UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

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| UNITED STATES OF AMERICA | ) | |
| | ) | |
| v. | ) | 1:10-cr-00186-JAW |
| | ) | |
| DOMINGOS NOBREGA | ) | |

**ORDER ON MOTION FOR SENTENCE CONSIDERATION**

Domingos Nobrega was convicted by a federal jury on May 24, 2011 of being a felon in possession of a firearm, a violation of 18 U.S.C. § 922(g)(1). *Jury Verdict* (Docket # 98). He is awaiting sentence. On December 16, 2011, Mr. Nobrega filed a *pro se* motion entitled "Motion for Sent[e]nce Consideration." *Mot. for Sentence Consideration* (Docket # 161) (*Def.'s Mot.*). In accordance with the District's standard practice, because Mr. Nobrega is a represented criminal defendant who filed a *pro se* motion, the Court consulted with defense counsel to determine whether he wished to adopt the motion. Here, Attorney Jeffrey Silverstein, who represents Mr. Nobrega, confirmed that he adopted the motion. Accordingly, the Court docketed the motion and the Government responded. *Gov't's Resp. to Def.'s Mot. for a Sentence of Public Flogging* (Docket # 162) (*Gov't's Opp'n*).

Mr. Nobrega's motion is highly unusual. Mr. Nobrega asks that, in lieu of incarceration, the Court sentence him to a public flogging. *Def.'s Mot.* at 1. Specifically, he requests "2 lashes for every year given to him as sent[e]nce to be imposed upon him." *Id.* He asserts that "[t]his old type of sentence is still on the books to be used in the United States as long as it is requested and not imposed by the court system under the 8th amendment of the United States of America." *Id.* Mr. Nobrega suggests this punishment because he "does not want to be part of the 2.5 Million people locked up in the United States Prison system and be part of a prison statistic." *Id.* He says he "feels he will benefit

and learn more of why not to break the United States Laws and will remember it if he is granted this type of sent[e]nce of corp[o]ral punishment or public flogging." *Id.* Attached to his motion is an article he authored, critiquing the prison system in the United States. *Def.'s Mot.* Attach. 1 Domingos Nobrega, *Bring it Back to the U.S.*, DOING TIME (Aug. 2011) (citing PETER MOSKOS, IN DEFENSE OF FLOGGING (2011)).

The Government responds that the Court is restricted to imposing a punishment within its statutory authority and does not have the authority to impose a sentence of flogging. *Gov't's Opp'n* at 1. Here, the Government says Congress has mandated that for a violation of § 922(g)(1), the Court may impose a period of incarceration not to exceed ten years to be followed by no more than three years of supervised release, a fine of not more than $250,000, and a special assessment of $100. *Id.* (citing 18 U.S.C. §§ 924(a), 3583(b)(2), 3571(b)(3), 3013(a)(2)(A)). The Court may not, according to the Government, sentence Mr. Nobrega to a public flogging. *Id.*

The Government is correct. Setting aside whether a sentence of a public flogging would violate the Eighth Amendment's prohibition against cruel and unusual punishment, Congress expressly outlawed whipping in 1839:

> Sec. 5 *And it be further enacted*, that the punishment of whipping and the punishment of standing in the pillory, so far as they now are provided for by the laws of the United States, be, and the same are hereby, abolished.

Act of Feb. 28, 1839, ch. 36, § 5, 5 Stat. 321-22 (codified at 18 U.S.C. § 3564); *United States v. Murphy*, 41 U.S. 203, 205 (1842) (discussing sentencing options and noting that "whipping is abolished by the act of congress"). A variation of this statute remained on the books until November 1, 1987, when Congress enacted amendments to the Sentencing Reform Act. *See* 18 U.S.C. Ch. 227, § 3564 ("The punishment of whipping and of standing in the pillory shall not be inflicted"), *repealed by* the Sentencing Reform Act provisions of

the Comprehensive Crime Control Act of 1984, Pub. L. 98-473, Title II, §§ 212(a)(1), (2), 235(a)(1), Oct. 12, 1984, 98 Stat. 1987, 2031. As part of the 1984 and 1987 sentencing reforms, instead of listing the punishments a federal court could not impose, Congress set forth the sentences that a federal court could impose, 18 U.S.C. § 3551, and it nowhere authorizes whipping. As the Government pointed out, for being a

felon in possession of a firearm, Congress has expressly authorized a period of incarceration not to exceed ten years, a fine not to exceed $250,000, a period of supervised release not to exceed three years, and a special assessment of $100 as the maximum penalties for which Mr. Nobrega is vulnerable as a consequence of his conviction. 18 U.S.C. §§ 924(a)(2), 3571(b)(3), 3583(b)(2), 3013(a)(2)(A).

The Court understands Mr. Nobrega's desire to accept some form of punishment for his crime and yet avoid incarceration. However, the Court is prohibited from imposing a public flogging and must sentence him in accordance with the punishments Congress has authorized.

The Court DENIES Domingos Nobrega's Motion for Sentence Consideration (Docket # 161).

SO ORDERED.

/s/ John A. Woodcock, Jr.
JOHN A. WOODCOCK, JR.
CHIEF UNITED STATES DISTRICT JUDGE

Dated this 20th day of January, 2012

**Defendant (1)**

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