

**DISTRICT OF COLUMBIA  
COURT OF APPEALS**

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**No. 04-CM-760**

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**ELENA RUTH SASSOWER,**

*Appellant,*

**v.**

**UNITED STATES,**

*Appellee.*

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

Pursuant to Rules 9 and 27 of the Rules of this Court, appellant 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.

Counsel for the government (John Fisher, Esq.) is not opposed to the grant of this Motion.

## STATEMENT

Appellant 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.

Appellant appeared for sentencing on June 28, 2004, before the Hon. Brian Holeman. The judge 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, p. 6. He then asked appellant to make her statement.

After some exchanges between appellant and Judge Holeman, the judge stated that he was “ready to impose sentence” (Transcript of June 28, 2004, Exhibit 1, 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, Judge Holeman specified the terms of probation. *Id.* pp. 16-21. These included the requirement that appellant 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 appellant 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)), Judge Holeman 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 Judge Holeman then advised appellant that she had a right to appeal. Appellant orally requested a stay pending

appeal. Judge Holeman denied the request stating: “To do so would be to show you favorable treatment that I have not in the past shown any other convicted criminal defendant in this courtroom and I won’t start that practice now.” *Id.*, p. 24. A notice of appeal was filed on June 29, 2004.

Appellant 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 Judge Holeman would, therefore, conclude on September 25.

## **ARGUMENT**

### **APPELLANT’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**

Judge Holeman announced that he was sentencing appellant “to 92 days,” that appellant 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, appellant 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 appellant in which she declined the terms of probation, Judge Holeman increased the sentence to six months’ imprisonment. A substantial legal issue that should be decided by this Court 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 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 Judge Holeman was permitted to increase appellant’s sentence once he 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 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 appellant be released with reasonable conditions limiting, among other things, her travel.<sup>1</sup>

**THE EMERGENCY NATURE OF  
THIS APPLICATION AND THE TRIAL  
JUDGE'S DENIAL OF THE ORAL  
REQUEST FOR A STAY WARRANT  
APPLICATION TO THIS COURT**

Because appellant's service of 92 days will be completed on September 25, any imprisonment beyond that date might constitute irreparable harm if appellant were to prevail on her legal argument. Moreover, appellant's presence in White

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<sup>1</sup> Specifically, with the government's consent, we ask the Court to impose the following conditions:

- (1) That appellant obey all laws, ordinances, and regulations, and that she incur no arrests for probable cause.
- (2) That appellant 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 appellant stay away from the United States Capitol complex and that appellant 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.

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 2) attests, appellant's participation in activities involving "the young children of this community" at the Temple on *Yom Kippur* (which is September 25) "would have both a beneficial effect on her students and an important rehabilitative effect on Ms. Sassower." As such, 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 appellant's release -- upon completion of her 92-day sentence -- pending resolution of this appeal, in order to avoid mooted a substantial legal issue she will be presenting to this Court.

Judge Holeman denied appellant's request for a stay on grounds that would appear to apply to any stated reason for such relief. Hence we submit that it is appropriate and in the interest of justice for this Court to consider and grant the requested relief.

## CONCLUSION

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

Respectfully submitted,



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*Attorneys for Appellant*

Dated: September 23, 2004



**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing *Unopposed Emergency Motion For Appellant's Release To Preclude Mootness Of Appellate Issue and Appearance of Counsel Forms* were sent by facsimile transmission and U.S. First Class mail on this 23<sup>rd</sup> day of September, 2004, to:

John Fisher, Esq.  
United States Attorney's Office  
For the District of Columbia  
555 4<sup>th</sup> Street, N.W.  
Washington, DC 20530  
Fax: 202-514-8779



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Nathan Lewin

District of Columbia Court of Appeals  
500 Indiana Avenue, NW  
Washington, DC 20001

APPEARANCE

Appeal No.: 04-CM-760

Case Caption:  
Elena Ruth Sassower v. United States

The Clerk will enter my appearance in the above matter as:

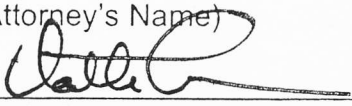
Pro Bono/  Retained Counsel for:  
Elena Ruth Sassower, Appellant

I hereby certify that I am a member in good standing of the D.C. Bar.

D.C. Bar No. 38299

Nathan Lewin

(Print Attorney's Name)

  
\_\_\_\_\_  
(Attorney's Signature)

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Date: September 23, 2004

District of Columbia Court of Appeals  
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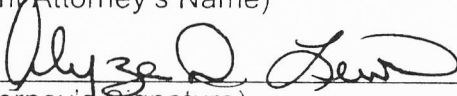
Pro Bono/  Retained Counsel for:  
Elena Ruth Sassower, Appellant.

I hereby certify that I am a member in good standing of the D.C. Bar.

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