

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA,	§
	§
Plaintiff,	§
	§ Criminal No. 3:03-CR-189-D
VS.	§
	§
DANIEL T. ROSE,	§
	§
Defendant.	§

ORDER

Defendant Daniel T. Rose’s (“Rose’s”) June 13, 2006 unopposed motion to waive personal appearance at resentencing is granted, and the court schedules resentencing submissions as set forth *infra* at § II.

I

Rose has the right under the Constitution and by rule to be present for resentencing. *See, e.g., United States v. Stribling*, 54 Fed. Appx. 414 (5th Cir. 2002) (per curiam) (unpublished opinion). He can waive this constitutional right, provided his waiver is a voluntary, knowing, and intelligent act, “done with sufficient awareness of the relevant circumstances and likely consequences.” *United States v. Newell*, 315 F.3d 510, 519 (5th Cir. 2002) (quoting *Brady v. United States*, 397 U.S. 742, 748 (1970)). The “waiver must constitute an ‘intentional relinquishment or abandonment of a known right or privilege.’” *Id.* (quoting *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938)). The court must determine whether Rose “had ‘actual knowledge of the existence of the right or privilege, full understanding of its meaning, and clear comprehension of the consequence of the waiver.’” *Id.* (emphasis omitted) (quoting *Hatfield v. Scott*, 306 F.3d 223, 230 (5th Cir. 2002)).

Rose's motion, which he signed personally on June 1, 2006, contains his statements that he understands his right to be present for resentencing, understands his right to allocute on his own behalf at resentencing, and agrees to be bound by and limited to all information presented at resentencing by his counsel. He states that he "expressly, voluntarily, and knowingly waives all rights, Constitutional or otherwise, associated with re-sentencing." Mot. 2. Accordingly, the court finds that Rose has actual knowledge of the existence of his right to be present for resentencing, a full understanding of the meaning of this right (evidenced, *inter alia*, by his specific waiver of the right to allocute), and a clear comprehension of the consequence of the waiver (e.g., that he is bound by and limited to information presented at resentencing by his counsel). The court therefore accepts Rose's waiver.


II

The United States Probation Officer submitted her supplement and second addendum ("addendum") to the presentence report ("PSR") on May 31, 2006. Any objections to the addendum must be submitted to the court no later than June 28, 2006. If a party objects, the Probation Officer must submit an addendum to the court and serve the attorneys for the government and the defendant no later than July 7, 2006. Additionally, the parties may submit written statements of their positions concerning resentencing, in which they argue for a particular sentence, no later than July 14, 2006. At any time after that deadline has elapsed, the court will resentence Rose based on the PSR and all

addenda and written submissions received in connection with the original sentencing and resentencing, without an in-court hearing.

SO ORDERED.

June 14, 2006.



SIDNEY A. FITZWATER
UNITED STATES DISTRICT JUDGE