

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

United States of America)
)
 v.) USDC No. 21-cr-620 (BAH)
 Anthony Vuksanaj, *defendant.*)

UNOPPOSED MOTION TO VACATE IN-PERSON SENTENCING
AND TO PERMIT HEARING BY TELECONFERENCE

Defendant, through undersigned counsel Nathan I. Silver, II, Esq. (“counsel”), appointed by this Court under the Criminal Justice Act, with no opposition from the United States, respectfully moves the Court to vacate its order of in-person sentencing and to permit the parties to appear remotely. The reason follows

The defendant has been continued on release on his own recognizance under “USDC General Supervision” following his guilty plea to the offense of demonstrating in the U.S. Capitol building, a violation of 40 U.S.C. §5104(e)(2)(G), a petty offense and a class C misdemeanor. Defendant has complied with the conditions of his release during his supervision by Pretrial Services Agency of the Southern District of New York.

Defendant in his plea agreement waived, pursuant to the CARES Act, §15000(b)(4) (Pub.L. 116-136), his right to be present for court appearances. (ECF Doc. 25, “Waivers,” ¶9(E)) This was a condition of the plea agreement itself.

Defendant relies on Fed.R.Crim.Proc. 43(b)(2), “Defendant’s Presence,” in support of his request. It provides, “When Not Required. A defendant need not be present under any of the following circumstances:(2) Misdemeanor Offense. The offense is punishable by fine or by imprisonment for not more than one year, or both, and with the defendant's written consent, the

court permits arraignment, plea, trial, and sentencing to occur by video teleconferencing or in the defendant's absence.”

Defendant is charged in a four-count Information which alleges misdemeanors only, the kinds of crimes the Rule countenances. The remaining three counts will be dismissed at sentencing, per the Plea Agreement.

Defendant submits that the rule, by using the introductory phrase “when not required” allows the defendant to elect to appear either remotely (by video conferencing) or not at all. The role of the Court, in the defendant’s reading, is to ensure, by requiring a *written* consent, that the defendant has knowingly and voluntarily waived, without coercion or promise of benefit from anyone, the right to be present for any or all of the court proceedings in a misdemeanor criminal case. Once the Court satisfies itself that the defendant has made such a waiver, then the defendant may appear either by teleconference or not at all.¹

Defendant advises the Court that an in-person appearance will also work a personal financial hardship on him. The defendant has already provided to the U.S. Probation Office information about his finances. It is counsel’s sense, based on his having been present for U.S. Probation Officer Aidee Gavito’s telephone interview of the defendant, that the final Presentence Report (“PSR”) will conclude that the defendant does not have the means to pay a fine. Defendant remains responsible, per the terms of his Plea Agreement, to make payments of \$500 in restitution and \$10 for the special assessment. In this light, a hearing conducted remotely will

¹ Counsel advised the government (attorney of record, asst. U.S. Alison Prout) in advance of the defendant's plan to make this request. The government required the defendant in the Plea Agreement to waive his right to be present for further court proceedings. Though the government does not necessarily agree with the defendant’s reading of Rule 43, it nonetheless does not oppose the instant Motion. Counsel feels duty bound to share that information with the Court.

relieve the defendant of the expense of travel to and from the District of Columbia, along with meals and hotel accommodations.

Last, the defendant is eligible for self-surrender to the U.S. Bureau of Prisons in the event the Court sentences him to a period of incarceration. An in-person sentencing is, of course, necessary when a defendant is not eligible for self-surrender. Defendant understands his obligation to comply with all Court orders, just as he has during his period of pretrial (and now presentence) release, and the serious consequences that could result from a failure to self-surrender.²

Defendant has signed a waiver of his right to appear in person, which is attached to this Motion as Exhibit 1.

A proposed Order is attached.

WHEREFORE, the defendant respectfully moves the Court to grant said relief.

This pleading is,

Respectfully submitted,

/s/

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² Defendant would be subject, under 18 U.S.C. §3146(a)(2) and (b)(iv), to a separate penalty of up to one year imprisonment were he to fail “to surrender for service of sentence pursuant to a court order.” That is twice, and in addition to, the penalty (up to six months) he now faces at sentencing. The corresponding fine for this class A misdemeanor would be up to \$100,000 under 18 U.S.C. §3571(b)(5), twenty times the \$5,000 fine he faces for Demonstrating in a Capitol building, a Class C misdemeanor.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing pleading has been served via ECF on Alison Prout, Esq., U.S. Attorney's Office for the Northern District of Georgia, attorney of record for the United States, this 26th day of February, 2022.

/s/

Nathan I. Silver, II