

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

v.

DANIEL JAY HERENDEEN,

Criminal Case No. 21-278(BAH)

Hon. Beryl A. Howell

MOTION TO CONTINUE HEARING AND TO APPEAR BY VIDEO

Daniel Herendeen, through counsel Colleen P. Fitzharris, moves to continue the probation violation hearing scheduled to take place in person on January 26, 2024, at 9:30 am. In addition, he respectfully asks that the hearing be conducted by video.

Mr. Herendeen pleaded guilty to Entering and Remaining in a Restricted Building or Grounds, 18 U.S.C. § 1752(a)(1). This Court sentenced him to 36 months' probation. Dkt. 87, Judgment. On January 11, 2024, undersigned counsel received notice of an in-person hearing to address alleged violations of probation. The violation petition alleges that Mr. Herendeen committed a criminal offense, failed to report his arrest within 72 hours, failed to comply with the special condition that he submit to two months' home detention, failed to report to his probation officer as directed, and relocated without approval from the Probation Department. Mr. Herendeen asks the Court to continue the hearing for three reasons.

First, Mr. Herendeen needs time to determine whether Ms. Fitzharris may continue representing him in this matter and obtain new counsel if she cannot. In March 2021, when Mr. Herendeen was arrested in Michigan, Ms. Fitzharris was appointed as counsel. At that time, she was an Assistant Federal Defender at the Federal Community Defender for the Eastern District of Michigan. In September 2022, however, Ms. Fitzharris transferred to the Office of the Federal Public Defender for the Western District of Washington, in Seattle. Although she continued to assist Mr. Herendeen, as needed, her continued representation requires approval of the Chief Federal Public Defender for the district.¹ The Federal Public Defender for the District of Columbia cannot represent Mr. Herendeen because that office represents the co-defendant. Mr. Herendeen asks for additional time to determine whether Ms. Fitzharris may continue to represent Mr. Herendeen effectively from Seattle while he is in Nashville, Tennessee, and whether the office will approve ongoing representation.

Second, at the end of December 2023, Mr. Herendeen was in a horrific car accident and was hospitalized. He is currently on bed rest and cannot travel for at least six weeks. Ex. 1, Medical Record (SEALED). In addition, he has been prescribed several pain medications that will affect his ability to understand and participate in the proceedings.

Third, the first violation alleged is that Mr. Herendeen committed a criminal offense. He has been charged, and the case is still pending in the 16th Circuit Court in

¹ Ms. Fitzharris obtained limited approval to continue representing Mr. Herendeen for purposes of filing motions to delay reporting to the Federal Bureau of Prisons.

Macomb County, Michigan. His arraignment was scheduled for January 16, 2024. Mr. Herendeen waived his presence at the arraignment because of his medical condition. A pretrial conference is scheduled for February 15, 2024. Ex. 2, 16th Cir. Ct. Dkt.

Mr. Herendeen asks this Court to continue the hearing regarding Violation 1 to allow the criminal proceedings to resolve. Resolution of the charges in state court may obviate the need for an evidentiary hearing. Mr. Herendeen enjoys more constitutional protections in those ongoing criminal proceedings than in hearings for alleged probation violations. He asks for the opportunity to defend against those charges in state court before addressing the violation in federal court. If the Court wishes to address the other alleged violations before that time, Mr. Herendeen asks that that hearing take place by video and at a time when he is no longer under the influence of prescription pain medications.

CONCLUSION

Mr. Herendeen respectfully asks this Court to continue the hearing on the alleged probation violations for at least 60 days. He also requests that he and counsel be permitted to appear by video.

Date: January 17, 2024

Respectfully submitted,

FEDERAL PUBLIC DEFENDER
WESTERN DISTRICT OF WASHINGTON
s/ Colleen P. Fitzharris
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CERTIFICATE OF SERVICE

I hereby certify that on January 17, 2024, I electronically transmitted the foregoing document to the Clerk of Court using the ECF system for filing and transmittal of Notice of Electronic Filing to all parties of record.

Date: January 17, 2024

Respectfully submitted,

FEDERAL PUBLIC DEFENDER
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