

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

UNITED STATES OF AMERICA

v.

Case No. 3:16-cr-48-J-25JBT

REGINALD FULLWOOD
a/k/a Reggie Fullwood

**UNITED STATES' RESPONSE TO DEFENDANT'S MOTION FOR
EARLY TERMINATION OF SUPERVISED RELEASE**

The United States, through the undersigned Assistant United States Attorney, hereby responds to the defendant's "Pro Se Motion to Terminate Probation" (doc. 76), which was filed on March 25, 2019.¹ By order entered on March 26, 2019 (doc. 77), the Court directed the government to respond to the motion no later than April 9, 2019.

On February 7, 2017, the Court sentenced the defendant to time served plus a three-year term of supervised release arising out of his conviction for the offenses of wire fraud and failure to file a tax return, in violation of 18 U.S.C. § 1343 and 26 U.S.C. § 7203. See docs. 68 (Clerk's Minutes for sentencing) & 69 (Judgment). Because the defendant was not detained while his case was pending (see docs. 7

¹ The defendant styled his motion as one asking for termination of probation, but in fact, as discussed below, he was sentenced to time served plus a term of supervised release, not probation. As a practical matter, of course, a term of supervised release and a term of probation are functionally equivalent.

(Clerk's Minutes – Initial Appearance/Arraignment/Bond) & 10 (Order Setting Conditions of Release)), "time served" was simply the time he spent in custody on the day of his arrest. The Court also ordered the defendant to serve the first six months of supervised release on home detention, to perform 450 hours of community service, and to pay restitution to the IRS in the amount of \$42,545.38. See doc. 69 at 5-6. The Court imposed the sentence as a variance from sentencing guidelines that called for 15-21 months of imprisonment, a variance to which the government objected. See doc. 71 (Statement of Reasons) at 1, 3.

The defendant seeks early termination of the three-year term of supervised release because he "has an employment opportunity that requires that he not be on probation" and that his "employment and career prospects are limited" by his being on supervised release. He argues that early termination is warranted because he has served 25 months of the supervised release term without incident, including the period of home detention, and he has completed over 550 hours of community service, more than that required by the Court. Notably, he does not discuss, or even mention, the \$42,545.38 in restitution ordered by the Court or how much of the restitution remains to be paid. Undersigned counsel asked the defendant's supervising probation officer about the restitution and he stated that the defendant has paid approximately \$2,500 in restitution (at \$100 per month, as ordered by the Court), meaning that approximately \$40,000 remains to be paid.

As discussed below, although the defendant's complying with the terms of his supervised release is commendable, mere compliance with conditions of supervision is not a sufficient basis for termination of supervision.

Under 18 U.S.C. § 3583(e)(1), “[t]he 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” “[A] district court must conclude that the early termination of supervised release is warranted both by the individual’s conduct and also by the interest of justice.” United States v. Pregent, 190 F.3d 279, 283 (4th Cir. 1999). “Occasionally, changed circumstances—for instance, exceptionally good behavior by the defendant or a downward turn in the defendant’s ability to pay a fine or restitution imposed as conditions of release—will render a previously imposed term or condition of release either too harsh or inappropriately tailored to serve the general punishment goals of section 3553(a).” United States v. Lussier, 104 F.3d 32, 36 (2d Cir. 1997).

In the present case, the defendant’s motion should be denied because there is no reason to treat his case any differently than other cases in which a term of

supervised release has been imposed. The Court already, at the defendant's sentencing hearing, took all of the section 3553(a) factors into consideration when it sentenced the defendant and, considering those factors, the Court did not impose a term of imprisonment but instead varied from the sentencing guidelines to allow the defendant to remain at liberty (albeit with restrictions). That is, a three-year term of supervised release was imposed as an alternative to the harsher punishment of imprisonment. Accordingly, given the Court's having already granted, in effect, a reduction of the defendant's sentence, a further reduction in the form of early termination of supervised release is not warranted, especially in view of the significant amount of restitution that the defendant still owes.

The defendant's technical compliance with the terms of his supervised release, although commendable, does not warrant early termination.

[D]istrict courts applying *Lussier* to § 3583(e)(1) petitions have found that even perfect compliance with conditions of release does not qualify as "exceptionally good behavior" warranting early termination. These courts have noted that "[m]odel prison conduct and full compliance with the terms of supervised release is what is expected of a person under the magnifying glass of supervised release and does not warrant early termination." *United States v. McKay*, 352 F.Supp. 2d 359, 361 (E.D.N.Y. 2005). In *United States v. Medina*, the court found that though defendant's "post-incarceration conduct is apparently unblemished, this alone cannot be sufficient reason to terminate the supervised release since, if it were, the exception would swallow the rule." 17 F.Supp. 2d 245, 247 (S.D.N.Y. 1998). Therefore, a defendant must show something "of an unusual or extraordinary nature" in addition to full compliance. *United States v. Caruso*, 241 F.Supp. 2d 466, 469 (D.N.J. 2003).

United States v. Etheridge, 2013 WL 6124338, *4 (D.D.C. 2013). See also United States v. Smith, 2010 WL 716495, *2 (M.D. Fla. 2010) (Melton, J.) (“The Court is of the opinion that the conduct and rehabilitation efforts described by Defendant while commendable, are not exceptional to the extent that early termination of supervised release is warranted”); United States v. Paterno, 2002 WL 1065682, *2 (D.N.J. 2002) (“Most courts addressing this issue have found that compliance with terms of supervised release and with the law alone are not enough to warrant early termination”) (citations omitted); United States v. Herrera, 1998 WL 684471, *2 (S.D.N.Y. 1998) (“[T]he fact that [the defendant] has complied with the terms of his probation is commendable, but that ultimately is what is expected of him”).

“Unfortunately for [the defendant], he is a convicted felon, and certain consequences flow from the choices he has made. This includes the consequence of supervised release as a result of his serious [fraud] conviction[.]². . . His supervised release term continues to appear sufficient but not greater than necessary to deter criminal conduct and appropriate to protect the public from further crimes of the Defendant.” See Folks v. United States, 733 F. Supp.2d 649, 651-52 (M.D.N.C. 2010).

² Although the defendant was convicted of fraud offenses rather than drug trafficking (which was the offense involved in Folks), the offenses are nevertheless serious ones.

For the foregoing reasons, the motion for early termination (doc. 76) should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 4, 2019, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system and a true and correct copy of the foregoing and the notice of electronic filing was sent by United States Mail to the following non-CM/ECF participant:

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s/ Arnold B. Corsmeier
ARNOLD B. CORSMEIER
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