

United States of America  
First Circuit Court of Appeals

NO. 2021-1501

UNITED STATES OF AMERICA

Appellee,

v.

STEPHEN D. WILLIAMS

Defendant/Appellant.

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APPEAL FROM MASSACHUSETTS FEDERAL DISTRICT COURT

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BRIEF OF DEFENDANT/APPELLANT, STEPHEN WILLIAMS

October 6, 2021

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## **STATEMENT OF JURISDICTION**

On June 11, 2021, the United States District Court for the District of Massachusetts (*Mark L. Wolf, J.*) revoked the supervised release of Stephen D. Williams, after it found him in violation of conditions of supervised release, pursuant to 18 U.S.C. § 3583(e)(3). On the same date, the court sentenced Mr. Williams to two years committed. The First Circuit Court of Appeals has jurisdiction over this appeal. 18 U.S.C. § 3742; 28 U.S.C. § 1291.

On May 28, 2021, the court (*Jennifer C. Boal, M.J.*) refrained from releasing Mr. Williams pending new criminal charges, 18 U.S.C. § 3142, appeal of which is to this court. 18 U.S.C. § 3145(c); 28 U.S.C. § 1291.

A notice of appeal was filed on July 8, 2021.

## **STATEMENT OF ISSUES**

- I. Did the court err in not conducting an evaluation of where Mr. Williams is able to get the most effective medical care, in prison or out?
  
- II. Did the court impose a cruel and unusual punishment on Mr. Williams in violation of the 8th amendment by incarcerating him while he has a fatal disease and cannot get adequate care in prison, such that a two-year sentence is tantamount to a death sentence?
  
- III. Did the court sentence Mr. Williams unreasonably, given that he has become physically incapable of further criminal activity, and that his family is available to provide care he cannot get elsewhere?
  
- IV. Did the court err in detaining Mr. Williams when his current situation means he is likely to be available to comply with court orders and release conditions?

## STATEMENT OF FACTS AND STATEMENT OF THE CASE

### I. Prior Incarceration and Compassionate Release

After a plea of guilty to a pair of 2016 bank robberies, defendant Stephen Williams was serving a 60-month period of incarceration. INDICTMENT (Mar. 16, 2017) (omitted from appendix); INFORMATION (Dec. 19, 2017) (omitted from appendix); PSR (Mar. 20, 2018) at ¶ 2, *Sealed Appx.* at 3; JUDGMENT IN A CRIMINAL CASE (Mar. 29, 2018) at 1-2 (omitted from appendix). His sentence included 36 months of supervised release, which was conditioned on six “mandatory conditions,” thirteen “standard conditions,” and ten “special conditions.” *Id.*

Beginning in October 2019, Williams reported to prison medical staff that he was experiencing abdominal pain, cramps after food or fluids, blood in his stool, and significant weight loss.<sup>1</sup> He was prescribed various medications for abdominal infections, which did not help. Prison medical records indicate he repeated those complaints every few weeks through February 2020. Although he tested positive for H Pylori, which is known to increase the risk of cancer, he was not referred to a gastroenterologist for further testing. BOP MEDICAL RECORDS JUNE 2019-JUNE 2020, *Sealed Appx.* at 60 *et seq.*; DEFENDANT’S SUPPLEMENTAL MEMORANDUM (July 10, 2020), *Appx.* at 3.

Believing he was suffering from cancer, *Revoc.Hrg.* at 34, yet receiving inadequate medical care, Williams first applied to the prison for compassionate release. After administrative denial, he then petitioned his sentencing court. PLEA FOR PASSIONATE [*sic*] RELEASE (June 8, 2020),

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<sup>1</sup>In 2018, Williams, who is 5'6" tall, weighed 170 pounds. PSR ¶126 (Mar. 20, 2018), *Sealed Appx.* at 3. At the time his release was revoked in 2021, he weighed just 138 pounds. *Revoc.Hrg.* at 33.

(omitted from appendix); see *United States v. Dimasi*, 220 F. Supp. 3d 173 (D. Mass. 2016). In July 2020, about seven months shy of completing his sentence, the Massachusetts Federal District Court (*Mark L. Wolf*, J.), found the requisite extraordinary and compelling reasons. The court reduced Williams’s sentence to time-served, and ordered compassionate release pursuant to 18 U.S.C. § 3582(c)(1), with the condition of home confinement. MEMORANDUM & ORDER (July 22, 2020), *Appx.* at 13; AMENDED JUDGMENT (July 23, 2020), *Appx.* at 15. Probation determined Williams was to stay at his daughter’s home in Brockton, Massachusetts. *Revoc.Hrg.* at 16.

Upon release, Williams moved to his daughter’s, but found it stressful because it was small and overcrowded – the court called it “crammed” – though his family “let him sleep on a couch” in their apartment. *Revoc.Hrg.* at 31; VIOLATION REPORT (June 8, 2021) at 6, *Appx.* at 34.

Williams was then diagnosed with advanced, stage-IV colon cancer, which metastasized to his liver. Williams requires chemotherapy every two weeks, each time involving three days hospitalization. Prognosis is not hopeful. *Revoc.Hrg.* at 9-10, 23-26, 29-31; ORDER ON DETENTION (May 27, 2021) at 3-4, *Addendum* at [24](#).

Williams is physically unable to move well and has difficulty breathing, but was ashamed to disclose his medical condition to his daughter, son, and grandchildren. *Revoc.Hrg.* at 32-33. Williams admitted to his probation officer that he had left the house for a walk to the corner store, and Williams was later fitted with an electronic monitoring bracelet. *Revoc.Hrg.* at 16-17; VIOLATION REPORT at 2, 6. Meanwhile,

Williams was not calling his probation officer daily as required by Probation's substance abuse check-in program, because he had no regular access to a telephone. *Id.*

In part due to this proceeding, Williams's "large and extended family" (several members of which participated in the revocation hearing) is now aware of his cancer. Now that they are, they have indicated they are willing to provide housing and care. *Revoc.Hrg.* at 30.



## **II. Detention and Sentencing for Violation of Supervised Release**

About two months after his release, on September 13, 2020, Williams left the house, and his probation officer was unable to locate him. Later that day, the officer received an alert that Williams had removed the transmitter bracelet. *Revoc.Hrg.* at 16-17; VIOLATION REPORT at 3.

Williams's whereabouts was unknown for two months, until November 13, 2020. According to several civilian and police witnesses as well as physical evidence, he was involved in a bank robbery in Boston, about an hour after which he was arrested with \$7,538 cash. *Revoc.Hrg.* at 18-20; BPD REPORT (Nov. 6, 2020), *Appx.* at 23; VIOLATION REPORT at 4-5. In addition to new bank robbery charges, Williams was charged with four violations of the terms of his supervised release, ARREST WARRANT (Sept. 15, 2020), *Appx.* at 22, and brought before the sentencing court on a writ of habeas corpus. WRIT OF HABEAS CORPUS (Nov. 30, 2020), *Appx.* at 28.

In May 2021, Williams appeared for a detention hearing regarding both the new charges and the alleged violations of supervised release. Beyond his criminal history, the court assessed in detail Williams's living situation, his illness, and decades of local residency. The magistrate (*Jennifer C. Boal*, M.J.) then found that because his "situation has changed dramatically . . . there are conditions of release that could secure the safety of the community and Williams' [*sic*] appearance at court hearings." ORDER ON DETENTION (May 27, 2021), *Addendum* at [24](#).

The Government appealed the release to the district court judge. MOTION FOR STAY AND REVIEW OF RELEASE ORDER (May 28, 2021),

*Appx.* at 29. This prompted the magistrate to stay the order of release, ORDER (June 9, 2021), *Addendum* at [29](#),<sup>2</sup> yet the magistrate never issued a detention order. As a result of the stay – but without any detention order – Williams has remained incarcerated since his 2020 arrest.

In 2021, Probation issued a violation report, and the court (*Mark L. Wolf, J.*) held a video hearing on revocation of supervised release. Williams admitted guilt, which the court accepted, to the three violations regarding home confinement, tampering with the bracelet, and not calling in. *Revoc.Hrg.* at 16-17; JUDGMENT IN A CRIMINAL CASE (June 11, 2021) at 1-2, *Addendum* at [31](#).

Regarding the fourth violation, committing a crime while on supervised release, Williams took an “*Alfred plea.*” *United States v. Kobrosky*, 711 F.2d 449, 452 (1st Cir. 1983) (“In [*North Carolina v. Alford*, [400 U.S. 25 (1970)]], the Supreme Court recognized that ‘an individual accused of crime may voluntarily, knowingly, and understandingly consent to the imposition of a prison sentence even if he is unwilling or unable to admit his participation in the acts constituting the crime.’”). *Revoc.Hrg.* at 6-7, 18-20. The court found Williams in violation of supervised release. JUDGMENT IN A CRIMINAL CASE (June 11, 2021) at 1.

The Government sought the two-year statutory maximum for violation of supervised release, 18 U.S.C. § 3583(e)(3), while Williams argued he should be sentenced to the time served from his most recent

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<sup>2</sup>All three of these documents concerning detention, the court’s May 27, 2021 Order on Detention, the government’s May 28, 2021 Motion for Stay and Review of Release Order, and the court’s June 9, 2021 Order, were filed in both dockets: 17-10054 (the underlying bank robberies), and 20-10312 (the new bank robbery charge). Around the same time, the two cases were consolidated. ELECTRONIC ORDER (June 3, 2021) (omitted from appendix).

arrest to the date of the revocation hearing: approximately 8 months.

*Revoc.Hrg.* at 23-28; SUPPLEMENTAL MEMORANDUM (July 10, 2020).

The court revoked supervised release, and sentenced Williams to two years, with the “recommend[ation] that [he] serve that sentence in a Bureau of Prisons facility that is equipped to deal with somebody who has Stage 4 colon cancer.” *Revoc.Hrg.* at 37. JUDGMENT IN A CRIMINAL CASE (June 11, 2021) at 1, 3. The court made clear that its reason for the sentence was not only recidivism concerns, *Revoc.Hrg.* at 40-41, but because “you’ve got the best hope of getting the medical care you need as a result of the sentence that I’ve given you.” *Revoc.Hrg.* at 41.

## **SUMMARY OF ARGUMENT**

Stephen Williams received a two-year prison sentence for violation of supervised release. But because he has stage-IV colon cancer which has metastasized to his liver, with a poor prognosis, it is tantamount to a death sentence.

At one time, his family did not know of his medical condition and was unable to help. Now that they are aware and understand, they have pledged to provide Williams both housing and the care he needs at home.

The sentencing statute requires that the court evaluate whether a person in Williams's situation can get the "most effective" medical care in prison or out. Because the court never conducted a comparison of home versus prison care, simply expressing its unsupported belief that the best care was in prison, the sentence was procedurally unlawful.

In addition, Williams's fatal disease requires specialized food not available in prison, and medications that are barred by prison policies. This cruelly causes Williams undue and debilitating pain, in violation of his constitutional right to adequate medical care in prison.

Finally, due to his condition, Williams has become physically incapable of crime, belying any concerns for recidivism.

Accordingly, this case should be remanded with direction to correct the unlawful sentence. In the alternative, because he was brought before the court on a writ of habeas corpus, this court may release Williams forthwith.

## ARGUMENT

### I. Sentencing Court is Required to Conduct Evaluation of Where Mr. Williams Will Get the Most Effective Medical Care

The federal sentencing statute lists the factors a sentencing court must consider in determining a defendant's sentence. Among them are "to provide the defendant with needed ... medical care ... in the *most effective* manner." 18 U.S.C. § 3553(a)(2)(D) (emphasis added); 18 U.S.C. § 3583(c) (citing 18 U.S.C. § 3553(a)(2)(D) regarding factors in imposing supervised release).

The sentencing court held that the sentence imposed was based in part on the court's estimation that "you've got the best hope of getting the medical care you need as a result of the sentence that I've given you." *Revoc.Hrg.* at 41.

There are insufficient facts in the record for the court's finding. The court was aware that Williams had been misdiagnosed while incarcerated, and that the prison doctor insisted that Williams's abdominal discomforts were caused by an infection, despite Williams's reported belief that it was more serious. The court also understood that Williams's cancer was not formally diagnosed until he was out of jail on compassionate release, by which time his prognosis had worsened.

Despite this, the court did not conduct any inquiry into the relative availability or quality of medical attention in the two settings – in jail versus out of jail. Thus, the court could make no reasonable finding that jail treatment would be "the most effective manner." 18 U.S.C. § 3553(a)(2)(D). It therefore committed procedural error. *United States v. Nelson*, 793 F.3d 202, 205 (1st Cir. 2015).

Given that Williams's family is now available to provide care, such an evaluation is likely to result in a finding that the most effective care is home with his family.

Accordingly, Williams's sentence is unlawful and should be reversed.

Williams preserved this issue in his plea for compassionate release. SUPPLEMENTAL MEMORANDUM (July 10, 2020) at 6-7. To the extent it was not preserved, the court's ruling is plain error. Plain error allows a

reviewing court [to] set aside a challenged portion of a criminal sentence if, and only if, the appellant succeeds in showing (1) that an error occurred (2) which was clear or obvious and which not only (3) affected the defendant's substantial rights, but also (4) seriously impaired the fairness, integrity, or public reputation of judicial proceedings.

*United States v. Pabon*, 819 F.3d 26, 33 (1st Cir. 2016).

The error was plain because the need for evaluation of the relative availability and quality of medical attention in prison versus out of prison is obvious on the face of the statute, which conspicuously mandates a comparison – “the most effective manner.” 18 U.S.C. § 3553(a)(2)(D). It is further obvious because this court has indicated that such an evaluative comparison is necessary. *See United States v. Pupo*, 995 F.3d 23, 31 (1st Cir. 2021) (Sentencing court “questioned defense counsel about [defendant's] intention of living in Florida with family following incarceration while receiving treatment, [and] expressing skepticism as to whether that arrangement was workable.”).

Incarcerating Williams when he may be able to get more effective

treatment out of prison affects his substantial rights, because the 8th Amendment to the United States Constitution requires that prisoners receive adequate medical care. *Estelle v. Gamble*, 429 U.S. 97, 103-04 (1976). Moreover, keeping Williams in prison while he dies of cancer, while failing to consider alternative arrangements, reflects poorly on the court and contributes to a negative reputation of judicial proceedings.

Accordingly, this court should find that the sentencing court committed procedural error by not conducting the mandated comparison of whether the most effective care for Williams is found in prison or out. It should then remand for resentencing with directions to conduct such an evaluation.

## **II. Mr. Williams is Being Treated Cruelly Because Prison Does Not Provide the Curative Food and Medicine He Needs**

While incarcerated, Williams's body has been unable to digest the food served in jail; he lost 32 pounds, or nearly 20 percent of his body weight.

As the court recognized, *Revoc.Hrg.* at 42, prisoners have a constitutional right<sup>3</sup> to adequate medical care. *Estelle v. Gamble*, 429 U.S. at 103-04. Williams's weight loss alone shows he is receiving inadequate care, and shows also that the prison system is incapable – in a facility designed to house many – of providing the individualized care his condition requires. Williams is unsure what type of diet he needs, but is certain he is not getting it. *Revoc.Hrg.* at 33. See *Massey v. Hutto*, 545 F.2d 45, 46 (8th Cir. 1976) (prisoner with ulcer required special diet).

Further, Williams suffers significant pain from his colon and liver cancer, which becomes especially unbearable when he relieves himself. For that reason, his doctors have prescribed Oxycodone, a pain medication, which has the added benefit of stultifying his digestive system. *Revoc.Hrg.* at 29-30, 36.

However, prison policy forbids oxycodone for detainees, *Revoc.Hrg.* at 30, thus unconstitutionally preventing Williams from getting the medical care his doctors have prescribed. Meanwhile, Williams is suffering the torment of cancer while being denied pain relief. *Hope v. Pelzer*, 536 U.S. 730, 737 (2002) (“The unnecessary and wanton

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<sup>3</sup>U.S. CONST., amd. 8 (“Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”).



infliction of pain constitutes cruel and unusual punishment forbidden by the Eighth Amendment.”) (quotations omitted).

This court should remand for resentencing, with direction that the court consider the cruelty to which Williams is being subject.

### **III. Violation of Supervised Release Does Not Justify a Death Sentence**

Williams should not be incarcerated at this time. He is very sick, has a poor prognosis, and cannot get the medical care he needs while in prison. This makes his two-year sentence for violation of supervised release tantamount to a death sentence. While Williams violated terms of his release, he needs compassionate care now more than ever.

Williams's release from jail in July 2020 was sudden. Although it was a product of his *pro se* petition for compassionate release, it was unexpected, and only hurried arrangements were made regarding where he could live. He camped on his daughter's couch, but felt pushed out on the street with few resources. Williams was not thinking clearly because of his pain, various medications, chemotherapy, and his inability to eat. Under these conditions his preexisting paranoia resurfaced, and he lost more weight. *Revoc.Hrg.* at 32-33; PSR ¶¶ 130, 131, 134.

Some of the release conditions, moreover, were unrealistic. He was required to call every evening, but had no regular access to a telephone. He was not allowed to leave the confines of a "crammed" apartment, where his daughter and her family only tolerated his presence and were not prepared to provide him the care he needed. When Williams began to understand the severity of his medical condition, he was ashamed to raise it with his family: "So, you know, I basically tried to run from that and got myself in the situation." *Revoc.Hrg.* at 32.

Now however, Williams has resources in place. His large and extended family knows of his medical condition, and has indicated they are willing to provide housing and care. *Revoc.Hrg.* at 30.

At this point, Williams's physical state prevents recidivism. While

the court correctly pointed out that when Williams was originally sentenced he pledged to be reformed, yet committed another crime, *Revoc.Hrg.* at 34-35, now it is physical disability, not spiritual deliverance, that inhibits re-offending. *Revoc.Hrg.* at 32, 34, 36, 38; see STATEMENT OF REASONS (Mar. 29, 2018) at 3-4 (omitted from appendix).

Accordingly, the court's two-year sentence is substantively unreasonable, *United States v. Ruiz-Huertas*, 792 F.3d 223, 228-29 (1st Cir. 2015), and he should be released as expeditiously as possible. If not, he is likely to die in jail, while experiencing unnecessary pain.

#### **IV. Pre-Trial Detention Should Not Be a Death Sentence**

Unlike his situation in 2020, Williams’s family now knows about his health situation, and has pledged to house and support him. That support will likely ease any mental health concerns that contributed to his re-offending, and his physical condition will also likely prevent recidivism. Stable housing and constant need for chemotherapy ensures Williams will be available to comply with court dates and release conditions.

For Williams, the lack of a release order – which is now keeping him incarcerated – is both procedurally unlawful and tantamount to a death sentence.<sup>4</sup>

There is a presumption that defendants not be detained pending trial. 18 U.S.C. § 3142(b). The statute says the court “*shall* issue an order” releasing, releasing with conditions, or detaining the defendant. 18 U.S.C. § 3142(a) (emphasis added). No such order was ever issued. Rather, Williams is detained on the basis of a stayed order of release. Accordingly, Williams’s detention is unlawful.

In addition, evidence of a new crime should be used only to determine whether the defendant is likely to appear at future court hearings. *United States v. Edson*, 487 F.2d 370, 372 (1st Cir. 1973) (“[T]he nature of the offense, as well as the evidence of guilt, is to be considered only in terms of the likelihood of [defendant] making himself unavailable for trial.”).

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<sup>4</sup>This issue is ripe in this revocation of supervised release matter because the order of release, the government’s appeal of it, and the stay of it, were all entered in this docket.

It appears, however, that the court based its non-release of Williams on the assumed fact of re-offense.

This court should reverse the magistrate's detention order, and remand for reconsideration of it, with instructions that the district court "forthwith set conditions of release." *United States v. Schiavo*, 587 F.2d 532, 533 (1st Cir. 1978).

## CONCLUSION

Stephen Williams should not be allowed to die incarcerated just because prison cannot accommodate his disease.

This court should remand for re-sentencing, instructing the sentencing court to perform the evaluation required by 18 U.S.C. § 3553(a)(2)(D). It should also direct the court to consider Williams's rights pursuant to the 8th amendment, the fact that he has been detained and sentenced to what may be a death sentence, and the physical impracticability of him committing future crimes. Upon remand, this court should encourage prompt release. *See Schiavo*, 587 F.2d at 533 (“The matter must be remanded with directions that the district court forthwith set conditions of release.”).

In the alternative, because he was brought before the sentencing court on a writ of habeas corpus, and for the “special reasons” enumerated, this court may release Williams forthwith. FED.R.APP.P. 23(d) (“An initial order governing the prisoner’s custody ... continues in effect pending review unless for special reasons shown to the court of appeals ... the order is modified or an independent order regarding custody [or] release ... is issued.”).

Respectfully submitted,

Stephen D. Williams  
By his Attorney,  
Law Office of Joshua L. Gordon

Dated: October 6, 2021

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**REQUEST FOR ORAL ARGUMENT AND CERTIFICATION**

Defendant requests that Attorney Joshua L. Gordon be allowed oral argument.

I hereby certify that on October 6, 2021, I will forward via the ECF/PACER system an electronic version of this brief to the United States Court of Appeals for the First Circuit, and by the same method to the office of the United States Attorney.

I hereby certify that this brief complies with the type-volume limitations contained in FED.R.APP.P. 32(a), and that it contains no more than 3,573 words, exclusive of those portions which are exempted.

Dated: October 6, 2021

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Joshua L. Gordon, Esq.

**ADDENDUM**

1. Order on Detention (May 27, 2021) . . . . . [24](#)  
2. Order (June 9, 2021). . . . . [29](#)  
3. Judgment in a Criminal Case (June 11, 2021). . . . . [31](#)