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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

16 CR 376 (RMB)

5 ABDULRAHMAN EL BAHNASAWY,

6 Defendant.

7 -----x

New York, N.Y.
December 12, 2017
1:00 p.m.

10 Before:

11 HON. RICHARD M. BERMAN,

12 District Judge

13 APPEARANCES

14
15 JOON H. KIM
16 Acting United States Attorney for the
17 Southern District of New York

18 NEGAR TEKEEI
19 Assistant United States Attorney

20 ANDREW FRISCH
21 JASON WRIGHT
22 Attorneys for Defendant

-and-

23 FEDERAL DEFENDERS OF NEW YORK
24 Attorneys for Defendant

25 SABRINA SHROFF

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1 THE COURT: From my point of view, the purpose of
2 today's conference is to set a date for sentencing. And that
3 is I think reflected in the memo endorsement of mine dated
4 November 28, 2017, which endorses a letter from Mr. Frisch of
5 that same date. So that's what I have in mind here today.

6 MR. FRISCH: So, Judge, we've conferred with the
7 government, and they have kindly agreed not to object to our
8 request for a period of 60 days within which to make our
9 submission in aid of sentencing for Mr. Bahnasawy.

10 It is necessary for a couple of reasons, one of which
11 is the unusual history, substance abuse and mental illness
12 history, the complexity of some of the issues to be presented.
13 We also want to assure that we address treatment going forward
14 for him, for him personally and also for the Court's evaluation
15 in setting an appropriate sentencing. There is also some
16 scheduling issues. Ms. Shroff has two trials coming up --

17 THE COURT: I got it. That's agreeable to you as
18 well?

19 MS. TEKEEI: Your Honor, I must confess that when we
20 received Mr. Frisch's voice mail this morning, it was our
21 understanding that his request was a request to adjourn the
22 sentencing date for 60 days, not the date by which the
23 sentencing submission would be due. So when we voiced our
24 consent to that adjournment, it was to set a sentencing date 60
25 days from today.

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1 THE COURT: Okay. I got you. Let me just look at the
2 calendar and see.

3 Here's the schedule, which I think is fair and it
4 works also for me. I would like to do the sentencing on
5 February 13 and I'll give you a morning.

6 MS. SHROFF: Judge, I will be on trial. I'm quite
7 certain I will be on trial on another terrorism case.

8 THE COURT: You know, I have a calendar also. So, I'm
9 trying to accommodate everybody. It is certainly long enough
10 out for everybody to be ready for sentencing.

11 MS. SHROFF: Is there any way you can give me two more
12 weeks, please?

13 THE COURT: Two after that? No, because I'm sitting
14 on the Second Circuit in two weeks after that.

15 MS. SHROFF: Could you give us three weeks after that?

16 THE COURT: Can't do it. Can't do it.

17 MR. FRISCH: Your Honor --

18 THE COURT: I can do it over lunch, at a lunch break,
19 give you two hours then.

20 MS. SHROFF: Your Honor, may I just -- I just finished
21 telling the line assistant Ms. Tekeei --

22 THE COURT: So, putting schedules aside, it's really
23 time to conclude this case. It has been for some time.
24 Defense counsel have made some changes, I get that. New
25 defense counsel, but even adding in the new defense counsel,

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1 it's still time. So I personally think that the date I was
2 going to suggest for sentencing is January 30. I think that's
3 enough time. So, I certainly think that February 13 is enough
4 time.

5 And it is time, is really the point I'm trying to
6 make. It is not fair to Mr. Bahnasawy, or anybody, for us to
7 keep dragging this out.

8 MS. SHROFF: May I just have one second with them just
9 one second.

10 THE COURT: Yes.

11 (Pause)

12 MS. SHROFF: Ms. Tekeei, can you just join us for a
13 minute.

14 MS. TEKEEI: Sure.

15 (Pause)

16 THE COURT: What have you got?

17 MR. FRISCH: Your Honor, so we completely understand
18 where your Honor is coming from and the history of the case and
19 the government's interest and your interest in getting this
20 done. Completely understand.

21 Here's the problem we have. One of the issues is the
22 work we need to do, but there is the issue of scheduling as
23 well. Ms. Shroff has a trial in December and one in January.
24 I have a trial in January which is out of the city. I won't
25 even be in New York City, it is Upstate New York. Mr. Wright

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1 has commitments.

2 I fully -- our overriding objective here is to get
3 this right from our point of view, not just to be effective
4 lawyers, but also not to shortchange the Court in explaining
5 the issues, certainly our client. And all we can ask the Court
6 to do is to see if your Honor can see clear to give us as much
7 time so we can just do the best we can, not just for our
8 client, which we certainly want to do, but also for the Court.

9 THE COURT: So what does that mean?

10 MR. FRISCH: Well, in talking about this with
11 Ms. Shroff and Mr. Wright before we came to court, and
12 ultimately the government, and we had obviously a
13 miscommunication as to what 60 days meant. We felt that after
14 speaking to the professionals who have worked with
15 Mr. Bahnasawy and plotting a course forward in advance of
16 sentencing that we could make it work if we had 60 days to get
17 our submission in. You know, I'd like the 60 days.

18 If your Honor just thinks you can't do that, we'll
19 take whatever your Honor feels you can do. But February 13
20 just seems undoable, given our desire to do our best for our
21 client, and also in light of our, frankly, commitments to other
22 clients as well and other judges.

23 THE COURT: It's undoable in what respect?
24 February 16. You can't get the materials in by then? It makes
25 no sense to me, to be honest with you.

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1 MS. SHROFF: Your Honor, I could explain why we
2 wouldn't be able to meet that deadline. We're just, honestly,
3 in talking with them and I think we're finally --

4 THE COURT: I think you're talking about trial
5 calendars, which is what you're talking about. I don't think
6 you're talking about the merits. It is certainly enough time
7 between what's already transpired and these kinds of dates
8 we're talking about, is certainly enough time to do a pretrial
9 submission.

10 MS. SHROFF: Your Honor, I'm really not talking about
11 the trial schedule at all. I'm trying to explain to the Court
12 that it has taken a while for the three of us to congeal as a
13 team. I know this Court knows this case backward and forward,
14 but it takes a while to know. It takes a while to get to know
15 the client, and the client has a lot of baggage, as this Court
16 has very uniquely recognized.

17 So it is not just our trial schedule. We really are
18 trying to work as a team. It is an adjustment of sorts.
19 Trying to bring the family back in. And your Honor, you have
20 been incredibly patient.

21 THE COURT: What does that mean?

22 MS. SHROFF: It means we'll put in our submissions 60
23 days from today, please. And the government concedes that
24 because of the misunderstanding between us, they are now okay
25 with the request. You could hear from them. And we of course

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1 will not seek any further adjournments.

2 THE COURT: Okay.

3 MS. TEKEEI: Your Honor, for what it's worth, having
4 spoken with defense counsel, and hearing their arguments, we
5 have no objection to a hard deadline of February 13 for their
6 sentencing submission and a hard date for sentencing. We're
7 not interested in any further adjournments, as I'm sure your
8 Honor shares the concerns related to that.

9 THE COURT: Okay. So here's the schedule. We're
10 going to sentence on March 1 at 10. The defense submission is
11 due by noon on February 15, and government's response is due by
12 noon on February 22. I take it that works for everybody. Is
13 that right?

14 MR. FRISCH: Yes, your Honor. Thank you very, very
15 much.

16 MS. TEKEEI: Yes, thank you.

17 MS. SHROFF: Thank you, your Honor. I really
18 appreciate it.

19 THE COURT: Okay. Thanks a lot. Nice to see you.

20 (Adjourned)

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