

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

UNITED STATES OF AMERICA

v.

**ROBERT THOMAS SNOW,
also known as “Bob Snow”**

Defendant.

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Case No. 22-CR-30 (TJK)

**UNITED STATES’ OPPOSITION TO DEFENDANT’S
MOTION FOR SENTENCE REDUCTION**

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, hereby files this opposition to the Defendant’s second motion for sentence reduction, styled as Defendant’s Motion for Early Termination of Probation. Dkt. No. 38.

Five weeks after the Court denied the Defendant’s first Motion for Early Termination of Probation, the Defendant again moves to terminate his probation early, despite the lack of any intervening new conduct or change in status. Again, the Defendant relies on his “exemplary” actions of satisfying the other parts of the Court’s judgment. Dkt. 38 at 2, 5. Merely complying with the terms of his probation is insufficient to warrant a sentence reduction. The Defendant also relies on his health and impending eye surgery, but this information was before the Court when it imposed its sentence three months ago, and when it denied the Defendant’s first Motion for Early Termination of Probation. The Defendant’s second motion again fails to satisfy the standard for the early termination of probation and should be denied.

BACKGROUND

On December 29, 2021, the Defendant was charged by complaint with four misdemeanor offenses in connection with his unlawful entry into the United States Capitol Building in the midst of the Capitol Siege on January 6, 2021. On January 4, 2022, he self-surrendered and on January 21, 2022, the Defendant was charged with the same four offenses by Information. On March 24, 2022, he 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 the Capitol Building.

On July 7, 2022, the Court held the sentencing hearing. The government requested that the Court sentence the Defendant to fourteen days' incarceration, three years' probation, 60 hours of community service, and \$500 in restitution. Dkt. No. 26 at 1. The Defendant requested a sentence of a \$500 fine, along with agreed-to restitution of \$500. Dkt. No. 27 at 23. Both parties submitted extensive 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 Defendant's case. The Court considered the record and the arguments of counsel and sentenced the Defendant to 12 months' probation, 60 hours of community service and the agreed-to \$500 restitution. At the hearing, the Court stated that it would consider a motion by the Defendant for the early termination of probation when the Defendant completed his community service and monetary portion of his sentence.

On August 15, 2022, less than six weeks after the entry of judgment, the Defendant moved the Court for the immediate termination of his term of probation solely on the basis that he had paid his \$500 restitution and \$10 special assessment and completed the court-ordered 60 hours of community service. Dkt. 36. On August 29, 2022, the Court denied the Defendant's

motion without prejudice, explaining that the Defendant had “served only about six weeks of his one year term of probation” and that he failed “to explain how terminating his probation now is appropriate under 18 U.S.C. § 3564(c) or caselaw applying the same.” Aug. 29, 2022 Minute Order. Five weeks after the Court’s order, the Defendant filed the present motion.

ARGUMENT

I. The Standard for Terminating the Defendant’s Sentence of Probation.

As the government previously explained, Section 3564(c) of Title 18 allows a court to terminate probation upon consideration of (1) the applicable 18 U.S.C. § 3553(a) factors, (2) “the conduct of the defendant,” and (3) whether the requested sentence is “warranted by . . . the interest of justice.” 18 U.S.C. § 3564(c).¹ The Defendant continues to ignore that “[t]he point of a motion to modify a sentence is to review what may have changed in the intervening period.” *United States v. Hartley*, 34 F.4th 919, 932, n.9 (10th Cir. 2022). The focus on intervening changes makes sense since the Court must reconsider the same § 3553(a) factors that it considered when imposing the original sentence. *See, e.g., 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”). Thus, absent a relevant change, there is no basis for the Court to reduce the sentence already imposed.

Despite characterizing his compliance with his restitution and community service requirements as “exemplary,” the Defendant does not appear to dispute the well-established principle that mere compliance with the conditions of probation without more does not warrant

¹ A fourth requirement—that in the case of a felony conviction, a defendant has served the statutorily prescribed portion of his probationary term before moving for termination, 18 U.S.C. § 3564(c)—is not at issue here.

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 in the similar analysis for supervised release modification motions, model post-incarceration conduct and 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).

The Defendant cites three unpublished out-of-district cases where a defendant's term of supervised release was terminated early to support the premise that "exceptional conduct" is not required to justify early termination of probation. Yet each case is distinguishable. In *United States v. Nelson*, No. 17-CR-424 (PKC), 2022 WL 125814 (E.D.N.Y. Jan. 13, 2022), the court terminated a defendant's supervised release early only after the defendant had served 20 years in prison, followed by 55 months of his ten-year supervised release period. The court expressly noted that "mere compliance with the law is insufficient to justify termination," and that "a defendant is not entitled to early termination simply because he has successfully served a portion of his supervised release term." *Id.* at *1. The court went on to find that the "unusual circumstances of Defendant's case" justified termination because the defendant had received a grant of clemency by the President of the United States after serving 20 years of a life sentence, and so a reduction of his supervised release after 55 months would be a proportionate reduction to reflect his grant of clemency. *Id.* at *2.

United States v. Adamek, No. 18-cr-50186-001-PHX-DJH, 2021 WL 2555512 (D. Ariz. May 21, 2022) is equally inapposite. There, the defendant had served over three years of his five-year term of probation. Moreover, while on probation, the court found that the defendant's "personal and health circumstances have turned dire, and he has been deemed disabled." *Id.* at 1. This change in condition stands in stark contrast to the Defendant's health situation. While the Defendant reports suffering health challenges, as described below, most if not all of those health conditions were present when the Defendant committed the instant offense, and all of his conditions were presented to the Court before it imposed the Defendant's sentence. Thus unlike in *Adamek*, the Defendant has presented no change in circumstances to warrant early termination.

Finally, *United States v. Bellavance*, No. 3:10-cr-00045-BLW, 2021 WL 3669316 (D. Ida. Aug. 18, 2021) provides limited explanation of the court's reasoning, but is nonetheless distinguishable. There, the defendant had completed a term of 36 months of incarceration, and had been revoked twice and served an additional 13 months in prison. The court granted the defendant's unopposed motion for early termination of supervised release with only three motions of supervised release remaining.

By contrast, the two published cases in this district cited in the government's prior response should guide the Court. In *United States v. Longerbeam*, 199 F.Supp.3d 1 (D.D.C. 2016), the court explained that in this circuit, either "changed circumstances" or "something of an unusual or extraordinary nature in addition to full compliance" is needed to justify early termination because otherwise the exception would "swallow the rule." *Id.* at 2 (citing *United States v. Mathis-Gardner*, 783 F.3d 1286, 1288 (D.C. Cir. 2015), *United States v. Lussier*, 104 F.3d 32, 32 (2d Cir. 1997) and *United States v. Etheridge*, 999 F.Supp.2d 192 (D.D.C. 2013)). And in *United States v. Mathis-Gardner*, 110 F.Supp.3d 91, 93–94 (D.D.C. 2015), the court explained that in spite of the defendant's argument that she had taken dramatic steps to give back to her community since her release from prison, early termination was not in the interest of justice based on the need for supervised release to serve as punishment and a general deterrent.

The Defendant continues to ignore two principles underlying the determination of early termination. First: that probation and supervised released are "not only designed for rehabilitation and re-integration," but also as "a form of punishment." *Mathis- Gardner*, 110 F.Supp.3d 91, 94. Thus simply complying with one's terms of probation and not requiring further rehabilitation is not enough. Second: that "[t]he point of a motion to modify a sentence is to review what may have changed in the intervening period." *Hartley*, 34 F.4th at 932, n.9;

accord Martin, 1992 WL 178585, at *1. While the defendant is correct that “exceptional conduct” is not the *only* way to meet the standard of 18 U.S.C. § 3564(c), he still fails to provide the Court with any intervening changes to justify a modification of his sentence.

II. The Defendant Has Not Met the Standard for Early Termination of Probation.

In this case, the Defendant continues to fall short of meeting the standard for early termination. Nor does an analysis of the § 3553(a) factors justify the requested sentence reduction. The Defendant spent 43 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 penetrated three floors of the building and only exited after being ordered to do so by law enforcement at gunpoint. He also pumped his fist in the air while facing the crowd from the balcony of the Capitol Building, apparently celebrating the riot and egging other rioters forward.

All of the § 3553(a) factors highlighted in the Defendant’s motion have already been taken into account in the Court’s sentence. To begin, the Defendant is not entitled to any further benefit from the fact that he did not injure anyone or damage property when he stormed the Capitol. His criminal charges and conviction for parading, demonstrating or picketing in a Capitol building accurately reflect the severity of his conduct, and he was sentenced based on his conduct alone, and not the violent or destructive conduct of others around him. Similarly, the Defendant notes his eye condition, age-related arthritis, and 2016 heart attack, all of which were also presented to the Court during his sentencing. Indeed, neither the Defendant’s advanced age nor heart condition—both present on January 6—deterred him from his 30-hour roundtrip drive from Arkansas to Washington, D.C., nor from his 43-minute trespass inside the U.S. Capitol.

None of the foregoing characteristics have changed in the five weeks since the Court denied the Defendant's first motion for early termination of his sentence. The purpose of probation is not merely to afford supervision while a defendant fulfills the other terms of a court's judgment; it serves as punishment. The Defendant was sentenced to one year of probation on July 8, 2022 and his second motion amounts to a request for an effective 75% reduction of that sentence. That modification does not reflect the seriousness of his offense, nor does it promote respect for the law. His motion should be denied.

Respectfully submitted,

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