

## United States District Court

for the

### Eastern District of Pennsylvania

April 30, 2012

U.S.A. vs. Moshe Rubashkin

Case No. 07-CR-498-01

#### **VIOLATION OF SUPERVISED RELEASE**

COMES NOW Christopher J. Moughan U.S. PROBATION OFFICER OF THE COURT presenting an official report upon the conduct and attitude of Moshe Rubashkin who was placed on supervised release by The Honorable James Knoll Gardner sitting in the Court at Allentown PA, on the 4<sup>th</sup> day of November, 2008, who fixed the period of supervision at 3 years, and imposed the general terms and conditions theretofore adopted by the Court and also imposed special conditions and terms as follows:

ORIGINAL OFFENSE: Illegal storage of hazardous waste without a permit and aiding and abetting (Count One).

ORIGINAL SENTENCE: The defendant was sentenced to 16 months imprisonment followed by three years supervised release.

SPECIAL CONDITIONS: 1) The defendant shall provide the United States Probation Office with full disclosure of his financial records to include yearly income tax returns upon the request of the United States Probation Office. The defendant shall cooperate with the probation officer in the investigation of his financial dealings and shall provide truthful monthly statements of his income; 2) The defendant is prohibited from incurring any new charges or opening additional lines of credit without the approval of the probation officer, unless the defendant is in compliance with a payment schedule for any fine or restitution obligation. The defendant shall not encumber or liquidate interest in any assets unless it is in direct service of the fine or restitution obligation or otherwise has the express approval of the Court; 3) The defendant shall participate in a mental health program for evaluation and/or treatment as directed by the United States Probation Office. The defendant shall remain in treatment until satisfactorily discharged and with the approval of the United States Probation Office; 4) The Court hereby directs that the defendant's supervision be transferred to the United States Probation Office in the Eastern District of New York; 5) The defendant shall make restitution in the total amount of \$450,000.00. Payments should be made payable to the United

**RE: Rubashkin, Moshe**  
**Case No. 07-CR-498-01**

States Treasury and forwarded to the Clerk of the Court in Philadelphia, Pennsylvania, for distribution to the designated victims; 6) The defendant shall pay a fine in the amount of \$7,500.00; and 7) The defendant shall pay a special assessment in the amount of \$100.00.

MODIFICATION OF  
CONDITIONS:

On December 30, 2011, the Court ordered that the defendant's conditions of supervised release be modified to include that he be placed on home confinement with electronic monitoring for a period of two months.

DATE SUPERVISION  
COMMENCED:

April 12, 2010

The above probation officer has reason to believe that the supervised releasee has violated the terms and conditions of his supervision under such circumstances as may warrant revocation. These conditions are:

Modification of Conditions: On December 30, 2011, conditions were modified to include the following: For a period of two months, the defendant shall be confined to his residence, commencing on a date approved by the U.S. Probation Office. The defendant shall be required to be at his residence at all times except for approved absences for gainful employment, community service, religious services, medical care, educational or training programs, and at such other time as may be specifically authorized, in advance, by the U.S. Probation office. The defendant shall wear an electronic monitoring device and follow all location monitoring procedures. The defendant shall permit the probation officer access to the residence at all times and maintain a telephone without any custom services at the residence. The defendant shall pay all the costs associated with the location monitoring services and shall disclose all financial information and documents to the probation Department to assess his ability to pay.

On April 17, 2012, U.S. Probation Officer Karen W. Hill, Eastern District of New York, notified this officer of noncompliance by the defendant with respect to his condition of home confinement with electronic monitoring. Correspondence immediately followed which outlines the defendant's noncompliant conduct and the request for a hearing on violation of supervised release.

**RE: Rubashkin, Moshe**  
**Case No. 07-CR-498-01**

Officer Hill submitted the following for the Court's consideration:

Mr. Rubashkin has been under the supervision of this office since his April 12, 2010, following release from the custody of the U.S. Bureau of Prisons. He paid the special assessment fee on January 9, 2009, paid restitution in full on January 27, 2009, and completed a mental health assessment on August 25, 2011. As assessed by Harvey N. Kranzler, M.D., Rubashkin is not in need of psychiatric treatment or counseling. Mr. Rubashkin has been unemployed since February 28, 2011, and has not made a diligent effort to find new employment. He has opted, however, to pursue business ventures as they become available and is supported by \$900 per month in food stamp benefits and contributions from extended family members. Mr. Rubashkin resides with his wife and four of his children at 1349 President Street, 1<sup>st</sup> Floor, Brooklyn, NY., 11213. On December 30, 2011, Judge Gardner modified Mr. Rubashkin's conditions of supervised release by ordering him to serve two (2) months on home confinement. He further ordered that Mr. Rubashkin wear an electronic monitoring device and follow all location monitoring procedures. The above modification was imposed in response to false representations Mr. Rubashkin made to the probation office regarding the payment of the Court imposed fine and false representations he made regarding the probation office's position with respect to international travel.

On February 10, 2012, Senior U.S. Probation Officer Stephen Sandford met with Mr. Rubashkin, at his place of residence, where he installed the location monitoring equipment and activated the electronic monitoring transmitter. He reviewed the Location Monitoring Program Participant Agreement with him and explained to Mr. Rubashkin that he would remain on location monitoring until April 9, 2012, at which time instructions for disconnecting the equipment and removing the electronic monitoring transmitter would be provided. Mr. Rubashkin signed the Participant Agreement and was provided with a copy. A copy of the Probation Form 61 (Location Monitoring Program Participant Agreement) is attached for the Court's review. Page 2 of the agreement clearly defines the expiration date of April 9, 2012, and reflects Mr. Rubashkin's signature acknowledging the same.

On April 4, 2012, Mr. Rubashkin reported to the probation office and met with U.S. Probation Officer Karen Hill. Mr. Rubashkin was reminded of his obligation to pay the electronic monitoring fees and he was directed to contact Senior U.S. Probation Officer Sandford to confirm his home confinement completion date, obtain instructions on when and how to remove the electronic monitoring transmitter, and when and how to unplug the location monitoring equipment.

On April 7, 2012, 10:00 p.m., the probation officer received an alert from the monitoring center, indicating that Mr. Rubashkin failed to return to his home. The probation officer was unable to reach Mr. Rubashkin by telephone and left a message for him, directing him to call the emergency line. Mr. Rubashkin failed to call the probation officer and/or the emergency line.

**RE: Rubashkin, Moshe**  
**Case No. 07-CR-498-01**

On April 8, 2012, 8:23 a.m., the probation officer received a power loss alert from the monitoring center. The probation officer was unable to reach Mr. Rubashkin by telephone and left a message for him, directing him to call the emergency line. Mr. Rubashkin failed to call the probation officer and/or the emergency line. Power was restored at 11:06 a.m.

On April 8, 2012, 10:00 p.m., the probation officer received an alert from the monitoring center, indicating that Mr. Rubashkin failed to return to his home. The probation officer was unable to reach Mr. Rubashkin by telephone and left a message for him, directing him to call the emergency line. Mr. Rubashkin failed to call the probation officer and/or the emergency line.

A review of the electronic monitoring log reflects that the offender left his home on April 7, 2012, 8:44 a.m., and failed to return. On April 10, 2012, the probation officer contacted Mr. Rubashkin by telephone. Mr. Rubashkin stated that he cut the electronic monitoring device and removed it from his ankle on April 7, 2012, because he thought he completed his home confinement term. He was presented with a copy of the Location Monitoring Program Participant Agreement he signed on February 10, 2012, wherein his April 9, 2012, completion date is clearly stated. Mr. Rubashkin stated that he did not refer to the Participant Agreement, because in his mind he thought it was completed. Mr. Rubashkin was reminded of instructions issued to him on April 4, 2012, directing him to contact Senior U.S. Probation Officer Sandford to confirm his home confinement completion date and to obtain instructions on when and how to remove the electronic monitoring transmitter and when and how to disconnect the location monitoring equipment. Mr. Rubashkin stated that he did not contact Officer Sandford because he thought his home confinement term expired on April 7, 2012, and he knew how to remove the transmitter and how to disconnect the equipment.

Mr. Rubashkin was questioned about his whereabouts from April 7, 2012, 8:00 a.m. to April 10, 2012, 8:00 a.m. Mr. Rubashkin maintained that he remained in Brooklyn, New York, during the above period and slept at his residence every evening. He reported that he did not answer his telephone or check his telephone messages because he was observing the Sabbath and the Passover holiday. He explained that he entertained close to forty-five (45) family and community members in his home many of whom spent the night. On April 7, 2012, he set out to partake in the Mikvah Bath. Since he did not want to take the bath with the transmitter on his ankle, he visited a friend in the neighborhood and had a third party cut the strap to the electronic monitoring transmitter. He left the transmitter at his friend's house and picked it up on April 10, 2012, when he was en route to the Probation Office. At no time did he return the transmitter to his home. He maintained that his premature removal of the electronic monitoring transmitter was "an honest mistake, due to miscalculation of his home confinement expiration date."

Since Mr. Rubashkin cut the strap to the transmitter outside of the range of the location monitoring equipment, the monitoring center was unable to pick up an open strap alert. Since Mr. Rubashkin did not bring the transmitter back within range of the location monitoring equipment, data maintained in the transmitter, including the time that the strap was cut, was not recorded. Since Mr. Rubashkin removed the transmitter from his ankle, the probation office is unable to account for his whereabouts from April 7, 2012 through April 9, 2012.

RE: Rubashkin, Moshe  
Case No. 07-CR-498-01

It is the probation officer's assessment that Mr. Rubashkin knowingly cut the strap prematurely, such that he could partake in the Passover festivities without the burden of electronic monitoring. As his actions were willful, deliberate, and without authorization, violation of supervised release action is warranted.

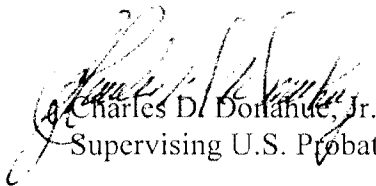
GRADE OF VIOLATION

C

PRAYING THAT THE COURT WILL ORDER ... **THE ISSUANCE OF A SUMMONS DIRECTING THE NAMED SUPERVISED RELEASEE TO APPEAR AT A REVOCATION HEARING.**

I declare under penalty of perjury that the foregoing is true and correct.

Respectfully,

  
Charles D. Donahue, Jr.  
Supervising U.S. Probation Officer

Place: Allentown, PA

Date: April 30, 2012

CJM/am  
Attachment

cc: Assistant U.S. Attorney  
Defense Attorney  
Defendant

ORDER OF THE COURT

Considered and ordered this 17<sup>th</sup>  
day of May, 2012 and  
ordered filed and made part of  
the records in the above case.

  
James Noel Gardner  
U.S. District Court Judge