

June 26, 2008

TO: The Honorable Legrome D. Davis

RE: BAILEY, William A
Case NO. : 2:06CR00287-01
Exp. Date: June 27, 2010

REQUEST FOR EARLY TERMINATION OF SUPERVISED RELEASE

Please accept the attached *pro se* motion for early termination of supervised release.

It is my understanding that the US Probation Office in Charlotte, NC, which has actively monitored my supervision since my release from prison, will not oppose.

Respectfully Submitted,

William A Bailey Jr

CC: Michael L. Levy, Esquire
Assistant US Attorney, EDPA

Cheryl A. Krause, Esquire
Defense Counsel

I. Omar Cedeno
US Probation Officer, EDPA

June 26, 2008

Judge Davis,

On February 13, 2007, you sentenced me to 3 months in prison followed by 3 years of supervised release (with a special condition of 3 months home confinement). The supervised release term is the maximum allowed by law. (See attached 2nd Amended Judgment and Commitment document). As ordered, I surrendered to the Pensacola Federal Prison Camp on March 30, 2007 and completed my term of imprisonment -- and began my term of supervised release -- on June 28, 2007.

According to 18 USC §3583(e)(1):

The court may, after considering the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7) terminate a term of supervised release and discharge the defendant released at any time after the expiration of one year of supervised release, pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation, if it is satisfied that such action is warranted by the conduct of the defendant released and the interest of justice;

(These same factors, according to 18 USC §3583(c), are what the Court considered in imposing the original term of supervised release.)

One year has elapsed and I am respectfully requesting termination of the remainder of my term of supervised release.

My request is based on both legal and personal factors.

With input from probation officers, the Judicial Conference Committee on Criminal Law, chaired by Chief Judge William Wilkins (4th Cir.) from 1999 until 2003, created nine criteria to help probation officers properly identify offenders for consideration for early termination. The Judicial Conference endorsed the criteria at its March 2003 meeting as part of the revised post-conviction supervised release policies.

"The Committee believes that when the conditions of supervision imposed have been met, and the offender has successfully reintegrated into the community and does not pose a foreseeable risk to public safety in general or to any individual third party," said Wilkins, "the probation officer should request the court to consider early termination."

The criteria are:

- stable community reintegration (e.g., residence, family, employment);
- progressive strides toward supervision objectives and in compliance with all conditions of supervision;
- no aggravated role in the offense of conviction, particularly large drug or fraud offenses;
- no history of violence (e.g., sexually assaultive, predatory behavior, or domestic violence);
- no recent arrests or convictions (including unresolved pending charges), or ongoing, uninterrupted patterns of criminal conduct;
- no recent evidence of alcohol or drug abuse;
- no recent psychiatric episodes;

- no identifiable risk to the safety of any identifiable victim; and
- no identifiable risk to public safety based on the Risk Prediction Index.

(See <http://www.uscourts.gov/ttb/mar04ttb/rewarded/index.html>)

While it is the official policy of the US Probation Office in the Western District of North Carolina to initiate termination requests only after two-thirds (2/3) of the term of supervised release have been completed, my Probation Officer (Chris Barber, 704-350-7654) will confirm that all of these criteria have been satisfied and will express no objection to early termination and it is clearly within the discretion of the court to consider early termination requests after one year.

Furthermore, it is notable that all of the factors to be considered by the Court in making an early termination decision, according to 18 USC §3583(e)(1) above, mirror those factors in 18 USC §3553, to which the Court is to refer when making its original sentencing decision, with one significant exception: 18 USC §3553(a)(2)(A) is missing.

18 USC §3553(a)(2)(A) is a sentencing factor intended “to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;”

In other words, this exception indicates that supervised release is not intended to be a punishment. The prison term and home confinement satisfied the retributive goal of the sentencing process.

The purposes of supervised release were described by the Supreme Court in *Johnson v US*, 529 U.S. 694 (2000):

Congress intended supervised release to assist individuals in their transition to community life. Supervised release fulfills rehabilitative ends, distinct from those served by incarceration. See §3553(a)(2)(D); United States Sentencing Commission, Guidelines Manual §§ 5D1.3(c), (d), (e) (Nov. 1998); see also S. Rep. No. 98–225, p. 124 (1983) (declaring that “the primary goal [of supervised release] is to ease the defendant’s transition into the community after the service of a long prison term for a particularly serious offense, or to provide rehabilitation to a defendant who has spent a fairly short period in prison for punishment or other purposes but still needs supervision and training programs after release”). Sentencing courts, in determining the conditions of a defendant’s supervised release, are required to consider, among other factors, “the nature and circumstances of the offense and the history and characteristics of the defendant,” “the need . . . to afford adequate deterrence to criminal conduct; . . . to protect the public from further crimes of the defendant; and . . . to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment.” 18 USC § 3553(a). (***Emphases added.***)

During the sentencing hearing (transcript is attached) on February 13, 2007, the Court expressed great sensitivity to “what social purpose we are engaged in” (p26 lines 21-22) in attempting to weigh the relevant factors in shaping an appropriate sentence. Indeed, the Court specifically asked the government and my defense counsel what they considered to be the purpose(s) of sentencing in this particular case (see discussion at pp. 26-28). In addition, I was also directly asked and the Court clearly explained its thinking in this matter in the following extended exchange (see pp. 51-54, 57):

THE COURT: All right, sir, I ask you the same question I asked your lawyer. What are the purposes of sentencing in your case as you understand it? What are we trying to achieve here?

MR. BAILEY: I would think the primary purpose is to prevent me from doing this again.

THE COURT: I don't think you're going to do it again.

MR. BAILEY: I think you're right.

THE COURT: I don't think that's the issue.

MR. BAILEY: Then it would have to be retribution, proper punishment, compensation to the victim for what has taken place.

THE COURT: All right, but you --

MR. BAILEY: The punishment has to reflect the moral gravity of what I've done.

THE COURT: All right, you've paid the financial loss that was stipulated in the plea agreement and I believe you paid restitution even beyond that, am I correct about that? How much have you paid?

MR. BAILEY: I paid \$150,000

THE COURT: Okay. All right, I guess the -- I hear what you say and it's actually quite eloquent particularly the part where you explain how the medical association has a relationship with its clients and they have a social contract, if you will. And the clients have provided a certain information about their personal lives which they expect to remain confidential or not disclosed and by circumventing the access barriers you violated the relationship that the organization has with its clients and that's a criminal behavior and that's actually very thoughtful and I think that you understand certain -- very clearly certain aspects of the conduct.

The starting point under the guidelines is to look at exactly where we are and I don't see a basis for an upward departure. So I view this still as a twelfth one with a guideline range of 10 to 16 months. And I think as I listen to this there are two things that I need to accomplish with particularity and actually I had a sort of sentencing concerns before I spoke with you, but I didn't have an exact sentence in my mind that I was going to impose. I'm subject to persuasion. And there are a couple of impressions that I'm left with as number one, I think you need punishment because I think you're just a hair too clever for my taste, if you will. And I think that you appreciated the wrongfulness of what you were doing and you did it ultimately as you have told me because of the money. And that's what it was about. And I think that we do, as Ms. Krause saying, have to put it all in perspective.

And as I look at the list of sentencing crimes there many of them are destroying data, stealing confidential data, and we would all agree, three of us as professionals, on the continuum that is a more egregious harmful offense than this. That's not to diminish the

wrongfulness of this conduct, but you, you know, you have to put it in perspective. And I think that this conduct requires a general statement that it is wrongful punishable conduct under the law even though it is not as -- not of the same magnitude as some of the other criminal offenses. And actually you make it easy because there's -- I mean as I say you require a certain amount of punishment from my perspective.

So I am not actually going to sentence within the guidelines provisions because as we all indicated there's not a factual scenario that parallels this. The way that I balance this is that the defendant should receive six months confinement, the first three months which would be total confinement and the last three months would be on house arrest, electronic monitoring. And I say that because I think that you need a specific punishment for me to put you in your house where you can do a business and you would have restricted hours. Given the degree of intelligence and sophistication and choice that's involved in your case I don't think that's enough. I think that the offense requires an incarcerative sentence. So first three months would be total confinement. The last three months would be electronic monitoring. That would be followed by three years supervised release.

I would impose a supplemental fine of \$10,000 and the special assessment and the restitution have been paid.

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PROBATION OFFICER: Your Honor, just two clarifications.

THE COURT: Right.

PROBATION OFFICER: One is that the three months home detention will be served as a condition of the supervised release?

THE COURT: Right.

PROBATION OFFICER: And also that the electronic monitoring, who shall pay for that? Defendant?

THE COURT: He shall. But my intention is that he be incarcerated in total confinement three months only, right? Okay, go ahead, please. Give him his rights.

Finally, one of the factors the Court is to consider is 18 USC §3553(a)(6): "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." In light of the below-guidelines prison sentence imposed, a supervised release term terminated after one-year would be consistent and proportionate to the term of incarceration. That is, one would not expect a defendant sentenced to 3 months in prison to require the same maximum term of supervised release to transition back to community life as a defendant sentenced to a much longer term.

The prison term has been served, all fines and restitution have been paid, the Court is satisfied the illegal conduct will not re-occur, rehabilitation is complete, all terms of supervised release to this point

have been complied with, and all factors the US Probation Office considers in requesting early termination have been met. It is not clear what further sentencing objectives are left to be satisfied.

On a personal level, the conditions of supervised release are not burdensome. It **IS** inconvenient to file monthly reports, notify the Probation Office of all travel outside the district and seek permission from the Court for international travel (which the Court recently granted in my case for trips in July and October), but this is a small annoyance.

There is however a couple of additional matters that I would hope the Court would consider.

My experience in prison was eye-opening to say the least. I can identify with the following comments by Justice William Brennan:

Prisoners are persons whom most of us would rather not think about. Banished from everyday sight, they exist in a shadow world that only dimly enters our awareness. They are members of a "total institution" that controls their daily existence in a way that few of us can imagine. "[P]rison is a complex of physical arrangements and of measures, all wholly governmental, all wholly performed by agents of government, which determine the total existence of certain human beings (except perhaps in the realm of the spirit, and inevitably there as well) from sundown to sundown, sleeping, walking, speaking, silent, working, playing, viewing, eating, voiding, reading, alone, with others. . . ." It is thus easy to think of prisoners as members of a separate netherworld, driven by its own demands, ordered by its own customs, ruled by those whose claim to power rests on raw necessity. -- Justice William Brennan, dissenting in [O'Lone v. Estate of Shabazz](#), 482 U.S. 342, 354-55 (1987).

I have become highly sensitized to the needs of federal inmates, especially those who I befriended. When I was released, I had intended to maintain contact, both in the form of letters of encouragement as well as material assistance, with those friends while they were in prison and after they were released. Many of these men have virtually no one who cares about them and, upon release, are virtually destitute with unpromising job prospects. I have learned that a little encouragement and assistance goes a long way.

Unfortunately, Standard Condition of Supervised Release #9 (see 2nd Amended Judgment and Commitment document, p. 3) states: "the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer."

In one instance, I asked for permission to loan an extra vehicle to a friend who had recently been released to South Florida but was denied since that constituted an "association."

In another instance, the Probation Office approved an association with someone who was attending a recently formed church home group that I participated in after I discovered he was also a convicted felon who had recently completed his term of supervised release under the same probation officer assigned to me.

While I understand the general purpose for this condition, it is extremely frustrating to be in a position to provide encouragement and assistance under circumstances that are clearly not suspicious yet

prohibited under threat of returning to prison (for up to 3 years!) for violating the terms of my supervised release.

Terminating my supervised release after one year would allow me to provide such assistance.

Second, this November is a very important election. Voting is a fundamental right that should not be abridged except under extreme circumstances. I understand that my conduct resulted in my forfeiting that right for a period of time. In North Carolina, one can re-register to vote after the term of supervised release is completed. Unless the Court still has sentencing objectives that it believes are unsatisfied and require a continuation of my supervised release, I would hope the Court would respect my desire to participate in the upcoming election.

I am grateful for the fairness and thoughtfulness the Court demonstrated during my sentencing hearing. My entire family likewise left satisfied that I had been treated fairly by the Court.

I believe my request for early termination of supervised release satisfies the statutory requirement that: "The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes" of sentencing.

I respectfully request that the Court grant my request.

Sincerely

William A Bailey Jr