

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CRIMINAL DIVISION

UNITED STATES OF AMERICA	:	Case No. 2014 CMD 018262
	:	
v.	:	Closed Case
	:	
BERNARD FREUNDEL	:	Senior Judge Geoffrey M. Alprin

ORDER

Before the court is the defendant's Motion to Reduce Sentence, filed with the court on December 22, 2016, pursuant to D.C. Super. Ct. Crim. R. 35(b). The court ordered the government to respond to the motion by January 22, 2017, and the government moved to extend that filing deadline due to an inability to access the defendant's trial record in this case. The court granted that motion, and ordered the government to respond by February 23, 2017. The government then filed its opposition to defendant's motion on February 22, 2017. After a careful review of the record, the applicable law, the defendant's motion, and the government's opposition, this court concludes that the defendant's motion to reduce sentence should be denied.

The defendant was convicted of 52 counts of voyeurism under D.C. Code § 22-3531(b) and (c) on February 19, 2015. Thereafter on May 15, 2015, this Court imposed consecutive sentences of 45 days of incarceration for each count, and a total of \$13,000 to be paid to the Victims of Violent Crime Compensation Act.

In his motion, the defendant argues that his sentence should be reduced on two grounds. First, he claims that while at the D.C. jail, Mr. Freundel has helped several inmates and has received praise from both the jail and the Department of Employment Services. Defendant's

motion, at 8. Further, he postulates that the D.C. jail is an inappropriate prison facility for the defendant because it cannot make provisions for Mr. Freundel to practice his religion or to observe a kosher diet, has no adequate rehabilitation services, mental health counseling, or medical and dental care, only allows for contact visits once a month “through a Plexiglas window” or via closed circuit television, provides inmates with little access to fresh air or recreational activities, has poor physical facilities which exacerbate health risks to longterm inmates, and possesses far worse physical conditions than a Bureau of Prisons Facility, which this Court recommended for the defendant during sentencing. *Id.* at 8-18.

A motion to reduce sentence under rule 35 “allow[s] the trial court to consider, after further reflection, whether the sentence originally imposed was too harsh in light of the defendant’s *pretrial conduct*.” *Williams v. United States*, 470 A.2d 302, 310 (D.C. 1983) (emphasis added). It is, in essence, “simply a plea for leniency addressed to the trial court’s discretion.” *United States v. Hamid*, 461 A.2d 1043, 1044 (D.C. 1983). *See also Saunders v. United States*, 975 A.2d 165, 167 (D.C. 2009). In considering such a motion, and deciding whether a sentence should be reduced, the Court should consider whether the defendant has set out any new factors which were not known at the time of the sentencing. *Moore v. U.S.*, 608 A.2d 144, 146 (D.C. 1992); *Pernell v. United States*, 771 A.2d 992, 995 (D.C. 2001). The defendant here, however, offers no appropriate basis to support a reduction in his sentence. This Court did consider all of the defendant’s pretrial circumstances during the May 15, 2015 sentencing hearing, and the defendant raises no new arguments in his current motion to reduce sentence.

Contrary to the defendant’s assertions, this Court finds no new basis for considering a reduction in his sentence. Although the Court at the sentencing hearing on May 15, 2015, noted

that the defendant “provides comfort and solace to many individuals in the community,” it also noted that those acts of kindness “do not exonerate [the defendant’s] conduct.” See government’s opposition, at 8. Further, the government requested a sentence of four months of imprisonment for each count, but the Court felt that 45 days for each count would be appropriate. The District Of Columbia Department of Corrections is the proper agency to address the defendant’s grievances regarding the conditions of the facilities at the District of Columbia jail. *Id.* Finally, Mr. Freundel is statutorily barred from transfer to a Bureau of prisons Federal Facility because he was not convicted of a felony, and the Department of Corrections has the authority to determine the facilities in which inmates are housed. *See* D.C. Code § 24-101; *see also* D.C. Code § 24-211.02 (establishing that the Department of Corrections, “shall have power to promulgate rules and regulations for the government of [its] institutions, [...] to classify the inmates, and to provide for their proper treatment, care, rehabilitation, and reformation.”). Upon reflection, given the nature of the offense and for all of the reasons listed above, this Court finds that the sentence is appropriate and should not be altered.

For these reasons, it is this 12th day of May, 2017,

ORDERED that defendant’s Motion to Reduce Sentence under D.C. Sup. Ct. Crim. R.

35(b) is **DENIED**.



Senior Judge Robert I. Richter
On behalf of Geoffrey M. Alprin
Senior Judge
/Signed in Chambers/

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