forced him to remain at his residence, and made it difficult for him to comply with any in-person reporting requirements, as the closest supervision office is over an hour away;
- The Court's requirement that Mr. Snow not possess any weapons while on supervision prevents him from being able to adequately defend himself and his wife in their rural home (located a significant distance from law enforcement), especially, when Mr. Snow was the victim of threats during the course of this proceeding and his declining health makes it harder for him to defend himself while unarmed from threatening or assaultive conduct.

Most importantly, this Court thoroughly and carefully analyzed the required § 3553 factors when sentencing Mr. Snow and that analysis supports the early termination of probation. The Court found that Mr. Snow's conduct was minimal vis-a-vis, other defendants who participated in the events of January 6, 2021; that Mr. Snow, with the exception of the incident offense, lived a law-abiding life prior to and after January 6, 2021; and that Mr. Snow cooperated with law enforcement and sincerely and wholeheartedly accepted responsibility for his conduct. This Court placed Mr. Snow on one year of probation, not because he was a danger to the community or because he needed drug and mental health treatment, but to ensure that he made full restitution and gave back to the community through extensive community service hours. That is exactly why this Court said more than once that it would be inclined to terminate Mr. Snow's supervision early, to the extent Mr. Snow completed his community service obligations. Since being contacted by law enforcement in 2021, Mr. Snow has done everything requested of him, including, while on pretrial release and probation. The Government

ordinarily does not oppose the termination of probation, especially when, as here, U.S. Probation does not oppose termination.

While the Government has a compelling obligation to prosecute those involved in the events of January 6, 2021, in doing so, it cannot lose its perspective and forget its obligations to be just, fair, and consistent in how it prosecutes all crimes. Mr. Snow, who accepted immediate responsibility, was shackled at his initial presentment, and became the subject of national news articles and threats, has paid the price for his conduct and should be permitted to have closure in the remainder of his life.

CONCLUSION

For all these reasons, Mr. Snow respectfully requests that his probation be terminated and that U.S. Probation be ordered to return to him his passport.

Dated: October 4, 2022

Respectfully submitted,

s/ Christopher Macchiaroli

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