

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA	:	
	:	
v.	:	CR No. 06-95WES
	:	
JOSE MOJICA	:	

REPORT AND RECOMMENDATION

PATRICIA A. SULLIVAN, United States Magistrate Judge.

This matter has been referred to me pursuant to 28 U.S.C. § 636(b)(1)(B) and 18 U.S.C. § 3401(i) for proposed findings of fact concerning whether Defendant Jose Mojica is in violation of the terms of his supervised release and, if so, for recommended disposition. In compliance with that directive and in accordance with 18 U.S.C. § 3583(e) and Fed. R. Crim. P. 32.1, hearings were conducted on February 23 and 25, March 28 and April 28, 2022. After being briefly detained, on February 25, Defendant was released to resume mental health treatment with the additional condition of stand-alone GPS monitoring for thirty days. On April 28, 2022, Defendant waived a violation hearing and made a limited admission to Violation No. 1 and a full admission to Violation No. 2.

Based on Defendant's admissions, the parties' joint recommendation, as well as the following analysis, I recommend that the Court impose a sentence of time served (February 23-25, 2022), followed by a two-year term of supervised release. While on supervised release, I recommend that Defendant be required to comply with the following conditions:

Defendant shall participate in a program of substance abuse treatment (inpatient or outpatient) as directed and approved by the Probation Office.

Defendant shall participate in a program of substance abuse testing (up to 72 drug tests per year) as directed and approved by the Probation Office.

Defendant shall participate in a program of mental health treatment as directed and approved by the Probation Office.

Defendant shall contribute to the cost of all ordered treatment and testing based on ability to pay as determined by the probation officer.

I. BACKGROUND

On October 22, 2021, the Court granted the Probation Office's petition for the issuance of a warrant charging Defendant with the following violations:

Violation No. 1: The defendant shall not commit another federal, state or local crime.

On Jun 12, 2021, Mr. Mojica committed the following offenses: B&E vehicle/boat nighttime for felony and attempt to commit crime as evidenced by his arrest on this same date, by Attleboro Police Department. As a result of this offense, on June 18, 2021, Mr. Mojica was sentenced in Rhode Island as a parole violator with a good time release date of April 11, 2022.

Violation No. 2: The defendant shall not leave the judicial district without permission of the Court or probation officer.

On June 12, 2021, Mr. Mojica left the District of Rhode Island without permission of the Court or the probation office as evidenced by his arrest in Attleboro, Massachusetts.

When this Court's warrant issued, Defendant was in the custody of Rhode Island in connection with the parole violation for the Violation No. 1 conduct. He had not yet appeared in Attleboro Superior Court for the pending Massachusetts charge for the same conduct. After serving eight months and completing the sentence imposed by Rhode Island, Defendant was transferred into federal custody and appeared initially on February 23, 2022. Following his release by this Court on February 25, 2022, he resolved the pending Massachusetts case by admitting only that there are sufficient facts to prove the charged conduct, with a continuance without a finding for nine months; if Defendant successfully completes the nine months, the Massachusetts case will be dismissed.

In this Court, Defendant was released on February 25, 2022, based on a plan developed by Probation with the support of Defendant's family, for the resumption of mental health treatment with thirty days of stand-alone GPS for stability. At the March 28, 2022, hearing, Probation confirmed that Defendant had responded remarkably well to mental health treatment and the GPS was removed. By April 28, 2022, when Defendant appeared again, he had resolved the pending Massachusetts charge and was continuing to do very well. At that hearing, he waived his right to a revocation hearing, admitted that the government has evidence sufficient to prove Violation No. 1 by a preponderance of the evidence and admitted Violation No. 2 without limitation. Based on his admissions, I found him guilty of violating the terms and conditions of his supervised release.

II. APPLICABLE LAW

Title 18 U.S.C. § 3583(e)(3) provides that the Court may revoke a term of supervised release and require the defendant to serve in prison all or part of the term of supervised release authorized by statute for the offense that resulted in such term of supervised release without credit for time previously served on post-release supervision, if the Court finds by a preponderance of evidence that the defendant has violated a condition of supervised release, except that a defendant whose term is revoked under this paragraph may not be sentenced to a term beyond five years if the instant offense was a Class A felony, three years for a Class B felony, two years for a Class C or D felony, or one year for a Class E felony or a misdemeanor. Defendant was on supervision for a Class A felony; therefore, he may not be required to serve more than five years of imprisonment upon revocation.

Title 18 U.S.C. § 3583(e)(2) provides that if the Court finds that the defendant violated a condition of supervised release, the Court may extend the term of supervised release if less than

the maximum term was previously imposed. In this case, the maximum term of supervised release is life.

Title 18 U.S.C. § 3583(h) and § 7B1.3(g)(2) of the United States Sentencing Guidelines (“USSG”) provide that when a term of supervised release is revoked and the defendant is required to serve a term of imprisonment that is less than the maximum term of imprisonment authorized, the Court may include a requirement that the defendant be placed on a term of supervised release after imprisonment. The length of such a term of supervised release shall not exceed the term of supervised release authorized by statute for the offense that resulted in the original term of supervised release, less any term of imprisonment that was imposed upon revocation of supervised release. In this case, the authorized statutory maximum term of supervised release is life.

Section 7B1.1 of the USSG provides for three grades of violations (A, B and C). Subsection (b) states that where there is more than one violation, or the violation includes more than one offense, the grade of violation is determined by the violation having the most serious grade.

Section 7B1.1(a) of the USSG provides that a Grade A violation constitutes conduct that is punishable by a term of imprisonment exceeding one year that (i) is a crime of violence, (ii) is a controlled substance offense, or (iii) involves possession of a firearm or destructive device, or any other offense punishable by a term of imprisonment exceeding twenty years. Grade B violations are conduct constituting any other offense punishable by a term of imprisonment exceeding one year. Grade C violations are conduct constituting an offense punishable by a term of imprisonment of one year or less; or a violation of any other condition of supervision. Section 7B1.3(a)(1) states that upon a finding of a Grade A or B violation, the Court shall revoke

supervision. Subsection (a)(2) states that upon a finding of a Grade C violation, the Court may revoke, extend or modify the conditions of supervision. In this case, Defendant has committed a Grade B violation; therefore, the Court shall revoke supervision.

Should the Court find that the defendant has committed a Grade B or C violation, § 7B1.3(c)(1) states that where the minimum term of imprisonment determined under § 7B1.4 is at least one month, but not more than six months, the minimum term may be satisfied by (a) a sentence of imprisonment; or (b) a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement or home detention according to the schedule in § 5C1.1(e) for any portion of the minimum term. Should the Court find that the defendant has committed a Grade B or C violation, § 7B1.3(c)(2) states that where the minimum term of imprisonment determined under § 7B1.4 is more than six months but not more than ten months, the minimum term may be satisfied by (a) a sentence of imprisonment; or (b) a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement or home detention according to the schedule in § 5C1.1(e), provided that at least one half of the minimum term is satisfied by imprisonment. Neither provision applies to this matter.

Pursuant to § 7B1.3(d), any restitution, fine, community confinement, home detention, or intermittent confinement previously imposed in connection with the sentence for which revocation is ordered that remains unpaid or unserved at the time of revocation shall be ordered to be paid or served in addition to the sanction determined under § 7B1.4 (Term of Imprisonment), and any such unserved period of confinement or detention may be converted to an equivalent period of imprisonment. In this case, there is no outstanding restitution, fine, community confinement, home detention or intermittent confinement.

Section 7B1.4(a) of the USSG provides that the Criminal History Category is the category applicable at the time the defendant was originally sentenced. In this instance, Defendant had a Criminal History Category of IV at the time of sentencing.

Should the Court revoke supervised release, the Revocation Table provided for in § 7B1.4(a) provides the applicable imprisonment range. In this case, Defendant committed a Grade B violation and has a Criminal History Category of IV. Therefore, the applicable range of imprisonment for this violation is twelve to eighteen months.

Section 7B1.5(b) of the USSG provides that, upon revocation of supervised release, no credit shall be given toward any term of imprisonment ordered, for time previously served on post-release supervision.

III. ANALYSIS

On January 5, 2007, Defendant pled guilty to possession with intent to distribute fifty grams or more of cocaine base and was sentenced to 151 months of imprisonment, followed by five years of supervised release; the incarcerative sentence was reduced pursuant to 18 U.S.C. § 3582(c)(2) to 120 months. Defendant began supervised release on December 11, 2019, with a projected expiration date of December 10, 2024. Release conditions were amended to add an extended stay at the Houston House (up to eight months) in light of Defendant's significant criminal history, which includes a state sentence for Murder II based on charges pending by the time of the federal prosecution in 2006.

For a year and a half, Defendant did very well on supervision, completing vocational training, working and cooperating fully with his supervising officer. That ended on the night of June 12, 2021, with a bizarre incident that appears clearly to have been the result of a lapse in mental health treatment. In brief, Defendant was arrested in Massachusetts (where he had gone

without permission) by the Attleboro police in possession of a stolen Del's Lemonade truck, wearing slippers, an inside-out t-shirt and duct tape rolls around his wrist; he told the officers he was going to convert the Del's truck to an ice cream truck so that he could sell ice cream to the "kids" to support his family. After observing his demeanor, instead of taking him to jail, the arresting officers transported Defendant to Sturdy Memorial Hospital where he was committed for a psychiatric evaluation. Violation No. 1 is based on the theft of the truck and Violation No. 2 is based on Defendant's leaving Rhode Island without the permission of Probation or the Court.

Since his release on February 25, 2022, with the support of his family and of his supervising Probation officer, Defendant has been restored ("dramatically" as described by Probation) to the person he had been before the June 2021 incident. He is not only fully cooperative in treatment and supervision, but also has been participating in the Man Up program and taking some machine operations courses. Based on this strong evidence that the incident was the product of a lapse in mental health treatment, Defendant's reengagement with treatment and the very serious consequences Defendant has already faced because of the incident, the parties presented an agreed-upon sentencing recommendation of time served (from February 23-25, 2022), followed by a two-year term of supervised release, ending federal supervision several months sooner than the present term (which would have ended in December 2024).¹ The parties also agreed to the imposition of conditions requiring mental health treatment and substance abuse treatment/testing.

On allocution, Defendant stated that he had not truly appreciated the seriousness of his mental health issues and was in denial of how important adherence to his regimen for medication

¹ Defendant will remain subject to the twenty-year term of probation imposed by the State of Rhode Island.

is for him to sustain the ability to function. He noted that, from his experience while in prison, he had misunderstood the purpose of the medication, believing it to be just a way to assist with sleep and stability. Now that he is trying to reintegrate in the community, his mental health and past traumas affect him more intensely. He confirmed that he is stable again, back in treatment including taking prescribed medication with a full understanding of what might happen if there is a lapse. He apologized for the violation conduct and noted that, during the night of June 12, 2021, he walked over a mile from his home yet has no recollection or understanding of where he was or what he was doing.

Based on the foregoing, I recommend that the Court adopt the parties' joint recommendation and impose a term of time served followed by a two-year term of supervised release with the conditions recommended by Probation.

IV. CONCLUSION

After considering the appropriate factors in 18 U.S.C. § 3553(a) and for the reasons expressed above, I recommend that the Court impose an incarcerative sentence of time served to be followed by a two-year term of supervised release. While on supervised release, I recommend that Defendant be required to comply with the following conditions:

Defendant shall participate in a program of substance abuse treatment (inpatient or outpatient) as directed and approved by the Probation Office.

Defendant shall participate in a program of substance abuse testing (up to 72 drug tests per year) as directed and approved by the Probation Office.

Defendant shall participate in a program of mental health treatment as directed and approved by the Probation Office.

Defendant shall contribute to the cost of all ordered treatment and testing based on ability to pay as determined by the probation officer.

Any objection to this report and recommendation must be specific and must be served and filed with the Clerk of the Court within fourteen (14) days of its receipt. See Fed. R. Crim. P. 59(b); DRI LR Cr 57.2(d). Failure to file specific objections in a timely manner constitutes waiver of the right to review by the district judge and the right to appeal the Court's decision. See United States v. Lugo Guerrero, 524 F.3d 5, 14 (1st Cir. 2008); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 605 (1st Cir. 1980).

/s/ Patricia A. Sullivan

PATRICIA A. SULLIVAN
United States Magistrate Judge
May 3, 2022