

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
GREENVILLE DIVISION

UNITED STATES OF AMERICA

V.

CAUSE NO. 4:19-cr-00139-DMB-JMV

KHAWANNA BLAIR

WAIVER OF PHYSICAL PRESENCE AT SENTENCING  
AND REQUEST TO PROCEED BY VIDEOCONFERENCE

Defendant, Khawanna Blair, by and through counsel, moves the Court pursuant to Fifth Circuit case law to sentence her via a videoconference, and in support thereof would show unto the Court the following:

1. The sentencing in this matter is currently scheduled for March 25, 2020, in Greenville, Mississippi [26]. Ms. Blair has been incarcerated since September 24, 2019, and pled guilty on December 11, 2019.

2. Due to the Novel Coronavirus Disease (COVID-2019), and the Northern District of Mississippi's Standing Order, 3:20-MC-9, court proceedings are being continued in order to protect the health and safety of the public, defendants, and court personnel.

3. Investigating the possibility of conducting hearings by video, Hon. Chief Judge Sharion Aycock, along with staff from the U.S. Attorney's Office, U.S. Probation Service, and Federal Public Defender's Office, successfully tested the use of the court's videoconferencing system with a detention center on March 16, 2020.

4. Ms. Blair is in custody and is available via the court's videoconferencing system. She respectfully requests to be sentenced via a videoconference on March 25, 2020. She has been in custody for a period of time sufficient to equal the high end of her applicable Guidelines range, and requests that the court go forward with a hearing.

5. Ms. Blair has outlined specific requests regarding the sentence to be imposed by

the court in a Sentencing Memorandum filed on March 5, 2020 [28]. However, should the court grant her request to proceed by video, she understands that the court has the discretion to render a sentence that is either more severe, or less severe, than the sentence called for by application of the U.S. Sentencing Guidelines or the specific requests in her Sentencing Memorandum.

6. Ms. Blair respectfully requests that the court waive her in-person presence at sentencing and proceed via videoconference pursuant to Paragraphs 2(a) and 4(a) of the Standing Order, 3:20-MC-9, entered March 13, 2020, and pursuant to Federal Rule of Criminal Procedure 43(c)(1)(B).

7. F. R. Crim. P. 43 sets forth when the defendant must be present at a court proceeding. Subsection (a)(3) states that a “defendant must be present at sentencing.” Fed. R. Crim. P. 43(a)(3). However, it has been recognized that a defendant may be sentenced *in absentia* in the “most extraordinary circumstances,” and then under appropriate safeguards, as where defendant has expressly waived her right to be present either by sworn affidavit or in open court for the record. *United States v. Brown*, 456 F.2d 1112, 1113 (5th Cir. 1972) (citing *United States v. Boykin*, 222 F. Supp. 398, 399 (D. Md. 1963)). Ms. Blair respectfully submits that the effect of COVID-2019 on the ability of the court to hold in-person hearings is one of those “extraordinary circumstances.”

8. In *Boykin*, defense counsel presented an Affidavit, signed by defense counsel and Boykin himself, and consented to by the United States Attorney, which waived his right of presence during sentencing, due to being hospitalized for a serious heart condition. *Boykin*, 222 F. Supp. at 399. Further, Boykin acknowledged that his attorney explained to him his rights of allocution and right of presenting mitigating evidence. However, Boykin waived those rights as well, allowing his attorneys to represent his best interests. The district court acknowledged that this was a unique situation and did not take the request for waiver of presence at sentencing lightly. However, understanding the circumstances of Boykin and believing that defense counsel properly safeguarded Boykin’s rights, the district court granted the request.

9. While the defendant in *Boykin* was neither present nor able to offer allocution during his sentencing hearing, Ms. Blair submits that by utilizing the videoconferencing system she will be “present,” being able to offer allocution and respond to questions. As for constitutional safeguards, Ms. Blair hereby affirms the following:

- A. She understands her right to be physically present for sentencing.
- B. She understands her right to offer allocution and present mitigating evidence to the court.
- C. She has discussed these rights with her attorney and she understands them.
- D. She desires to waive being physically present for her sentencing hearing and desires to appear via videoconference at sentencing on March 25, 2020.
- E. She understands that she would be in a different physical location than the presiding judge, counsel, or other parties to the hearing.
- F. Her waiver of physical presence at sentencing is made knowingly, freely, and voluntarily; it is not the product of force, threat, or coercion. She has neither been offered nor promised anything in exchange for making this request.
- G. She is prepared to confirm these rights and the contents of this waiver during a sentencing hearing held via videoconferencing, and is attaching a notarized affidavit as an exhibit.

10. The government has reviewed this Waiver of Physical Presence at Sentencing and Request to be Sentenced by Videoconference and has no objection.

11. Should the court deny this request and continue her sentencing hearing, Ms. Blair respectfully requests that she be allowed an unsecured bond under conditions the court deems

appropriate.

REQUESTED RELIEF

Khawanna Blair respectfully requests that her physical appearance at the sentencing hearing on March 25, 2020, be waived, and that she be allowed to appear via videoconferencing.

Respectfully submitted,

KHAWANNA BLAIR

/s/ Gregory S. Park  
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CERTIFICATE OF SERVICE

I, Gregory S. Park, attorney for the Defendant, Khawanna Blair, do hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and that the following parties will be notified electronically of filing:

Hon. Clyde McGee, IV, AUSA  
[clyde.mcgee@usdoj.gov](mailto:clyde.mcgee@usdoj.gov)

Hon. Clayton A. Dabbs, AUSA  
[clay.dabbs@usdoj.gov](mailto:clay.dabbs@usdoj.gov)

Dated this the 20th day of March, 2020.

/s/ Gregory S. Park  
GREGORY S. PARK  
Assistant Federal Public Defender