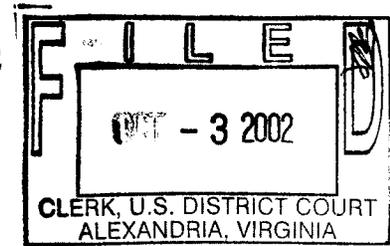


IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division



UNITED STATES OF AMERICA)
)
 v.)
)
 JOHN PHILLIP WALKER LINDH)

Criminal No. 02-37-A

ORDER

On July 22, 2002, Johnny Spann (“Spann”) filed *pro se* a “Request for Permission to Address the Court Prior to Sentencing.” Defendant, by counsel, objects to Spann’s request on the ground that Spann has no legal right to address the Court under Rule 32(c)(3)(E), Fed. R. Crim. P., as an alleged “victim” of the offenses of conviction.¹ The government has not filed a response to Spann’s request and presumably takes no position on whether it should be granted or denied.

It is arguably true that Spann, strictly speaking, has no right under Rule 32 to speak at

¹ In this regard, Rule 32(c)(3)(E) provides as follows:

[I]f sentence is to be imposed for a crime of violence or sexual abuse,...[the Court must] address the victim personally if the victim is present at the sentencing hearing and determine if the victim wishes to make a statement or present any information in relation to the sentence.

Rule 32(c)(3)(E), Fed. R. Crim. P. And, in the context of Rule 32, the term “victim” is defined as:

any individual against whom an offense has been committed for which a sentence is to be imposed, but the right of allocution under subdivision (c)(3)(E) may be exercised instead by...(B) one or more family members or relatives designated by the court if the victim is deceased or incapacitated; if such person or persons are present at the sentencing hearing, regardless of whether the victim is present....

Rule 32(f)(1), Fed. R. Crim. P.

defendant's sentencing because the government concedes that it has no evidence inculcating defendant in the death of Spann's son, and hence Spann is not a relative of a victim of the offenses of conviction. Yet, it is also true that federal sentencing courts have plenary authority to allow parties other than those identified in Rule 32 to speak in exceptional circumstances.

Accordingly, because information may be disclosed in the course of the sentencing hearing that may shed light on whether this case presents such exceptional circumstances, a decision on Spann's "Request for Permission to Address the Court Prior to Sentencing" is **DEFERRED** until an appropriate time during the sentencing hearing prior to the final imposition of sentence.

It is further **ORDERED** that should the Court grant Spann's request at the appropriate time, Spann will be afforded an opportunity to address the Court briefly if, after hearing and considering all of the information revealed in the course of the hearing, he still wishes in the circumstances to do so.

The Clerk is directed to send a copy of this Order to Spann, the Probation Office, the Marshal's Service and all counsel of record.

/S/

T.S. Ellis, III
United States District Judge

Alexandria, VA
October 3, 2002