

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION**

CLERK OF THE
COLUMBIA
DISTRICT BRANCH

2004 NOV 23 A 9:47

FILED

UNITED STATES OF AMERICA :

v. :

ELENA RUTH SASSOWER, :

Defendant. :

**Criminal No.: M-4113-03
Judge Holeman
Misdemeanor Calendar I**

ORDER

This matter comes before the Court as Defendant's Motion pursuant to C. C. R. Crim. P. 35(a) and D.C. Code § 23-110(a) to Correct an Illegal Sentence, filed October 26, 2004. Defendant has also requested a hearing on the Motion.

The record of this case reflects that Defendant was sentenced on June 28, 2004. Defendant previously filed an Unopposed Motion for Release to Preclude Mootness of Appellate Issue on September 23, 2004, which was denied by Order dated September 24, 2004. Defendant filed an "Emergency Appeal from the Superior Court" on October 6, 2004, which was denied on October 14, 2004. For the reasons that follow, the Court finds Defendant's current Motion devoid of merit and denies Defendant's requests for relief and for a hearing.

D.C. Superior Court Rules, Criminal Rule 35(a) governs correction or reduction of sentence. The Court may correct an illegal sentence at any time. In her Motion, Defendant acknowledges that under D.C. Code §10-503.18(b), the maximum penalty for disruption of Congress is six months incarceration and a \$500 fine. Thus, Defendant concedes that the sentence imposed is within the limits authorized by the pertinent statute. (Defendant's Motion at 3.) In addition, there can be no viable challenge to this

Court's jurisdiction to impose that sentence. Thus, there is no *prima facie* showing that the sentence imposed was illegal within the application of Rule 35(a). See *Robinson v. United States*, 454 A.2d 810, 813 (D.C. App. 1982).

Rule 35(a) also provides that a sentence imposed in an illegal manner may be corrected within **120 days** after sentence is imposed. This 120-day period is a jurisdictional limit on the power of the Court *to act*, and may not be extended. *United States v. Nunzio*, 430 A.2d 1372, 1374 (D.C. App. 1981). Here, Defendant was sentenced on June 28, 2004, or **110 days** prior to filing the instant Motion on October 26, 2004. Government filed Opposition to the Motion on November 9, 2004, which rendered the matter ripe for ruling **124 days** after sentencing. The Court could not act within the required time period, thereby losing its jurisdiction to correct the sentence allegedly imposed in an illegal manner. Thus, the Motion must be denied on procedural grounds alone. There is no cognizable basis supportive of a grant of the relief Defendant requests under Rule 35(a).

Defendant also seeks correction of the sentence pursuant to D.C. Code §23-110(a), which governs remedies for a motion attacking sentence. Under Section 23-110(a), Defendant is entitled to relief where (1) the sentence was imposed in violation of the Constitution of the United States or the laws of the District of Columbia, (2) the Court was without jurisdiction to impose the sentence, (3) the sentence was in excess of the maximum authorized by law, or (4) the sentence is otherwise subject to collateral attack. Defendant fails to make the required showing that either of these conditions have been satisfied.

Defendant's claims that the imposed sentence is in violation of the Constitution or District of Columbia law are mere conclusory allegations, the authority cited inapposite

and non-controlling, and the argument confusing. Defendant's Motion is, in substantial part, a critique of the *proposed conditions* of probation presented to Defendant prior to the imposition of sentence. It is well-established that the trial court has broad discretion to formulate an appropriate sentence, including setting the conditions of probation. *Hill v. United States*, 529 A.2d 788, 790 (D.C. App. 1987). The proposed conditions of probation presented to Defendant on June 28, 2004, the apparent foundation of Defendant's contention that her constitutional rights have been violated, were rejected by Defendant. Clearly, Section 23-110 does not pertain to *proposed* probationary conditions *rejected* by Defendant *prior to* imposition of sentence.

Further, the Court did not exceed its jurisdiction in imposing the sentence, nor did sentence as ultimately imposed exceed the maximum authorized by law. Defendant has not, and cannot, present facts or authority to the contrary.

Still further, to the extent that Defendant seeks to classify the instant Motion as a collateral attack, the matter is time-barred and this Court is without jurisdiction to act. *Robinson*, 454 A.2d at 813 (D.C. App. 1982). The sentencing at issue here neither involves action beyond the sentencing judge's jurisdiction nor a sentence in excess of the statutory maximum. Therefore, any collateral attack of alleged sentencing error may be predicated only upon a contention that Defendant's sentence was imposed in an "illegal manner." *Id.* Such collateral challenges, though authorized by Section 23-110, are limited by the 120-day jurisdictional limitation of Rule 35(a). *Id.* Here, again, the Court is without jurisdiction to act as the time period has expired and may not be extended.

Thus, Defendant has failed to establish that the delineated requirements of Section 23-110(a) have been met. It should also be noted that Section 23-110(e) expressly

prohibits consideration of a second or successive motion for similar relief on behalf of the same prisoner. Within her Motion, Defendant admits to having filed "numerous pro se motions in both this Court and the Court of Appeals, all of which have been denied."

(Defendant's Motion at 4-5.) Indeed, documents have been filed by Defendant challenging the sentence imposed: Defendant's Unopposed Emergency Motion for Defendant's Release to Preclude Mootness of Appellate Issue, filed on September 24, 2004 and Appellant[']s Unopposed Emergency Motion for Defendant's Release to Preclude Mootness of Newly Raised Issue Regarding Illegality of her Sentence, filed on September 23, 2004. Both Motions were denied. The current Motion is nothing more than a reiteration of issues raised in those documents.

The question remains whether Defendant should be afforded a hearing on this Motion. Section 23-110(a) claims that are conclusory and palpably incredible do not require hearings. *Haley v. United States*, 799 A.2d 1201, 1214 (D.C. App. 2002). Here, Defendant's constitutional claims are not only conclusory, they are palpably incredible. Defendant's current argument that she was sentenced twice is inconsistent with the record. On June 28, 2004 Defendant was offered probation, Defendant rejected probation, and only following Defendant's clear and unequivocal rejection of probation was sentence imposed. That sentence, once imposed, did not exceed the maximum provided under D.C. Code §10-503(16). Defendant argues that the rejected proposal of probation is a *first* sentence and the imposition of 6 months incarceration is a *second* sentence, and therefore illegal. This argument is clearly incredible because a proposal of probation is not a sentence under any reading of authority. The sentencing judge is empowered to offer a defendant sentencing alternatives from which the defendant may

choose. *Hill v. United States*, 529 A.2d at 790. Here, Defendant chose not to abide the proposed conditions of probation and was thereafter sentenced. Defendant's claims do not merit a hearing.

Further, a hearing is not required where the hearing would not add to the available information on the question whether the Court's sentence was improper. *Ready v. United States*, 620 A.2d 233 (D.C. App. 1993). On its face the Motion fails and where, as here, the existing record provides an adequate basis for denying the Motion, no hearing is required.

WHEREFORE, upon consideration of Defendant's Motion, Government's Opposition thereto, and the record of this case, Defendant having failed to establish that the imposed sentence was illegal or that the Court otherwise retains jurisdiction to entertain her Motion, and having further failed to establish that the sentence was imposed in violation of the Constitution of the United States or the laws of the District of Columbia, the Court was without jurisdiction to impose the sentence, the sentence was in excess of the maximum authorized by law, or the sentence is otherwise subject to collateral attack, and having further failed to state a cognizable basis for relief other than as previously submitted to the Court, it is this 22nd day of November, 2004 hereby

ORDERED, that the Defendant's Motion and request for a hearing are **DENIED**.


BRIAN F. HOLEMAN
JUDGE

SIGNED IN CHAMBERS

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