UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
	:	
v.	:	**No. 22-CR-362**
	:	
ANDREW MICHAEL CAVANAUGH,	:	
	:	
Defendant.	:	

GOVERNMENT'S OPPOSITION TO DEFENDANT'S MOTION FOR EARLY TERMINATION OF PROBATION

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully submits this opposition to Defendant Andrew Michael Cavanaugh's Motion for Early Termination of Probation. (ECF No. 42.)

On January 6, 2021, while members of Congress gathered in the United States Capitol to certify the results of the 2020 presidential election, Cavanaugh stormed the building, fist-pumping and cheering, alongside a throng of screaming rioters. (*See* ECF No. 33, Government's Sentencing Memorandum.) For this conduct, Cavanaugh pleaded guilty to one count of 40 U.S.C. § 5104(e)(2)(G): Parading, Demonstrating, or Picketing in the Capitol Building. On August 2, 2022, Cavanaugh was sentenced to 24 months' probation, 60 hours' community service, and $500 in restitution. (*See* Judgment, ECF No. 39.) Now, less than halfway through his term of probation, Cavanaugh asks this Court to terminate his probation early. The Court should deny this motion.

BACKGROUND

On March 15, 2021, Cavanaugh was charged by complaint with violating 18 U.S.C. § 1752(a)(1) and (2) and 40 U.S.C. § 5104(e)(2)(D) and (G). On May 14, 2021, Cavanaugh was charged in a four-count Information with violating the same four misdemeanor offenses.

On February 7, 2022, Cavanaugh pleaded guilty to Count Four of the Information, charging him with a violation of 40 U.S.C. § 5104(e)(2)(G), Parading, Demonstrating, or Picketing in a Capitol Building. By plea agreement, Cavanaugh agreed to pay $500 in restitution to the Architect of the Capitol.

On August 4, 2022, the Court held the sentencing hearing. The government requested that the Court sentence the defendant to 30 days' incarceration, three years' probation, 60 hours of community service, and $500 in restitution. (*See* ECF No. 33 at 1.) Cavanaugh requested a probationary sentence. (ECF No. 37 at 1.) Both parties submitted sentencing memoranda and made arguments to the Court as to how the factors under 18 U.S.C. § 3553(a) should be weighed in the Cavanaugh's case. The Court considered the record and the arguments of counsel and sentenced Cavanaugh to 24 months' probation, 60 hours of community service and the agreed-to $500 restitution.

On July 10, 2023, Cavanaugh filed his Motion for Early Termination of Probation. (ECF No. 42.)

ARGUMENT

A court may terminate probation imposed in a misdemeanor case "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). In making this determination, the Court must consider the factors set forth in 18 U.S.C. § 3553(a). *Id.*; *see also United States v. Hartley*, 34 F.4th 919 (10th Cir. 2022) (holding that a district court must make individualized determinations based on the applicable statutory criteria before responding to a request to modify a sentence); *cf. United States v. Ferrell,* 234 F.Supp.3d 61, 63 (D.D.C. 2017) (same holding for considering early termination of probation in felony case).

In assessing whether the interests of justice warrant modification of a sentence, the Court should "review what may have changed in the intervening period" since the sentence was imposed. *Hartley*, 34 F.4th at 932, n.9; *see also Ferrell*, 234 F. Supp. at 64 (denying defendant's motion to terminate her probation early because she did not show "that any other changed circumstances—including any exceptional problems associated with completing her remaining term of probation—would alter the Court's original sentencing analysis or make the original sentence unduly harsh or otherwise inappropriate"); *United States v. Martin*, No. 89 CR. 405 (DNE), 1992 WL 178585, at *1 (S.D.N.Y. July 13, 1992) (denying motion for early termination of probation under 18 U.S.C. § 3564(c) where the defendant failed to offer "the existence of new circumstances that merit a modification of the original sentence").

Cavanaugh's request for early termination of his probation is not warranted because nothing has changed since this Court determined—less than a year ago—that 24 months' probation was sufficient but not greater than necessary to achieve the goals of sentencing. Cavanaugh does not attempt to argue that circumstances have changed warranting a modification of his sentence.

Rather, Cavanaugh leans on his compliance with the conditions of probation. Courts have routinely held that mere compliance with the conditions of probation without more does not warrant early termination. *See United States v. Salazar*, 693 F. App'x 565, 566 (9th Cir. 2017) (affirming denial of motion to modify conditions of probation where "the magistrate judge applied the correct legal standard when she considered the 18 U.S.C. § 3553(a) factors and determined that Salazar's mere compliance with the conditions of probation, without more, did not warrant early termination"); *United States v. Acosta-Triana*, No. CR 01-0817 (ES), 2017 WL 4786559, at *2 (D.N.J. Oct. 23, 2017) (finding general compliance with probation terms "insufficient to terminate probation"); *United States v. Rusin*, 105 F. Supp. 3d 291, 292 (S.D.N.Y. 2015) (stating that full

compliance with probation conditions is what is expected of defendants and "[e]arly termination is not warranted where a defendant did nothing more than that which he was required to do by law."). Likewise, under a similar analysis for motions to modify supervised release, unblemished compliance with the terms of supervised release, standing alone, have been found insufficient to warrant early termination of supervised release when the defendant has not "show[n] something 'of an unusual or extraordinary nature' in addition to full compliance." *United States v. Longerbeam*, 199 F.Supp.3d 1, 2-3 (D.D.C. 2016) (holding that "while the Court commends defendant for his law-abiding conduct and personal successes, such activities are expected of a person on supervised release and do not amount to "exceptionally good behavior" or "something of an unusual or extraordinary nature in addition to full compliance."); *see also United States v. Mathis-Gardner*, 110 F.Supp.3d 91, 93-94 (D.D.C. 2015) (noting courts "have found that mere compliance with the conditions of release is not enough to merit early termination of supervised release because model prison conduct and full compliance with the terms of supervised release is what is expected of a person under the magnifying glass of supervised release") (quotations omitted).

Nor does an analysis of the § 3553(a) factors justify the requested sentence reduction. Cavanaugh spent more than 30 minutes inside the U.S. Capitol building in the midst of a violent and deadly riot that threatened the peaceful transition of power in our nation. He entered the Capitol while U.S. Capitol Police were under siege despite his own background as a security officer in the United States Marines, charged with protecting secure government buildings like the U.S. Capitol. And, despite claiming that he only entered the Capitol to find a friend, he pumped his fist in the air as he crossed the threshold and made no effort to leave the Capitol quickly. The facts of Cavanaugh's offense have not changed.

Cavanaugh's history and characteristics were taken into account when the Court imposed 24 months' probation—already one of the lower sentences imposed on a January 6 defendant. Those characteristics have not changed in less than a year. Cavanaugh was compliant with the conditions of his pretrial release and this Court considered that when imposing his sentence. (Sentencing Tr. at 21.)[1] Cavanaugh's continued compliance with the terms of his probation—the baseline expectation—does not now alter this Court's sentencing analysis.

Moreover, the purpose of the sentence that this Court imposed is not merely to afford supervision while a defendant fulfills the other terms of a court's judgment; it serves as just punishment for the offense. *See* 18 U.S.C. § 3553(a)(2)(A). Cavanaugh's request to cut his probationary sentence in half does not reflect the seriousness of his offense, nor does it promote respect for the law. *See id.*

Finally, granting Cavanaugh's motion for early termination may result in unwarranted sentencing disparities between him and similarly situated January 6 defendants. 18 U.S.C. § 3553(a)(6); *see also United States v. Yung*, 1998 WL 422795, at *2 (D. Kan. June 12, 1998) (noting that if the court were to terminate the defendant's supervision early, "it would subvert the underlying policy of the Federal Sentencing Reform Act of 1984 to eliminate sentencing disparity among defendants guilty of similar offenses" and that the defendant's role in the conspiracy made him "more culpable than other convicted participants").

Since Cavanaugh's sentencing, scores of additional Capitol breach defendants have been sentenced. To aid sentencing courts, the government has developed a table providing additional information about sentences imposed on other defendants that is available at www.justice.gov/file/1567746/download. As demonstrated by this table, terminating

[1] The sentencing transcript is attached as an exhibit to this filing.

Cavanaugh's probationary sentence after less than 12 months would result in significant sentencing disparities with similarly situated defendants.

CONCLUSION

This Court crafted a sentence following careful consideration of each of the § 3553(a) factors. Cavanaugh presents no new information warranting early termination of probation. For the reasons stated herein and any discussed at a hearing on this motion, the government respectfully requests that this Court deny Cavanaugh's motion for early termination of his probation.

Respectfully submitted,

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