

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

UNITED STATES OF AMERICA

v.

Case No. 3:16-cr-34-J-32JRK

CARLA WILEY

**UNITED STATES' MEMORANDUM OPPOSING
DEFENDANT'S *PRO SE* MOTION/REQUEST FOR
EARLY RELEASE TO A RESIDENTIAL RE-ENTRY CENTER**

The United States of America, by and through the undersigned, files this response in opposition to Carla Wiley's *pro se* Motion Requesting a Judicial Recommendation Concerning Length of RRC/Halfway House Placement under the Second Chance Act (Doc. 49). The relief Wiley requests is potentially available to her through the Bureau of Prisons (BOP), but not through this Court. This motion should be denied.

Memorandum of Law

Carla Wiley is currently serving a 21-month sentence upon conviction for conspiracy to commit wire fraud in connection with the fraudulent charity One Door For Education. A prisoner is required to exhaust all administrative remedies available to her through the BOP before filing her petition in federal court. The BOP has the sole discretion to execute the terms and conditions of a prisoner's confinement, including eligibility for certain programs. "An

inmate who wishes to challenge how the BOP is interpreting or administering an early release program, rules or credits may do so under [28 U.S.C.] § 2241.” *Wright v. Haynes*, 410 Fed. App’x. 262, 264-65 (11th Cir. 2011). The Eleventh Circuit has held that while a prisoner’s failure to exhaust administrative remedies does not necessarily limit a district court’s jurisdiction, “that does not mean that courts may disregard a failure to exhaust and grant relief on the merits if the respondent properly asserts the defense.” *Santiago-Lugo v. Warden*, 785 F.3d 467, 475 (11th Cir. 2015) (citing *Skinner v. Wiley*, 355 F.3d 1293, 1295 (11th Cir. 2004)).

Wiley requests that this Court recommend her eligibility for pre-release placement outside the BOP, pursuant to the Second Chance Act. Codified at 42 U.S.C. § 17541, the Second Chance Act provides funding for a federal prisoner re-entry program and vests the BOP with the authority to determine if a prisoner is eligible for this program. A prisoner seeking participation in the program must make a request through the BOP and pursue any available appeal through that institution. *Woodford v. Ngo*, 548 U.S. 81, 93 (2006). Such proceedings provide the district court with a complete record for review and “eliminate[s] unwarranted federal-court interference with the administration of prisons” and allows “correction officials time and opportunity to address complaints internally before allowing the initiation of a federal case.” *Id.*

Wiley addresses that she has participated in certain BOP educational programs and that she seeks this adjustment to her sentence to ameliorate her perceived elevated risk of poor community readjustment. However, Wiley has not stated what steps she has taken within the BOP to obtain her requested relief. Wiley instead asks this Court to recommend to the BOP that she be released early to a residential re-entry center (RRC) or a halfway house to “aid in her rehabilitation.” Doc. 49 at ¶ 9. As set forth, Wiley’s motion-request indicates that she has participated in a list of BOP programs designed for this very purpose.

Wiley has attached two separate orders from United States District Courts in Pennsylvania and Ohio granting the same recommendation that Wiley requests. Of the two attached Orders, the case most closely analogous to Wiley’s underlying case is *United States v. Quimby*, Case Number 1:13-cr-39-MBC (W.D. Pa. 2015), in which the defendant entered a plea of guilty to one count of bank fraud and one count of tax evasion, and was sentenced to 27 months’ imprisonment on each count, to run concurrently. The Memorandum Order attached to Wiley’s Request, Doc. 49-1, notes that Quimby is a “white-collar” defendant and someone the Court “would not expect. . . to cause any problems wherever he is assigned.” *Id.* However, neither case that Wiley cites is binding on this court, and it is unclear whether

the defendant in either case exhausted the administrative process at their designated facilities before seeking judicial relief. Because, as stated, it is unclear whether Wiley has done so here, the Court should deny this motion.

While the government is not foreclosing the possibility that the BOP may grant Wiley the relief she seeks, it is improper for Wiley to ask this Court for a recommendation before working toward that relief with her BOP case worker and/or others at her facility who are familiar with her day-to-day behavior. The BOP is the appropriate forum for this relief to be considered.

WHEREFORE, Carla Wiley's *pro se* Motion Requesting a Judicial Recommendation Concerning Length of RRC/Halfway House Placement should be denied.

Respectfully submitted,

MARIA CHAPA LOPEZ
UNITED STATES ATTORNEY

ANNALOU TIROL
ACTING CHIEF
PUBLIC INTEGRITY SECTION
CRIMINAL DIVISION

/s/ A. Tysen Duva

A. Tysen Duva
Assistant United States Attorney
Florida Bar No. 0603511

/s/ Michael Coolican

Michael J. Coolican
Assistant United States Attorney
U.S.A. No. 156
300 N. Hogan Street, Suite 700
Jacksonville, Florida 32202
Telephone: (904) 301-6300
Facsimile: (904) 301-6310
E-mail: Tysen.Duva@usdoj.gov
E-mail: Michael.Coolican@usdoj.gov

/s/ Eric G. Olshan

Eric G. Olshan
Assistant United States Attorney
700 Grant Street, Suite 4000
Pittsburgh, Pennsylvania 15219
Telephone: (412) 894-7446
E-mail: Eric.Olshan@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on June 18, 2018, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following:

N/A

I hereby certify that on June 18, 2018, a true and correct copy of the foregoing document and the notice of electronic filing were sent by United States Mail to the following non-CM/ECF participant(s):

Carla Wiley
Reg. No 66813-018
FPC Alderson
Glen Ray Road, Box A
Alderson, WV 24910

/s/ A. Tysen Duva
A. Tysen Duva
Assistant United States Attorney