

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA	:	
	:	
v.	:	CR No. 13-69WES
	:	
ALFRED REPOSE	:	

**REPORT AND RECOMMENDATION**

PATRICIA A. SULLIVAN, United States Magistrate Judge.

Based on Probation's petition, this matter had 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 Alfred Repose is in violation of the terms of his supervised release and, if so, for recommended disposition. In compliance with that directive, hearings were conducted on April 1,<sup>1</sup> 8, and 24, 2019. On April 8, 2019, Defendant appeared pursuant to a summons and was released on the original conditions, with the additional condition of daily drug testing. At the April 24, 2019, hearing, the government made three oral motions: first, to withdraw the petition; second, to eliminate the bail condition of daily drug testing; and, third, to terminate Defendant's supervised release. For the reasons that follow, I granted the motions to withdraw the petition and to end daily drug testing by order entered the same day; I also recommend that the Court terminate Defendant's supervision.

**I. BACKGROUND, ANALYSIS AND RECOMMENDATION**

Based on his 2014 conviction for cocaine base distribution, Defendant was originally sentenced to forty months of incarceration to be followed by three years of supervision, which

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<sup>1</sup> On April 1, 2019, Defendant did not appear but called in advance to report that he had seriously cut a finger and was seeking medical help. His absence was excused and the matter was continued.

commenced on October 30, 2015. In 2017, Defendant's ongoing struggle with drug addiction resulted in revocation, with a three-month term of incarceration, based principally on positive drug screens for cocaine. At that time, the Court noted the conundrum of how to sanction violations resulting purely from addictive disease. ECF No. 34 at 6.

Since supervision recommenced on September 28, 2017, Defendant has been honest and pleasant in all of his dealings with Probation; prior to a recent medical diagnosis, he had been working. There is no suggestion that he has reverted to crime. His lingering but serious problem has been an intractable addiction to cocaine. However, despite Defendant's cooperation with Probation in accepting and fully engaging in the treatment it is able to offer, it appears that Defendant really needs long-term residential treatment, which Probation cannot provide because of a 2004 conviction that requires him to register as a sex offender.<sup>2</sup> To illustrate, when Defendant was recently released from a sixty-day stint at Houston House with intensive outpatient treatment (during which he did well), he resumed the use of cocaine almost immediately.

Based on this conduct, on March 21, 2019, the Court granted the Probation Office's petition for the issuance of a summons charging Defendant with the following violations:

**Violation No. 1: You must refrain from any unlawful use of a controlled substance.**

Mr. Repose used cocaine as evidenced by positive drug test results on March 6, 7, and 12, 2019. In addition, he reported using cocaine on March 16, 2019.

**Violation No. 2: The 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.**

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<sup>2</sup> All of the treatment providers with which Probation contracts now refuse to accept registered sex offenders for long-term residential treatment.

Mr. Repose failed to report to the Probation Office in accordance to the random drug testing guidelines on February 28, 2019. In addition, he failed to report for drug testing as directed on March 1, 2019.

At the April 8 hearing, Defendant appeared and was released with a daily testing protocol in the hope it might provide the motivation not to use cocaine. During the hearing, Defendant asked for long-term residential treatment; Probation confirmed that it is not available to him because of his SORNA status. The matter was continued to April 24, 2019. When Defendant appeared on April 24, 2019, Probation reported that he had continued to use cocaine regularly every few days during the intervening two weeks.

The government acknowledged that Defendant has completed more than three years of supervision and that, except for his addiction to cocaine, has done very well and has achieved the goals of supervised release. Further, he remains on probation with the State of Rhode Island until April 12, 2021. As to his addiction, Probation is unable to provide him with the level of treatment he appears to require. Were he to be incarcerated for a short period for these violations, which seems to be the only remedy available, it would be a futile<sup>3</sup> punishment of Defendant for the symptoms of addictive disease at great expense to the taxpayers. Accordingly, the government moved to withdraw the petition and to eliminate the bail condition of daily drug testing. Defendant had no objection to either motion. For the reasons stated, both motions were granted. For essentially the same reasons, the government also moved to terminate Defendant's supervised release; Defendant joined the motion. While unusual, I concur and recommend that the motion be granted.

As provided in 18 U.S.C. § 3583(e)(1), supervised release may be terminated early "at any time after the expiration of one year of supervised release . . . if [the court] is satisfied that

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<sup>3</sup> The last revocation proceeding resulted in a short period (three months) of incarceration. The time in jail did not have a positive impact on Defendant's addictive disease.

such action is warranted by the conduct of the defendant released and the interest of justice.” In considering early termination, the court should consider “the nature and circumstances of the offense and the history and characteristics of the defendant,” as well as the need for the sentence imposed “to afford adequate deterrence to criminal conduct,” “to protect the public from further crimes of the defendant,” and “to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.” 18 U.S.C. § 3553(a). At bottom, however, “whether to terminate a period of supervised release is subject to the discretion of the trial judge.” United States v. Miles, No. 1:05-CR-00006-JAW, 2014 WL 2048206, at \*1 (D. Me. May 19, 2014); United States v. Harris, 689 F. Supp. 2d 692, 694 (S.D.N.Y. 2010). For example, early termination may be appropriate when the court is presented with the defendant’s good behavior coupled with his inability to meet an imposed condition so as to “render a previously imposed term or condition of release either too harsh or inappropriately tailored to serve the general punishment goals of section 3553(a).” United States v. Trotter, 321 F. Supp. 3d 337, 359-60 (E.D.N.Y. 2018) (citing United States v. Lussier, 104 F.3d 32, 36 (2d Cir. 1997)). And when state supervision continues after federal supervision terminates, concerns of ongoing risk to public safety are assuaged because the defendant still has a powerful incentive not to reoffend. United States v. Seger, No. 1:98-cr-00065-JAW, 2014 WL 5473020, at \*5 (D. Me. Oct. 27, 2014).

In this instance, the parties agree that, other than the use of cocaine, all supervision goals have been achieved and it is now approximately six months past the expiration date of Defendant’s original term (October 29, 2018); further, Defendant will continue to be under the supervision of the State for two more years, until April 12, 2021. And while cocaine use is not without an impact on public safety, here Defendant suffers from intractable addiction, yet

Probation cannot provide him with needed long-term residential drug treatment because of his SORNA status. Thus, continued supervision seems both harsh and an expensive exercise in futility, contrary to the “general punishment goals of section 3553(a).” Trotter, 321 F. Supp. 3d at 359. If Probation had an untried tool that might help Defendant overcome his addiction, it would make sense to require Defendant to try it, but that appears not to be the case. This motion was initiated by the government, and Defendant’s Probation Officer concurs. Accordingly, I recommend that Defendant’s supervised release be terminated. Seger, 2014 WL 5473020, at \*9 (“it would be highly unusual for this Court to deny a motion for early termination where the defendant has made the motion, the Government supports it, and the [Probation Office] does not object”).

A coda: during the hearing, I emphasized to Defendant that early termination in these circumstances, while certainly a recognition of his cooperative and compliant approach to supervision, including to substance abuse treatment, is neither a reward nor a license for him to cease to use every resource available to him to continue to strive to achieve sobriety. His battle to overcome addiction should and must continue.

## **II. CONCLUSION**

I recommend that the government’s oral motion to terminate Defendant’s supervised release be granted. 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 after its service on the objecting party. 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 1, 2019