

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA

v.

CHARLES HILL, IV

Criminal Action

No. 1:20-cr-296-16-JPB-CMS

**UNITED STATES' OPPOSITION TO DEFENDANT'S MOTION
TO MODIFY PROBATION CONDITIONS**

The United States of America, by Ryan K. Buchanan, United States Attorney for the Northern District of Georgia, and Tal C. Chaiken and Nathan P. Kitchens, Assistant United States Attorneys, and Babasijibomi Moore, Trial Attorney for the United States Department of Justice, respectfully files this response in opposition to Defendant's *pro se* Motion to Modify Probation Conditions (DE 514.) Given the unique circumstances that resulted in Defendant's probationary sentence and the short amount of time he has served to date, the Court should deny Defendant's motion.

Relevant Background

Defendant Charles Hill pleaded guilty to conspiracy to commit wire fraud, in violation of Title 18, United States Code, Section 1349. Hill admitted to conspiring with others to obtain an \$854,805 Paycheck Protection Program ("PPP") loan for his business, Infinite Education Services, Inc. ("Infinite Education"). After Infinite Education received its PPP loan proceeds, Defendant engaged in various monetary transactions to launder the proceeds of that loan.

The Presentence Investigation Report calculated a Custody Guidelines Range of 27 to 33 months' imprisonment. (*See* PSR, Sentencing Options.) Neither

party objected to that Guidelines Range.¹ However, because Defendant suffers from a rare autoimmune disease, which his medical team opined would make a prison environment inappropriate, the Parties jointly agreed to recommend a sentence of 5 years' probation, with the first 27 months to be served in home detention. (DE 384-1, ¶ 21; DE 405 at 1; DE 408 at 1.) The Court adopted the Parties' joint recommendation. (DE 412 at 2.) Thus, Defendant's length of home detention equals the low end of the undisputed Guidelines range for his offense.

Defendant now moves to modify the conditions of his probation. (DE 514.) He notes that he has been serving a term of probation since January 12, 2022 – *i.e.* just over six months – and that no violations have been reported. (*Id.*, ¶¶ 1, 3.) He asks the Court to modify his probation, “to allow [him] to spend more time with family and resume volunteer activities both in the educational field and in the religious setting” and “to allow for [him] to obtain part time employment that would require use of social media.” (*Id.*, ¶ 5.) He specifically asks the Court to change his home detention to a “curfew only” restriction and to allow him to access social media for employment purposes. (*Id.*, ¶ 6.)

Argument

Under Title 18, United States Code, Section 3563(c), “[t]he court may modify, reduce, or enlarge the conditions of a sentence of probation at any time prior to the expiration or termination of the term of probation, pursuant to the provisions of the Federal Rules of Criminal Procedure related to the modification of probation and the provisions applicable to the initial setting of the conditions of probation.” 18 U.S.C. § 3563(c). Thus, the Court has discretion to modify Defendant's

¹ The United States does not have a transcript of the sentencing proceeding. Thus, references to the sentencing proceeding are based on counsel's recollection.

conditions of probation. *See Burns v. United States*, 287 U.S. 216, 220-21 (1932) (recognizing that the district court retains broad discretion to modify terms of probation). Here, the Court should not modify Defendant's conditions of probation to reduce his conditions, for several reasons.

First, Defendant has served only approximately 6 months on probation, representing about 22% of his term of home detention and about 10% of his total term of probation. And Defendant does not identify any material circumstances that have changed since he was sentenced in January 2022. Modification of Defendant's sentence is unwarranted given how little time has passed since the Court imposed it.

Second, modification is inappropriate because Defendant received the benefit of a sentence of home detention, rather than custodial imprisonment, only because of his rare medical condition. As the United States explained in its sentencing memorandum, "while Defendant's condition bears on the appropriate *location* for service of his sentence, it has no bearing on the appropriate *length* of his sentence based on the other Section 3553(a) factors." (DE 405 at 4.) Defendant is the *only* Defendant sentenced thus far in this case who has received a non-custodial sentence after pleading guilty to a conspiracy offense.² Indeed, the Court has sentenced other business owners whose conduct was like Defendant's (but who do not suffer from rare medical conditions) to the low end of their respective Guidelines ranges. (*See* DE 84 (Khalil Green sentenced to 41 months); DE 380 (Bern Benoit sentenced to 27 months)); *see also United States v. Redding*, No. 1:21-cr-00178-JPB, DE 17 (N.D. Ga. Oct. 27, 2021) (Charmaine Redding sentenced to 41 months).

² Defendant Andre Lee Gaines pleaded guilty to making false statements to law enforcement and was sentenced to probation.

Defendant's medical condition has already allowed him to avoid a custodial sentence that the Court likely would have otherwise imposed. Reducing Defendant's restrictions at this juncture would not be consistent with the Section 3553(a) factors that the Court considered in imposing Defendant's home detention sentence in the first instance.

Third, while the United States commends Defendant for his compliance with his conditions thus far, compliance is required of *every* Defendant who is serving a term of probation. *See* 18 U.S.C. 3565 (allowing the court to revoke a sentence of probation if the defendant violates a condition of probation). Compliance with conditions of probation does not warrant modification of the conditions.

Fourth, Defendant's requested modifications are conclusory and unsupported. For example, he does not explain how the home detention condition prevents him from "spend[ing] more time with family," which he can do at home. Nor does he explain why he cannot engage in volunteer activities from home. And he does not identify any specific part-time employment opportunity that he has received and is unable to engage in because of his restrictions. Blanket elimination of the home detention condition and a change in his social media limitations in these circumstances is unwarranted.

Conclusion

For these reasons, the United States respectfully requests that the Court deny Defendant's Motion to Modify Probation Conditions.

Dated: July 28, 2022

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CERTIFICATE OF SERVICE

I certify that on July 28, 2022, I filed a copy of the foregoing document electronically using the CM/ECF system, which will automatically generate notice of this filing to all counsel of record, and mailed a copy of the foregoing document to:

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