

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
UNITED STATES OF AMERICA)	
)	
v.)	Criminal No. 21-0342 (PLF)
)	
JEREMIAH CAPLINGER,)	
)	
Defendant.)	
_____)	

ORDER

On November 5, 2021, Defendant Jeremiah Caplinger entered a plea of guilty to Count 5 of the Information filed on May 5, 2021, charging Mr. Caplinger with a violation of 40 U.S.C. § 5104(d) (Climbing on U.S. Capitol Grounds), a Class B misdemeanor. See Plea Agreement [Dkt. No. 36] at 1. The sentencing is currently set for February 1, 2022 at 2:00 p.m.

In the government’s sentencing memorandum, the government argues at length, in a section of their memorandum spanning ten pages, that the Court has the authority to impose a split sentence of incarceration followed by probation. See Government Sentencing Memorandum (“Gov’t Mem.”) [Dkt. No. 46] at 41-50. In the defendant’s sentencing memorandum, defense counsel disagrees, and argues that, under 18 U.S.C. § 3551(b), the Court has no such authority. Defendant’s Sentencing Memorandum (“Def. Mem”) [Dkt. No. 47] at 6. Defense counsel cites an opinion by Judge Colleen Kollar-Kotelly for support. Id (citing United States v. Spencer, 21-cr-0147 [Dkt. No. 70]). The legal question at issue is whether the Sentencing Reform Act of 1984, 18 U.S.C. § 3551 et seq., prohibits the Court from imposing both a custodial sentence and a sentence of probation for a violation of 40 U.S.C. § 5104(d), a

petty offense Class B misdemeanor. This is an important legal question that deserves more extensive briefing. Accordingly, it is hereby

ORDERED that Mr. Caplinger's sentencing is continued to a later date, to be determined following a decision on this legal issue; it is

FURTHER ORDERED that Mr. Caplinger shall file a supplemental brief responding to this legal issue; it is

FURTHER ORDERED that the Court hereby appoints the Federal Public Defender to file an amicus brief on this legal issue; it is

FURTHER ORDERED that the government shall file a response to Mr. Caplinger's supplemental brief and the brief of amicus. This briefing schedule will be announced by the Court at a later date; it is

FURTHER ORDERED that on or before February 14, 2022, Mr. Caplinger is directed to provide to the Probation Office all documentation to aid in an amended Presentence Investigation Report, including supporting documentation regarding Mr. Caplinger's "assets, liabilities, income, and household expenses." See Presentence Investigation Report [Dkt. No. 43] at ¶¶ 56-60. Mr. Caplinger is further directed to submit waivers for release of information as directed by the Probation Office. See id. at ¶ 56.

SO ORDERED.

/s/

PAUL L. FRIEDMAN
United States District Judge

DATE: January 31, 2022