

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
CLARKSBURG**

UNITED STATES OF AMERICA,

Plaintiff,

v.

**Crim. Action No. 1:20-CR-27
(Judge Kleeh)**

RETA MAYS,

Defendant.

ORDER

After a status conference held on October 30, 2020 [Dkt. No. 59], this matter was scheduled for a sentencing hearing for two days beginning on February 18, 2021, at 9:30 a.m. Another status conference was held with the parties on November 18, 2020 [Dkt. No. 61] during which Counsel for Defendant followed up on the status of records that the parties were attempting to collect for Defendant's expert and use as mitigation evidence at sentencing. The parties filed status reports related to the records on December 4, 2020 [Dkt. No. 62] and December 10, 2020 [Dkt. No. 63].

On December 15, 2020, Defendant filed a motion to continue the sentencing hearing [Dkt. No. 64]. As grounds for a continuance, Counsel for Defendant notes that the parties are months ahead of where they would be had Defendant exercised her right to be charged by Indictment. The motion states that mitigation efforts were made more difficult by the COVID-19

pandemic which has limited travel and the ability to meet indoors. The motion also cites the issues faced by Counsel in obtaining historical records and securing a defense expert with experience in post-traumatic stress disorder and military sexual trauma. The Defendant requests that the sentencing hearing be continued until May 20 and May 21, 2021.

The Government responded in opposition to the motion to continue, noting that Counsel requested a sentencing hearing in March 2021 at the October 30, 2020, status conference [Dkt. No. 65]. The response also states that Counsel for Defendant agreed to address any mental health issue for sentencing mitigation purposes through only a written report prepared by the defense expert. As a result, the Government proposed that the parties be ordered to disclose opening expert reports on or before January 22, 2021, any responsive expert reports on or before February 5, 2021, and to file sentencing memoranda on or before February 12, 2021. The Government contends that a continuance is unwarranted and that any further delay is unreasonable.

In a supplemental filing, Counsel for Defendant states that Defendant's mitigation expert can provide a finished report no earlier than March 15, 2021 [Dkt. No. 67]. The supplement also addresses the voluminous nature of records necessary for the mitigation expert to review, and the continued problems faced by Counsel in preparing for the sentencing hearing with Defendant's

family who have all suffered illness from COVID and Defendant who has been on lockdown without access to video conferencing. The filing likewise references COVID-19 comorbidities of members of the defense team as a reason to proceed with caution.

The Government filed a response to Defendant's supplement and, based on the date of March 15, 2021 as the earliest by which Defendant's expert may complete a written report, requested a sentencing hearing for the week of April 12, 2021 [Dkt. No. 68]. Defendant replied [Dkt. No. 69], explaining that the preparation needed for a proper sentencing presentation is not so simple as receiving an expert's finished report in time for a rebuttal report to be prepared and filed, followed by a week for the parties to file sentencing memoranda. Counsel notes that the May 20, 2021, date was not selected at random but is based upon what the defense believes to be the minimum necessary to satisfy the duty to make reasonable investigations and an appropriate presentation for a non-death penalty sentencing.

The Court is mindful of its duty to impose sentence without unnecessary delay under Federal Rule of Civil Procedure 32(b)(1). It is further mindful that Counsel for Defendant indicated that acceptable.¹ After conviction or a plea of guilty, a defendant's

¹ This Court is certainly aware of the challenges presented to counsel - here and in any case - by the pandemic. The Court has faced challenges as well adapting to the current conditions while forging ahead with its Constitutional duties. With that said,

due process right, while diminished, is still present and she retains an interest in a sentencing proceeding that is fundamentally fair. Betterman v. Montana, 136 S.Ct. 1609, 1617 (2016). While victim concerns for closure are important to the timing of a sentencing hearing, a defendant's right to appropriately prepare for a sentencing proceeding that is fair is paramount. This Court cannot reasonably conclude a three-month continuance to permit Defendant and her defense team to adequately prepare in the midst of a nearly yearlong pandemic for a sentencing proceeding where the Government has clearly and publicly announced its intent to argue for a life sentence is unnecessary. The victims' families' and the Government's frustration is palpable and understood; however, this Court has an obligation to ensure Defendant's Constitutional and other rights are fully observed in this case. This continuance provides for that.

Accordingly, the Court **GRANTS** the Defendant's motion to continue the sentencing hearing [Dkt. No. 64]. The dates proposed by Defendant are not available. It is **ORDERED** that the **Sentencing Hearing** be **scheduled for two days beginning on May 11, 2021, at 9:00 a.m. at the Clarksburg, West Virginia point of holding court.**

For reasons appearing to the Court, and to provide a platform by which members of the public may safely view or listen to the

those conditions remain largely the same now as when this Court, months ago, established the current schedule.

sentencing hearing without having to personally attend the hearing, the proceeding will be accessible via **Zoom video conference** with an option to participate telephonically. The public may access the hearing as follows:

Option A (Link):

<https://www.zoomgov.com/j/1616091711>

Meeting ID: 161 609 1711

Option B (Dial-In From Your Location):

+1 669 254 5252 US (San Jose)

+1 646 828 7666 US (New York)

Meeting ID: 161 609 1711

The authorization of remote access to the sentencing hearing via Zoom video or teleconference is limited and does not authorize more traditional forms of "broadcasting" court proceedings, such as livestreaming court hearings on the internet.² Persons granted

² In allowing the hearing to be accessed via video conferencing technology, the Court is mindful of the March 31, 2020, and April 2, 2020, memoranda from the Executive Committee of the Judicial Conference offering guidance for the use of video and teleconference technology to provide access to the public and the press in criminal proceedings. The Judicial Conference determined that Federal Rule of Criminal Procedure 53 does not prohibit the use of technology authorized by the "Coronavirus Aid, Relief, and Economic Security Act" ("CARES Act"), (P.L. 116-136, 134 Stat. 281), to provide access to the usual participants and observers of the criminal proceedings identified in the Act. This authorization includes not only defendants, lawyers, probation officers, and court personnel, but others who normally participate in or observe criminal proceedings including victims, family members, the public, and the press. The authorization for video or

access to the hearing are reminded of the general prohibition against photographing, recording, and rebroadcasting of court proceedings. A violation of these prohibitions may result in sanctions, including removal of court issued media credentials, restricted entry to future hearings, denial of entry to future hearings, and any other sanctions deemed necessary by the Court.

It is so **ORDERED**.

The Court **DIRECTS** the Clerk to transmit copies of this Order to counsel of record and all appropriate agencies.

DATED: January 29, 2021

/s/ Thomas S. Kleeh
THOMAS S. KLEEH
UNITED STATES DISTRICT JUDGE

teleconference access to criminal proceedings expires when the emergency declared under the CARES Act ends.