

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

UNITED STATES OF AMERICA,
Plaintiff,

§
§
§
§
§
§
§

vs.

Crim. No. 2:17-cr-390 (01)

DAVID KEITH WILLS,
Defendant.

GOVERNMENT’S REQUEST FOR SENTENCING DATE

The United States of America, by and through its United States Attorney, Ryan K. Patrick, and the undersigned Assistant United States Attorneys, for the Southern District of Texas, files this request for a sentencing scheduling order under Federal Rule of Criminal Procedure 32 and criminal local rule 32.2. Specifically, the government requests dates for the preparation and disclosure of a presentence investigation report, objections and responses to such report, the issuance of a final report, and a sentencing date for the Defendant.

I. Trial and Post-Trial Background

On September 23, 2019, a jury trial began in this case. The jury returned a verdict finding the Defendant guilty on all counts but one on October 8, 2019. A scheduling order for sentencing was not set by the Court at that time. The Defendant was remanded into U.S. Marshal custody. On October 22, 2019, the Defendant filed a 134 page motion for new trial. The same day, the Defendant filed a corrected second motion for new trial. On October 25, 2019, the Defendant filed a third corrected motion for new trial.

On December 13, 2019, the government filed its response to the Defendant's motion for new trial. On December 19, 2019, the Defendant informed the Court, via email, that the parties agreed to allow the Defendant until January 13, 2020 to reply to the government's motion for new trial. Nevertheless, on December 30, 2019, the Defendant filed a motion for extension of time to file a reply to the government's response to the Defendant's Motion for New Trial. The government filed its response in opposition to this extension request on January 2, 2020. The Defendant did not file its reply by the agreed deadline of January 13, 2020, and the Defendant's additional extension request remains pending.

II. Rules for Sentencing

Federal Rule of Criminal Procedure 32 directs that "[t]he Court must impose sentence without unnecessary delay." *See Betterman v. Montana*, 136 S.Ct. 1609, 1617 (2016); *see also Pollard v. United States*, 352 U.S. 354, 486 (1957). Such rule makes it clear that the presumption is that sentencing shall occur earlier rather than later. *See United States v. Moore*, Crim. A. No. 09-00279-11, 2017 WL 524221 at *3 (W.D. La. Feb. 8, 2017). While the choice of time for sentencing is generally within the discretion of the trial judge, such discretion is not unlimited and sentence must be imposed without unreasonable delay. *See United States v. DeLuca*, 529 F.Supp. 351, 354 (S.D.N.Y. 1981). Additionally, Criminal Local Rule 32.2 provides that:

Order of Presentence Investigation and Initial Disclosure Date. At the time of determination of guilt, the Court will fix the date by which the initial presentence report shall be disclosed to counsel. The normal schedule for investigation, preparation, and completion of the initial report will be 35 days. In addition, unless waived by the defendant, the presentence report shall be disclosed not less than 35

days before the sentencing date.

The Defendant was found guilty by a jury over three months ago. Since then, Defendant has filed three motions for new trial and intends to add additional grounds for a new trial in a separate filing. The fact that the Defendant may add additional grounds to his motion for new trial, whether as a “corrected motion” or allegedly “newly discovered evidence,” and might continue to do so, should not act to delay the enforcement of a just sentence. *See Herrera v. Collins*, 506 U.S. 390, 417 (1993); *United States v. Forbes*, 790 F.3d 403, 408 (2d Cir. 2015). The *Forbes* court recognized the need for prompt enforcement of sentences upon conviction after a fair trial. *See Forbes*, 790 F.3d at 408.

Therefore, the government respectfully requests the Court enter a sentencing scheduling order, without unnecessary delay, in accordance with the federal and local rules of criminal procedure.

Respectfully submitted,
RYAN K. PATRICK
United States Attorney

/s/ Richard W. Bennett
Zahra Jivani Fenelon
Stephanie Bauman
Richard W. Bennett
Assistant United States Attorneys
(713) 567-9000

CERTIFICATE OF CONFERENCE

On January 15, 2020, undersigned counsel contacted Cynthia Orr and Gerald Goldstein, counsel for Defendant, this morning via email, to confer on whether they oppose the government's request. At the time of the filing of this request at the close of business, no response has been received.

/s/ Richard W. Bennett
Richard W. Bennett
Assistant United States Attorney

CERTIFICATE OF SERVICE

This is to certify that on the 15th day of January, 2020, a copy of the Government's Request for Sentencing Date and Proposed Order was sent to counsel for Defendant via ECF.

/s/ Richard W. Bennett
Richard W. Bennett
Assistant United States Attorney

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

**UNITED STATES OF AMERICA,
Plaintiff,**

vs.

**DAVID KEITH WILLS,
Defendant.**

§
§
§
§
§
§
§

Crim. No. 2:17-cr-390 (01)

ORDER

The Court, having considered the Government’s Request for Sentencing Date hereby GRANTS the motion.

IT IS ORDERED that the following Order for Presentence Investigation and Disclosure and Sentencing Dates be entered.

1. By _____, 2020, the initial presentence report must be disclosed to counsel.
2. By _____, 2020, counsel must object in writing to the facts used and application of the guidelines or state that there is no objection (14 days after disclosure).
3. By _____, 2020, the probation officer must submit to the judge the final presentence report with an addendum addressing contested issues (14 days after disclosure)
4. Sentencing is set for _____, 2020, at _____ a.m. / p.m.

Signed on this the ____ day of _____, 2020.

HONORABLE NELVA GONZALES RAMOS
UNITED STATES DISTRICT JUDGE