

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
	:	
	:	CASE NO.: 07-498-1
vs.	:	
	:	
	:	
MOSHE RUBASHKIN	:	
1349 Presidents Street	:	
Brooklyn, NY 11213	:	
	:	
Defendant	:	

DEFENDANT’S RESPONSE TO THE GOVERNMENT’S PETITION FOR VIOLATION OF SUPERVISED RELEASE

TO THE HONORABLE, JAMES KNOLL GARDNER:

On December 30, 2011, Your Honor ordered Mr. Rubashkin to undergo a 60 day period of house arrest which 60 day period commencing on a date to be approved by the U.S. Probation Office. The house arrest was to be monitored electronically. Pursuant to the terms of the Order, Defendant was permitted to leave his house for religious services.

On February 10, 2012, Mr. Rubashkin’s term of house arrest commenced. Mr. Rubashkin fully complied with all of the terms and conditions of his house arrest until April 7, 2012.

On or about April 30, 2012 the Probation Office filed a Petition to revoke Mr. Rubashkin’s supervised release. According to the Petition, Mr. Rubashkin removed the electronic monitoring device on April 7, 2012 under the (mistaken) belief that his term of house arrest was completed. When questioned further, Mr. Rubashkin indicated that on April 7, April 8 and April 9, he remained in Brooklyn, slept in his residence and did not wish

to partake in the Mikvah Bath with the device on his ankle. In observance of his religion, Mr. Rubashkin did not answer his telephone or return any telephone calls during the period of April 7-8, inclusive. Although not disputing the allegations in the Petition, Mr. Rubashkin believed that the terms of his house arrest was over and that his actions were consistent with the Court's Order of December 30, 2011. Mr. Rubashkin miscalculated the days for which he received credit for his house arrest and voluntarily admitted to the Probation Office that he did in fact remove the monitoring device two (2) days prior to April 9, 2012. Mr. Rubashkin did not try to deceive the Probation Office as his understanding was that the thirty (30) day period had expired. In the midst of the term requiring Mr. Rubashkin to wear the monitor, Mr. Rubashkin contends that he was observing two (2) religious holidays which he believes exempted him from wearing the device. Mr. Rubashkin has no intent of violating the Court Order of which he was two (2) days short of full compliance.

The sentencing range for a violation of a person's supervised release is based on the Grade of Violation and the Criminal History Category at the time of the conviction of the underlying offense. U.S.S.G. § 7B1 4(a). From a reading of the Violation of Supervised Release document, it appears as though Mr. Rubashkin is charged with a Class C violation. His Criminal History Category is III.

The violation alleged is the unauthorized removal of the electronic monitoring device and Mr. Rubashkin's two day miscalculation of his period of house arrest. Although serious, at no time did Mr. Rubashkin commit any new offenses or pose a danger to the community. He was celebrating Passover as well as observing his Sabbath. Albeit subject to pre-approval,

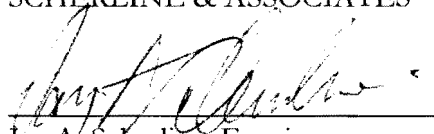
this conduct was permitted under the terms of the Participant Agreement and this Court's Order.

It is important to note that for a Grade C violation, it is not mandatory for the Court to revoke Mr. Rubashkin's period of supervised release or punish him by incarceration; rather, it is discretionary. U.S.S.G. § 7131.3. In fact, the Court has the authority to impose no further sanction upon Mr. Rubashkin. The penalty, if any, is to be dependent upon the seriousness of the charge. Although a violation, it is technical in nature and has its genesis in a misunderstanding. As such, it is the position of Mr. Rubashkin that his supervised release should not be revoked. It is respectfully submitted that should the Court deem it necessary to punish Mr. Rubashkin for this violation the appropriate penalty would be a period of placement in a half way house not to exceed 30 days, or in the alternate to have Mr. Rubashkin continue supervised electronic monitoring for a period of ninety (90) days.

Respectfully submitted,

SCHERLINE & ASSOCIATES

BY:

  
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CERTIFICATE OF SERVICE

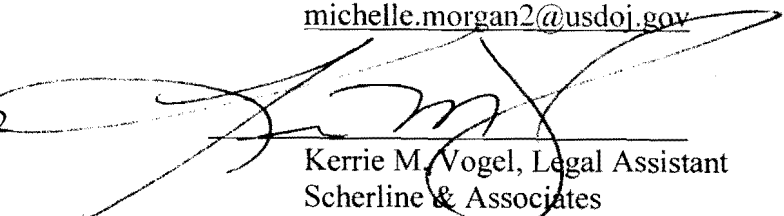
I hereby certify that I have this date sent by regular mail, electronic filing and e-mail copies of the Entry of Appearance, Defendant's Motion to Permit the Defendant to Leave the United States and Travel to Israel and the Memorandum of Law in support thereof, postage pre-paid, addressed as follows:

By ordinary mail: Michelle Morgan, Esquire  
U.S. Attorneys Office  
615 Chestnut Street  
Ste 1250  
Philadelphia, PA 19106

By Hand delivery: Honorable James Knoll Gardner  
Honorable Henry S. Perkin

By e-mail: [michelle.morgan2@usdoj.gov](mailto:michelle.morgan2@usdoj.gov)

Dated: June 25, 2012



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