

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA

v.

ROBERT S. STEWART JR,

Defendant.

Case No. 1:21-cr-005 (RDA)

**GOVERNMENT’S RESPONSE TO DEFENDANT’S PRO SE
MOTION TO AMEND THE JUDGMENTN AND CONVICTION ORDER**

The defendant, Robert S. Stewart, Jr., requests the Court amend the Judgement and Conviction Order entered on June 17, 2021 to include a recommendation to the Bureau of Prisons (“BOP”) that Mr. Stewart serve the final 12 months of his sentence in a BOP Residential Re-Entry Center (ECF Entry #19).

PROCEDURAL HISTORY

On February 3, 2021, Mr. Stewart entered a guilty plea to a three-count Criminal Information charging him with making false statements to the Federal Emergency Management Agency (“FEMA”) and the Department of Veteran’s Affairs (“VA”) in order to obtain lucrative contracts to provide those agencies with much needed personal protective equipment (“PPE”) during the early stages of the COVID-19 pandemic, in violation of 18 U.S.C. § 1001 (Count 1); engaging in a wire fraud scheme in which he unlawfully acquired and then misused federally insured loans from Celtic Bank and the Small Business Administration (“SBA”), in violation of 18 U.S.C. § 1343 (Count 2); and theft of government funds by falsely claiming to have served in the United States Marine Corp in order to fraudulently increase his veteran’s benefits, in violation of 18 U.S.C. § 641 (Count 3).

On June 16, 2021, the Court considered the sentencing memorandum and oral arguments of counsel as well as the allocution of Mr. Stewart, and after careful consideration of the factors set forth in Title 18, United States Code, Section 3553(a) sentenced Mr. Stewart to term of 21 months imprisonment. During the sentencing hearing, the Court permitted Mr. Stewart to self-surrender to a facility to be designated by the BOP. The following day, on June 17, 2021, the Court entered the Judgment and Conviction Order. Mr. Stewart did not appeal his conviction or sentence.

On July 28, 2021, Mr. Stewart reported as directed to the BOP's Federal Correctional Institution in Talladega, Florida to begin his 21-month sentence.

On October 20, 2021, Mr. Stewart filed this motion pro se.

APPLICABLE FEDERAL RULE OF CRIMINAL PROCEDURE

Rule 35(a) of the Federal Rules of Criminal Procedure does not appear to authorize amending a final Judgment and Conviction Order to grant the relief sought by Mr. Stewart. Specifically, Rule 35(a) states that:

Within 14 days after sentencing, the court may correct a sentence that resulted from arithmetical, technical, or other clear error.

There is nothing in Mr. Stewart's motion or in the record as a whole that would suggest the Court's silence as to whether Mr. Stewart should be placed in a Residential Re-Entry Center for the final 12 months of his sentence was the product of "arithmetical, technical or other clear error." As a result, there does not appear to be a procedural vehicle by which the Court can now amend a final Judgment and Conviction Order to include a specific sentencing recommendation to the BOP.

POSITION AND RECOMMENDATION OF THE GOVERNMENT

The government has no objection to Mr. Stewart participating in the Residential Re-Entry

Program. There is nothing about Mr. Stewart's background or offense conduct that would suggest he is not a suitable candidate for this important program. The government's position is simply that BOP officials are in the best position to determine which inmates are the most appropriate candidates to receive the BOP's limited resources. BOP officials can compare the benefits of the program with the needs of all eligible inmates and thereby make an individualized assessment as to which inmates are best suited to go into the program and for how long. It is entirely possible that given the parameters of the Residential Re-Entry program, BOP officials would prefer inmates who have served long prison sentences and may have significant challenges re-entering society be given preference for the program in order to facilitate their transition from prison to the community. Mr. Stewart, on the other hand, will have served a relatively short prison term and does not seem to have any particular hurdles facing him as he transitions back into civilian life. For these reasons, the government – and I would respectfully suggest the Court – should decline to weigh in and recommend Mr. Stewart be given preference for the re-entry program.

To the extent Mr. Stewart wants BOP officials to know the Court's thoughts at the time of sentencing, Mr. Stewart – perhaps through counsel – could rely on a transcript of the sentencing hearing. At sentencing, the Court took great care to discuss and balance the positive aspects of Mr. Stewart's life and background with his criminal conduct. A transcript of Mr. Stewart's sentencing hearing would seem to provide BOP officials with the very analysis that could be most valuable to their decision-making process. If, however, in the end, the Court feels it would be appropriate to recommend Mr. Stewart for the full 12 months in the Residential Re-Entry Program and there is no procedural vehicle to amend the Judgement and Conviction Order, the government would have no objection to the Court writing a letter or in some other manner communicating the Court's recommendation to the BOP .

Respectfully submitted,

Jessica D. Aber
United States Attorney

By: /s/
William Fitzpatrick
Assistant United States Attorney
United States Attorney's Office
Eastern District of Virginia
2100 Jamieson Avenue
Alexandria, Virginia 22314
Phone: (703) 299-3700
Fax: (703) 299-3868
William.fitzpatrick@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on November 7, 2021, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of that electronic filing (NEF) of the foregoing to the attorney of record for the defendant. On November 8, 2021, I caused this submission to be mailed, postage pre-paid, to Mr. Stewart, Registration No. 28576509, at FCI Talladega, Talladega, Alabama 35160.

 /s/
William Fitzpatrick
Assistant United States Attorney
United States Attorney's Office
Eastern District of Virginia
2100 Jamieson Avenue
Alexandria, Virginia 22314
Phone: (703) 299-3700
Fax: (703) 299-3768
William.fitzpatrick@usdoj.gov