

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

- against -

JOSEPHINE BHASIN,

Defendant.

**MEMORANDUM OF
DECISION AND ORDER**

CR-11-0268 (01) (ADS)

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
★ OCT 10 2013 ★

A P P E A R A N C E S :

LORETTA E. LYNCH

United States Attorney

610 Federal Plaza

Central Islip, NY 11722

By: Mark Kotila, Assistant United States Attorney

KESTENBAUM & MARK

Attorney for the Defendant

40 Cutter Mill Road

Great Neck, NY 10021

By: Bernard S. Mark, Esq., of Counsel

ANIE GONZALEZ

United States Probation Officer

United States Probation Department

202 Federal Plaza

Central Islip, NY 11722

SPATT, District Judge.

On March 8, 2013, the Court sentenced the defendant Josephine Bhasin to Probation for two years including 150 hours of community service.

The Court received a letter from Josephine Bhasin, dated September 15, 2013, in which she states: "I have health issues regarding my pain in my hip, heart surgeries and sleep apnea. I am requesting you to forego my penalties for community service 50 hours and 100 hours. Is that okay?"

The Assistant United States Attorney takes no position in regard to this request.

In a memorandum from the United States Probation Officer Anie Gonzalez, dated October 18, 2013, she states, in part, as follows:

On September 15, 2013, the offender wrote to the Court asking that the special condition requiring her to do community service be vacated, due to "health issues regarding pain in [her] hip, heart surgeries and sleep apnea." After being contacted by Chambers and asked to respond to this request, the undersigned officer reached out to the offender and directed her to provide us with medical documentation of the conditions cited in her letter to Your Honor.

Medical records confirm that in September 2013, the offender was being evaluated to determine if she has sleep apnea. The records do not confirm that she has been diagnosed as of yet. In January 2013, the offender had angiograms done on both sides of her heart and may have had a stent implanted at that time. However, the offender confirmed that she has not had any heart surgeries since that time and gave us the prescriptions of the medications she takes daily to maintain her heart health. To date, the offender has not been able to document her hip pain at all.

It is the position of the Probation Office that while the offender has some health concerns, she is physically capable of performing community service according to the schedule imposed by the Court at her sentencing on the instant offense. We submit that even if she is diagnosed with sleep apnea, this will not prevent her from complying with that condition. The offender could do as little as 3 hours per week for the next year and satisfy the Court's order. For these reasons, we respectfully recommend that the offender's request for vacating of the community service condition be denied.

The Court concurs with the recommendation of the United States Probation Officer. In the absence of any medical records confirming the medical conditions of the probationer, with a statement as to her inability to do community service, her application is denied.

SO ORDERED.

Dated: Central Islip, New York
October 23, 2013

/s Arthur D. Spatt


ARTHUR D. SPATT

United States District Judge