

JUST SCRAPS OF SNARK REMAINING

Fitzgerald's filing in response to Judge Walton's request for clarification on Libby's magical disappearing prison sentence has the feel of bitter duty. Much of it is an attempt to stave off any attempt by Libby's lawyers to disappear even the supervised release.

As discussed more fully below, it is the government's position that the supervised release term remains operative, and that, by effect of the commutation, the supervised release term began on July 2, 2007.

It offers three different reasons why Libby should be unable to bid to have the supervised release vacated.

Still, it is not without its snark. It repeats what Fitzgerald said in his statement—that Libby actually got a light sentence.

The Court sentenced the defendant to imprisonment on each of the counts, and **the total sentence of imprisonment, 30 months, was at the low-end of the applicable Sentencing Guidelines range.** [my emphasis]

And it goes to some length to demonstrate that this kind of commutation has almost never happened before. As in, once.

Before setting forth the specific grounds for its position, the government acknowledges the absence of case law authority that directly addresses whether a term of supervised release may follow a commutation of a term of imprisonment where no actual imprisonment has been served. The government is aware of only one other instance since the passage of the

Sentencing Reform Act of 1984 of a “prospective” commutation, that is, where no imprisonment term was actually served, and no case law analysis arose from that other commutation.

And it explains US Code, “not surprisingly,” doesn’t account for the kind of commutation Libby received.

Section 3583(e) sets forth the circumstances permitting termination, extension, modification, or revocation of supervised release, and not surprisingly, Â§ 3583(e) contains no provision for vacating a lawfully-imposed term of supervised release because a Presidential commutation deemed the sentence of imprisonment to be “expire[d].”

After all, Libby didn’t do the same things others had to to get their sentence commuted.

Although defendant Libby apparently did not submit a “petition[] for mercy,” the holding of Schick should still apply here: the defendant has readily accepted the “full benefit of a lesser punishment,” and thus it is appropriate that he still meet the much lesser burdens of the sentence he now faces.

The filing makes me more bitter than I was even last Monday. That’s what we’ve come to—arguing diligently to sustain the scrap of punishment Libby still has.