

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA
Clarksburg

UNITED STATES OF AMERICA,

v.

Criminal No. 1:20CR27

RETA MAYS,

Defendant.

**DEFENDANT'S MOTION TO CONTINUE SENTENCING FROM
FEBRUARY 18-19 TO MAY 20-21**

Now comes the defendant in the above captioned matter and requests that this Honorable Court continue the sentencing of the defendant in this matter to a date no earlier than May 20-21, 2021 for the reasons set forth in the paragraphs that follow.

The Time Leading Up to the Plea on July 14

The defense begins this motion and memorandum with a theme that has previously been urged upon this court, but which cannot be overemphasized: this case is many months and perhaps years ahead of where it would be had Ms. Mays simply insisted on her right to formal indictment, which would have triggered a no doubt lengthy and contentious discovery process, a death penalty authorization process, a motion and trial preparation process and ultimately a trial that may well have lasted months. Had she insisted on all of this, we would likely not be at the crossroads we are at today for another 24-36 months, with many tens of thousands of dollars spent in the interim. Instead, Ms. Mays chose to accept responsibility for her actions, enter a plea of guilty to all of the accusations against her and go into custody without objection, all in record time.

To be sure, this would not have been possible without a prosecutor who at the very least was not insisting on seeking the ultimate punishment, and who had an appreciation for the value of finality for all involved in a case such as this. But the timetable that the Assistant United States Attorney foisted on the defense team was aggressive to the point that counsel seriously discussed whether it was even worth trying to meet it.

While defense counsel were aware generally from news reports of the existence of an investigation into suspicious deaths at the Clarksburg VAMC, there had been no event which triggered Ms. Mays right to counsel until the United States Attorney issued a target letter delivered to her, dated February 5, 2020. Upon receipt of that letter, Ms. Mays immediately contacted the Federal Defender Office, and Mr. Kornbrath¹ initiated the process by which the court appointed the undersigned defense counsel the following day, February 6, 2020. The defense team went to work immediately, with Mr. Kornbrath and Mr. McCamic conducting introductory interviews of Ms. Mays in early to mid-February, and Mr. Hoose traveling to Clarksburg for the first meeting of all defense counsel with Ms. Mays on February 24, 2020. By March 1, 2020, defense counsel had made arrangements to seek appointment of two additional members to the defense team: a highly regarded and hence very busy mitigation specialist, and a seasoned private investigator, who was also experienced in mitigation work.

As this Court is well aware, within a matter of weeks thereafter, the country began to fall under the grip of the COVID-19 pandemic. In spite of this fact, by the early Spring of 2020, the

¹ In late 2019 Mr. Kornbrath reached out to Ms. Mays after she was named as a suspect in news reports regarding the deaths at the Clarksburg VAMC. While he was unable to represent her at that time, he made sure that she knew to contact him if she were either arrested, or in receipt of a target letter. The news reports were widely disseminated and Mr. Kornbrath as well as the Federal Death Penalty Resource Counsel immediately made arrangements to assemble a defense team that would be ready to respond quickly in the event of an arrest.

Government made clear to the defense team that any opportunity to reach a negotiated settlement of the allegations against Ms. Mays would have to be accomplished by early summer². As indicated above, upon receipt of the Government's proposed timeline, the defense team met virtually and engaged in lengthy and serious discussion as to whether achieving a negotiated settlement of such serious allegations was doable under any circumstances, let alone while a pandemic was raging throughout the country. Ultimately, the defense team concluded that we owed it to our client to do everything we could to meet the Government imposed deadline, no matter how unreasonable we might have felt it was. Thus began a series of gatherings in Bridgeport and Clarksburg with the five person defense team, Ms. Mays and members of her family. These meetings required significant travel on the part of learned counsel (Hoose) who is from Massachusetts, the mitigation specialist (McDermott) who is from Florida, and the private investigator (Watson) who is a six-hour drive away in Kentucky. Of course, Hoose³ and McDermott were required to fly to these meetings at a time when virtually all reputable public health experts were advising against unnecessary air travel. Most of the meetings, some of which were as long as 6-8 hours, were held of necessity in hotel room in Bridgeport, again at a time when public health experts were advising against travel and spending prolonged periods of time with others in confined spaces⁴, like a hotel room.

² The initial date was in late June, which was later extended to the July 14 date on defense counsel's representation that they were making progress.

³ Hoose has made six trips total to Clarksburg on this case, four of which were in the time frame from the onset of the pandemic to the date of the plea. On two occasions he drove, due to fears of contracting COVID-19 through commercial air travel.

⁴ The defense team tried to meet outdoors as much as was possible. Due to the nature of the discussions, obviously there were times when meeting in a public or even quasi-public space was not practical.

In short, while not in any way minimizing the Government's efforts, nor certainly not under-appreciating Ms. Mays' ability and willingness to engage with her defense team, this plea happened in large part because of the defense team's willingness to put their personal health and safety at risk by traveling at a time when most medical and public health experts were advising against it.

The Defense Mitigation Effort

Due to the time constraints imposed by the Government, the defense team was completely absorbed with making every effort to get the case resolved by plea, if that were possible. This effort required many hours of simply building trust, and once that was established, attempting to revive Ms. Mays' memories of patients and treatments from two years earlier. Due to the nature of the allegations, a complete review of a number of suspected victims' medical records needed to be done, the pharmacology of insulin and the physiology of the endocrine system (mainly the pancreas) had to be studied with the help of expert consultation via Zoom. Lastly of course, it required hours of discussion to make sure that the decision to enter a plea was the best course of action for Ms. Mays and one that she was entering into knowingly, freely and voluntarily. To say that this effort was emotionally draining would be a profound understatement. McDermott and Watson, the two female members of the defense team were integral to achieving this result. Given that simply getting to the point where we could execute a plea agreement drove the defense efforts, there was very little time for Watson and McDermott to do what is normally the focus of their work—beginning to build the case for mitigation of sentence. While many meetings were held with Ms. Mays, the focus was on the nature of the charges, the ability or lack thereof to adequately defend them, and her willingness to accept responsibility for them. Similarly, a few meetings were held with Ms. Mays parents at their

home in Bridgeport, but these charges hit their small side hill goat farm like a bombshell. As a result, only the most rudimentary beginnings of building a mitigation effort was attainable prior to July 14. The defense team was only able to meet with Ms. Mays' children and brother once or twice in brief outdoor sessions prior to July 14. Due to COVID-19 concerns, other family members and friends in the Harrison County area were not even approached, as it seemed socially irresponsible to do so, even if they had been willing to open their doors to strangers like the defense team. Again, in a normal case, taking place under normal circumstances, such relationships are built slowly over time. We did not have that time prior to July 14. Other friends and family members⁵ who live in different parts of the country have not been approached due to the same concerns.⁶

As the court is aware, Ms. Mays' husband Gordon is currently in the custody of the Bureau of Prisons. At some point, the defense team realized that we could not get the case to the point of a plea without it being discussed with Mr. Mays. To do so, once again a defense team member, Mr. McCamic, had to set aside his concerns for personal health and safety to make visits Mr. Mays at the Washington County Jail in Marietta, Ohio.

Efforts to Meet with Ms. Mays Post July 14

As the court is aware, we initially requested that Ms. Mays be detained at the Northern Regional Jail (NRJ) in Moundsville, in part due to the fact that she had previously been employed at the North Central Regional Jail, but also because it was most conducive to her

⁵ For example, Ms. Mays step-son Benjamin lives in North Central Pennsylvania. Under normal circumstances he is someone that the defense team would have interviewed by now. We have not done so due to the aforementioned concerns.

⁶ Certainly, the pandemic has taught us that many things can be done virtually. There are some things that cannot however and talking to friends and family members about the intimate details of their lives with the defendant is one of them.

getting visits from a member of the defense team, Mr. McCamic, who is in Wheeling. Indeed, immediately after the placement, Mr. McCamic was able to visit with Ms. Mays at Moundsville on a couple of occasions. Ms. McDermott visited her as well on a couple of occasions, and McDermott, Hoose and McCamic jointly visited her there prior to the status conference that was held in late October. In the Summer and early Fall, the number of COVID-19 infections among detainees and staff at the jail was near zero. As of this writing, the most recent information available is that there are 181 active cases among detainees and staff at the NRJ. The defense team, having previously risked their health and safety, is simply not willing to do so again under these even more dangerous circumstances. As the Court is aware, Mr. McCamic has experienced COVID-19 in a very personal way, as it claimed his step-mother in November. His father contracted it as well but has thus far survived. Just this past week, Mr. Hoose was informed that his soon to be 96 year-old mother, a resident of an assisted living facility, has tested positive for COVID-19.

In short, the weeks and months leading up to a sentencing proceeding where the defendant is facing the possibility of a life sentence would normally be a time of intense work with the client to attempt to build the case for leniency. Due to the current state of the pandemic this simply cannot happen.

The Status of Attempts to Obtain Records

The defense has diligently attempted to obtain all military and other records that pertain to Ms. Mays.⁷ While the Government is correct that most everything known in terms of military records is in our possession, we are not yet convinced that we have everything. But whether we

⁷ Once again, the defense acknowledges the Government's assistance in providing a large amount of documentary evidence.

have every piece of paper or not is only part of the concern. The records contain names of people who may have seen Ms. Mays professionally or who may have served with her, who can be of value in building the case for mitigation. The defense team acknowledges the Government's efforts at helping us locate the most recent batch of records (from a source that neither of us knew existed). Contained in those records are names for which the defense team would like to make an effort to follow up. Once again, given the reality of life in the pandemic, it is impractical to do anything other than make a phone call under the current circumstances.

Status of the Defendant's Expert

As has been previously reported, the defense will not call an expert to testify at sentencing. This will result in a substantial savings of time and money. Nonetheless, the defense is not prepared to totally forego expert assistance in the areas of post-traumatic stress disorder and military sexual trauma. The defense began searching for an appropriate expert in August and conducted its first interview of an expert in September. That expert who was well qualified for the task told us that she absolutely could not even begin until after the first of the year. We quickly identified a second expert who appeared to be even more appropriate for the task. This individual also told us that he could not begin work until after Christmas. These contacts confirmed what we already knew: that good experts are hard to find and are very busy.

Once we get the records to our expert, we do not envision a long period of time for him to review them and to draft a report, yet to expect that to be accomplished within the roughly three weeks that would be available should the court adopt the Government's proposed timeline is unreasonable. The defense should not be rushed in its efforts in this regard, nor should the Government, who will want adequate time to review the report and have its expert prepare a response.

COVID-19 and a February Sentencing

While all of us are happy with the recent news reports that a vaccine is on the way, the current rates of infection as well as the gross overall numbers continue to make it extremely unsafe to travel or to gather unnecessarily. Two members of the defense team have age comorbidities. Ms. Mays has at least two comorbidities. Mr. Douglas has on several occasions spoken of the age of some of the victims' family members. No matter how anxious they are for a final resolution of this case, they should not expose themselves to the risk of infection either.

Conclusion

No one of course can be certain what the future will hold with respect to the pandemic. Based on the reports, it seems likely however that the numbers will get worse before they get better. Given that the numbers got significantly worse when colleges went back into session and again after families gathered for Thanksgiving, it is only reasonable to conclude that they will get worse again after families gather for the Christmas holiday, which will happen in spite of all efforts to persuade them not to do so. No one can be sure whether the numbers will have begun to decline by February 18 or not. No one can be certain what the numbers will be in May either, but at least by then a substantial portion, if not a majority of the populace will likely have been vaccinated.

Finally, neither the defense team nor Ms. Mays has any ulterior motive in seeking the relief requested in this motion. There is no advantage to Ms. Mays in seeking to prolong the inevitable. At sentencing the defense intends to seek a sentence of thirty years. Ms. Mays gains nothing by delaying imposition of whatever sentence the court imposes. She cannot get visits in her current location and in fact she is probably more restricted in her activities than she will be when she is moved into a BOP facility.

For all of the above reasons the defense team requests that this case be continued to a date no sooner than May 20 for sentencing.

Respectfully submitted,

/s/David P. Hoose

David P. Hoose, Esq.
Sasson, Turnbull & Hoose
100 Main Street, Third Floor
Northampton, MA 01060
(413) 586-4800
dhoose@strhlaw.com

Brian Kornbrath, Esq.
Federal Public Defender
The Huntington Bank Building
230 West Pike Street, Suite 360
Clarksburg, WV 26301
(304) 622-3823
brian_kornbrath@fd.org

Jay T. McCamic, Esq. (WV Bar #2386)
McCamic Law Firm, PLLC
80 12th Street, Suite 305
P.O. Box 151
Wheeling, WV 26003
(304) 238-9460
jay@mccamic.com

Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on December 15, 2020, I electronically filed the above motion with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ David P. Hoose
David P. Hoose, Esq.