

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

v.

SCOTT J. BLOCH,

Defendant.

Criminal No. 1:10-mj-00215-DAR-1

**DEFENDANT’S REPLY IN SUPPORT OF HIS
UNOPPOSED MOTION TO WITHDRAW HIS GUILTY PLEA**

Pursuant to the Court’s March 2, 2011 Minute Order (“Order”), Defendant Scott J. Bloch, by his attorneys, hereby files this Reply in Support of Defendant’s Unopposed Motion to Withdraw his Guilty Plea and states as follows:

1. Undersigned counsel respectfully submits that it was not necessary for Mr. Bloch to file a Reply to the Government’s Response to Defendant’s Unopposed Motion to Withdraw his Guilty Plea (“Gov’t Resp.”) [Dkt. No. 39] since the Government declared that “the government believes that the defendant’s motion to withdraw his guilty plea in this case is well-founded” and thus the government “does not oppose defendant’s motion.” Gov’t Resp. at 1. Moreover, the Government also explained that its position was “one of basic fairness.” Gov’t Resp. at 3. Mr. Bloch was—and is—in complete accord with the Government’s views and, consequently, undersigned counsel declined to file a Reply in the interests of avoiding the imposition of an additional, and unnecessary, financial cost upon Mr. Bloch. Further, we understood this Court’s Order in the context of Local Criminal Rule 47(d), which suggests that Reply memoranda are permissive and within the discretion of the moving party. See Local Crim. R. 47(d) (“Within

seven days after service of the memorandum in opposition the moving party *may* serve and file a reply memorandum.”) (emphasis added).

2. With respect to the Court’s instruction that “Defendant shall offer a citation to the record in this action in support of the following averment: (1) ‘Contrary to the parties’ expectations under the plea agreement,’ (2) the PSI,...ostensibly relying on the sentencing guidelines,’ (3) ‘reversed Probation’s prior position,’ and (4) ‘maintained, for the very first time, that 2 U.S.C. § 192 mandated a minimum on-month term of imprisonment,” see Order, undersigned counsel states as follows:

a. The plain language set forth in section 3 of the Plea Agreement [Dkt. No. 3] demonstrates that the parties expected a guilty plea under 2 U.S.C. § 192 to be probation-eligible. Specifically, under the Plea Agreement, the Government and Mr. Bloch agreed that the “stipulated Sentencing Guidelines range is 0 to 6 months” and both parties agreed not to seek a departure from this 0 to 6 month range. See Plea Agreement § 3 [Dkt. No. 3]. This understanding is a plain and clear expression of the parties’ intent, and, as such, is manifestly contrary to any mandatory minimum sentence under 2 U.S.C. § 192. Moreover, undersigned counsel has advised the Court—orally (during the sentencing hearing), and in the Defendant’s Unopposed Motion to Withdraw his Guilty Plea—that Mr. Bloch, his counsel, and the Government all understood 2 U.S.C. § 192 to be a probation eligible offense. See generally Motion to Withdraw Guilty Plea [Dkt. No. 37] at 2-6. Such understanding was self-evidently a key consideration in Mr. Bloch’s decision to plead guilty in this case.¹ To the extent that the Court has any concerns regarding the record in this case, we have attached an affidavit from Mr. Bloch further reinforcing the fact that he would not have pleaded guilty if he had been informed

¹ Moreover, undersigned counsel, as well as the Government, was unaware of any precedent to the contrary at the time of the guilty plea, nor are we aware of any such precedents today, other than this Court’s Memorandum Opinion.

that section 192 was not a probation-eligible offense. See Exhibit A (March 3, 2011 Affidavit of Scott J. Bloch).²

b. With respect to the remaining aspects of undersigned counsel's prior representations regarding Probation's views of 2 U.S.C. § 192, there were numerous instances in the prior briefs and oral arguments in this case where it was made plain that Probation's current interpretation of 2 U.S.C. § 192 represents a departure from Probation's previously expressed position. For example, undersigned counsel and his associate, Ryan R. Sparacino, recall that Probation, represented by Ms. Kelly Kraemer-Soares, acknowledged to undersigned counsel, as well as the Court, that Probation's view of section 192 in this case is different from Probation's view of section 192 in cases such as Tejada. Moreover, the government also noted, in its Supplemental Sentencing Memorandum, that Probation's view in this case departs from its view in Tejada. See Government's Supplemental Memorandum in Aid of Sentencing [Dkt. No. 23] at 5-6 (citing government's and defendant's sentencing memoranda in Tejada, both of which referenced the fact that the Presentence Report in Tejada recommended probation). Understanding that Probation acknowledged its reversal and that Probation represented in open court that it was reversing course with respect to its interpretation of the penalty provision of 2 U.S.C. § 192, it necessarily follows that Probation has never taken a position contrary to the conclusion that the penalty provision of 2 U.S.C. § 192 is probation-eligible.

² In his Affidavit, Mr. Bloch swears under penalty of perjury that "[a]t the time I negotiated my guilty plea to one count of contempt of congress pursuant to 2 U.S.C. § 192, I believed that such an offense was probation-eligible, and I believed that it was possible that I could be sentenced to probation." Bloch Aff. ¶ 2 (Ex. A). Mr. Bloch further swears that "[i]f I had been informed that 2 U.S.C. § 192 was not a probation-eligible offense, or that any sentence under 2 U.S.C. § 192 required a mandatory minimum term of incarceration, I would not have pleaded guilty." Bloch Aff. ¶ 3 (Ex. A).

CONCLUSION

In light of the foregoing, Mr. Bloch requests that this Court grant his motion to withdraw his guilty plea to 2 U.S.C. § 192 pursuant to Rule 11(d)(2)(B).

Dated: March 3, 2011

Respectfully Submitted,

/s/

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Counsel for Scott J. Bloch

CERTIFICATE OF SERVICE

I certify that on March 3, 2011, I have electronically filed the foregoing *Reply in Support of Defendant's Unopposed Motion to Withdraw Guilty Plea* through the CM/ECF system, which will serve the document on all parties.

/s/

William M. Sullivan, Jr.

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AFFIDAVIT OF SCOTT J. BLOCH

I, Scott J. Bloch, declare under penalty of perjury as follows:

1. I am the defendant in the above-captioned matter.
2. At the time I negotiated my guilty plea to one count of contempt of congress pursuant to 2 U.S.C. § 192, I believed that such an offense was probation-eligible, and I believed that it was possible that I could be sentenced to probation.
3. If I had been informed that 2 U.S.C. § 192 was not a probation-eligible offense, or that any sentence under 2 U.S.C. § 192 required a mandatory minimum term of incarceration, I would not have pleaded guilty.

Executed on March 3, 2011, in Washington, D.C.

District of Columbia : SS

Subscribed and Sworn to before me, in my presence,

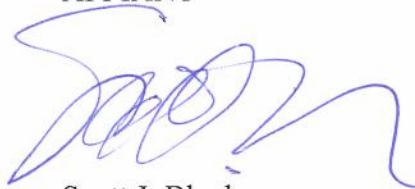
this 3 day of March, 2011

Stephanie Riggs

Notary Public, D.C.

My commission expires 02/29/2016

AFFIANT



Scott J. Bloch,

Acknowledgment of Notary Public:



Dated: March 3, 2011