SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, *Plaintiff,* v. ELENA RUTH SASSOWER *Defendant.*	**Case No. M4113-03** **Calendar 1: Judge Holeman**

UNOPPOSED EMERGENCY MOTION FOR DEFENDANT'S RELEASE TO PRECLUDE MOOTNESS OF APPELLATE ISSUE

Defendant hereby moves by undersigned counsel for release pending appeal from service of her sentence to prevent mootness of one of her principal issues on appeal – *i.e.*, the validity of any sentence exceeding 92 days' imprisonment. This Motion was filed in the District of Columbia Court of Appeals on September 23, 2004, and was denied by that Court without prejudice to its re-filing in this Court. Exhibit 1. For reasons stated below, defendant will suffer irreparable harm after September 25 (which also happens to be *Yom Kippur*, the most sacred day in the Jewish calendar). Hence this request is made for Emergency Consideration on the pleadings, and defendant has stated to counsel that she waives personal presence for the Court's consideration of this Motion.

Counsel for the government (John Fisher, Esq., and Aaron Mendelsohn, Esq.) are not opposed to the grant of this Motion.

STATEMENT

Ms. Sassower was found guilty on April 20, 2004, after a trial by jury of disruption of Congress in violation of D.C. Code § 10-503.16(b)(4). She represented herself at the trial. The maximum penalty under the statute is a six-month term of imprisonment and a $500 fine.

The prosecution recommended a five-day suspended sentence, with a six-month period of probation conditioned on completion of an anger-management course. Community Supervision Services recommended only the imposition of a fine.

The defendant appeared for sentencing on June 28, 2004, before this Court. Your Honor noted that he had heard from the government at a previous hearing "[a]nd so what remains is Ms. Sassower's statement." Transcript of June 28, 2004, Exhibit 2, p. 6. Your Honor then asked the defendant to make her statement.

After some exchanges between the defendant and Your Honor, the Court stated that he was "ready to impose sentence" (Transcript of June 28, 2004, Exhibit 2, p. 14):

> Ms. Sassower, I'm sentencing you to 92 days, I'm going to give you credit for any time served in this case. I'm going to suspend execution as to all remaining time.
>
> I will place you on two years probation. During the probationary term – well, let me back up then before I get into the probationary term.
>
> You will pay a $500 fine, within 30 days of the sentencing date, so that's within 30 days of today.
>
> You will pay $250 to the Victims of Violent Crimes Compensation Fund within 30 days of today.

Thereafter, Your Honor specified the terms of probation. *Id.* pp. 16-21. These included the requirement that the defendant keep records of her employment by tenths of an hour, that she serve 300 hours of community service, that she undergo anger-management therapy every six months, that she stay away from the United States Capitol complex (including the Library of

Congress and the Supreme Court Building), and that she write letters of apology and remorse to five Senators and the judicial nominee at whose hearing she attempted to speak.

When the defendant refused to accept these conditions (and, thus, declined to consent to probation as is required under the concluding sentence of D.C. Code § 16-710(a)), Your Honor stated the following (*id.*, p. 22):

> THE COURT: Very well. Then, sentence is imposed as follows:
> You are sentenced to six months incarceration.
> You will pay, within 30 days, following your incarceration, $500 as the fine that attaches to the penalty as to the offense for which you've been convicted.
> You will also pay, within 30 days, following your incarceration, the $250 compensation – contribution to the Victims of Violent Crimes Fund.
> Ms. Sassower, once again, your pride has gotten in the way of what could have been a beneficial circumstance for you. This incarceration begins forthwith; step her back.

Court was resumed after a brief recess, and Your Honor then advised the defendant that she had a right to appeal. The defendant orally requested a stay pending appeal. Your Honor denied the request. A notice of appeal was filed on June 29, 2004.

The defendant has, as of September 23, been imprisoned in the D.C. Jail for 88 days following her immediate remand on June 28 upon sentencing. She also served 2 days imprisonment following her initial arrest before she was released on her personal recognizance. The 92-day sentence initially imposed by Your Honor would, therefore, conclude on September 25.

ARGUMENT

THE DEFENDANT'S LEGAL ARGUMENT THAT HER SENTENCE COULD NOT BE INCREASED FROM 92 DAYS TO SIX MONTHS SHOULD NOT BE MOOTED BY SERVICE OF THE SENTENCE

Your Honor announced that he was sentencing the defendant "to 92 days," that defendant would receive "credit for any time served in this case," and that execution of sentence on "all remaining time" would be suspended with conditions of probation. Under this initially pronounced sentence, the defendant would have served 2 days after her arrest and the "remaining" 90 days were to be suspended in accordance with the provision of D.C. Code § 16-710(a) that authorizes a sentencing judge to prescribe a period of probation if he or she "impose[s] sentence and suspend[s] the execution thereof, or impose[s] sentence and suspend[s] the execution of a portion thereof."

After an exchange with the defendant in which she declined the terms of probation, Your Honor increased the sentence to six months' imprisonment. A substantial legal issue that should be decided by the Court of Appeals is whether that increase was permissible under Rule 32(c)(2) of the Criminal Rules of the Superior Court, which directs that "[s]entence shall thereafter be pronounced."

The comparable provision of the Federal Rules of Criminal Procedure has been authoritatively construed to prohibit a United States District Judge from revising his or her orally pronounced sentence – either upward or downward – because of a change of heart. See, *e.g.*, *United States v. Aguirre*, 214 F. 3d 1122, 1125 (9th Cir. 2000) ("We have previously suggested that the phrase 'imposition of sentence' is a 'term of art that generally refers to the time at which a sentence is orally pronounced.'"); *United States v. Layman,* 116 F.3d 105, 108 (4th Cir. 1997);

United States v. Abreu-Cabrera, 64 F.3d 67, 73 (2d Cir. 1995); *United States v. Townsend*, 33 F.3d 1230, 1231 (10th Cir. 1994).

Whether Your Honor was permitted to increase the defendant's sentence once the Court had orally announced (after her allocution) that he was sentencing her to a 92-day term of imprisonment is one of several issues of law to be presented on appeal. But Ms. Sassower will have fully completed service of 92 days in D.C. Jail on September 25.

It seems clear that, unless Ms. Sassower is released pending appeal, she will serve all or a substantial portion of her entire six-month sentence before her appeal is resolved on the merits. If that happens, one substantial issue she will present on appeal -- whether a sentence in excess of the 92 days initially announced is lawful -- will become moot. In order to preserve that issue, we respectfully request that the defendant be released with reasonable conditions limiting, among other things, her travel.[1]

The defendant's presence in White Plains, New York, on the evening of September 24 and all day on September 25 will substantially benefit her community. As the letter to Judge Holeman from Rabbi Gordon Tucker (Exhibit 3) attests, the defendant's participation in activities involving "the young children of this community" at the Temple on *Yom Kippur*

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[1] Specifically, with the government's consent, we ask the Court to impose the following conditions:

(1) That the defendant obey all laws, ordinances, and regulations, and that she incur no arrests for probable cause.
(2) That the defendant limit her travel to the States of New York, New Jersey, Florida, and the District of Columbia as well as travel directly in between such states and localities.
(3) That the defendant stay away from the United States Capitol complex as defined by the Court's original conditions of probation, and that the defendant have no physical, verbal, or written contact with the senators, the senators' staff, or the United States Capitol Police officers involved in this case, with respect to the issues involved in this case or appellant's 1996 arrest in the District of Columbia.

(which is September 25) "would have both a beneficial effect on her students and an important rehabilitative effect on Ms. Sassower." We respectfully request that Ms. Sassower be released in time for her to engage in this one-time-a-year community service.

Finally, the government is not opposed to the defendant's release -- upon completion of her 92-day sentence -- pending resolution of her appeal, in order to avoid mooting a substantial legal issue she will be presenting to the Court of Appeals.

CONCLUSION

For the foregoing reasons, the Court should release the defendant forthwith, subject to the conditions enumerated in note 1 -- which are acceptable to the government -- pending decision of her appeal.

Respectfully submitted,

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Dated: September 23, 2004

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

UNITED STATES OF AMERICA	:	
	:	
v.	:	**Criminal No. M-4113-03**
	:	**Judge Holeman**
ELENA RUTH SASSOWER,	:	**Misdemeanor Calendar I**
	:	
Defendant.	:	

ORDER

Upon consideration of Defendant's Unopposed Emergency Motion for Defendant's Release to Preclude Mootness of Appellate Issue, it is this 24th day of September, 2004 hereby

ORDERED, that the Defendant's Motion is **DENIED**.

BRIAN F. HOLEMAN
JUDGE

Copies forwarded by facsimile and mailed to:

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