

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA	:	
	:	
v.	:	CR No. 14-00022-WES
	:	
KEVIN BATES	:	

REPORT AND RECOMMENDATION

Lincoln D. Almond, 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 is in violation of the terms of his supervised release and, if so, to recommend a disposition of this matter. In compliance with that directive and in accordance with 18 U.S.C. § 3583(e) and Fed. R. Crim. P. 32.1, a revocation hearing was held on April 26, 2023, at which time Defendant, through counsel and personally, admitted that he was in violation of his supervised release conditions. At the hearing, I ordered Defendant detained pending my Report and Recommendation and final sentencing before District Judge William E. Smith.

On June 29, 2022, the Probation Office petitioned the Court for the issuance of an arrest warrant. On that date, the District Court reviewed the request and ordered the issuance of a warrant. Defendant appeared before the Court for a revocation hearing on April 26, 2023 at which time he admitted to the following charges:

Violation No. 2. Mandatory Condition: Defendant must not commit another federal, state, or local crime.

On May 20, 2022, Defendant committed the following offenses: Reckless Endangerment of Child; A&B With Dangerous Weapon; Destruction of Property over \$1,200.00, Malicious; and Negligent

Operation of Motor Vehicle as evidenced by the Attleboro Police Department's police reports and active arrest warrant.

Violation No. 3. Special Condition: Defendant shall participate in a program of substance abuse treatment (inpatient or outpatient), as directed and approved by the Probation Office.

Defendant did not appear for his weekly co-occurring group treatment session with CODAC on May 23, 2022; June 6, 2022; and June 13, 2022.

At the April 26, 2023 hearing, the Government made an oral motion to amend Violation No. 4 as follows:

Violation No. 4. Mandatory Condition: You must not commit another federal, state, or local crime.

On June 24, 2022, Defendant committed the offense of Obstructing Officer in Execution of Duty as evidenced by his arrest by the Cumberland Police Department to which he plead nolo contendere.

Also at the April 26, 2023 hearing, the Government made an oral motion to dismiss the following charge:

Violation No. 1. Mandatory Condition: Defendant must not commit another federal, state, or local crime.

On February 17, 2022, Defendant committed the offense of Domestic Violence-Simple Assault as evidenced by his arrest by the Lincoln Police Department.

The Government's oral motion to dismiss this violation charge was GRANTED.

As Defendant has admitted these charges, I find he is in violation of the terms and conditions of his supervised release.

Recommended Disposition

Section 3583(e)(2) provides that if the Court finds that 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. The authorized maximum term of supervised release is life.

Section 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 5 years if the instant offense was a Class A felony, 3 years for a Class B felony, 2 years for a Class C or D felony, or 1 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' imprisonment upon revocation.

Pursuant to 18 U.S.C. § 3583(h) and § 7B1.3(g)(2), 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. The authorized statutory maximum term of supervised release is life.

Section 7B1.1 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) notes that a Grade A violation constitutes conduct which 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) provides that upon a finding of a Grade C violation, the court may revoke, extend, or modify the conditions of supervision. Defendant committed a Grade A violation. Therefore, the Court shall revoke supervision.

Section 7B1.3(c)(1) provides 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 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 of these provisions apply to this matter.

Section 7B1.3(d) states that 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. There is no outstanding restitution, fine, community confinement, home detention, or intermittent confinement.

Section 7B1.4(a) provides that the criminal history category is the category applicable at the time Defendant was originally sentenced. Defendant had a Criminal History Category of VI 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.

Defendant committed a Grade A violation and has a Criminal History Category of VI. Therefore, the applicable range of imprisonment for this violation is fifty-one to sixty months, restricted by statute to sixty months.

Section 7B1.5(b) 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.

Analysis and Recommendation

Defendant has a lengthy criminal history notable for drug, firearm, and assault convictions. Ultimately, in 2015, Defendant plead guilty in this Court to drug trafficking and firearm offenses and received a seven-year sentence. He commenced supervised release on February 3, 2020.

Defendant has been in federal custody since November 9, 2022 and, prior thereto, in state custody starting June 24, 2022. Although any federal sentence on this revocation is retroactive

only to November 9, 2022, the Court gives Defendant “credit” in making this sentencing recommendation for the prior four and one-half months he spent in state custody on charges underlying this violation case.

Defendant’s term of supervision has been turbulent and marked by impulsive and dangerous behavior. Defendant attributes his history to untreated mental health conditions and reports that he is currently in a more stable place due to treatment and medication. He accepted responsibility for these violations and expressed remorse. The Court sincerely hopes that Defendant’s comments were genuine and reflect a motivation to change direction.

As to the current violations, they are technically Grade A with a guideline range of fifty-one to sixty months. However, both sides agree that the violation conduct (although serious) does not justify a sentence in that range. The Government seeks a twenty-month sentence retroactive to November 9, 2022. Defendant seeks a time-served sentence to take into account his prior time in state custody starting on June 24, 2022.

On balance, the Court concludes that a sentence of twelve months and one day is sufficient, but not greater than necessary, to advance the Section 3553 sentencing factors including deterrence and public safety. This violation case started with a domestic assault charge that was ultimately dismissed due to lack of victim cooperation. Approximately three months later, Defendant had an altercation with his nineteen-year-old son (witnessed by his eleven-year-old daughter) in an apartment building parking lot in Attleboro, Massachusetts. During this altercation, Defendant is seen intentionally hitting his son’s car with his car, screaming at his son, and banging on and damaging his son’s car. Ultimately, an arrest warrant was issued, and Defendant was arrested on June 24, 2022 attempting to elude police. He ignored police directives and created a dangerous and volatile situation. Notably, the car involved was driven by

Defendant's girlfriend who was the victim in the earlier domestic assault case, and there was an active no-contact order in place at the time. Defendant ultimately plead nolo to an obstruction charge and received a one-year suspended sentence. Defendant's past erratic and volatile behavior warrants punishment, but the Court hopes Defendant is correct and that continued mental health treatment will prevent behavior of this nature in the future. The Court also recommends twenty-four months of further supervised release to provide Defendant with supportive resources including access to treatment to prevent future violations.

Conclusion

After considering the sentencing factors set forth in 18 U.S.C. § 3553(a), I recommend that Defendant be sentenced to a term of twelve months and one-day of incarceration followed by twenty-four months of supervised release with the following special conditions:

1. Defendant shall participate in a program of substance abuse treatment (inpatient or outpatient), as directed and approved by the Probation Office.
2. Defendant shall participate in a program of substance abuse testing (up to seventy-two drug tests per year) as directed and approved by the Probation Office.
3. Defendant shall participate in a program of mental health treatment as directed and approved by the Probation Office.
4. Defendant shall contribute to the cost of all ordered treatment and testing based on ability to pay as determined by the Probation Officer.
5. Defendant shall permit the Probation Officer, who may be accompanied by either local, state, or federal law enforcement authorities, upon reasonable suspicion of a violation of supervision by possessing firearms, to conduct a search of Defendant's residence, automobile, and any other property under Defendant's control or ownership.

Any objection to this Report and Recommendation must be specific and must be filed with the Clerk of Court within fourteen days of its receipt. Fed. R. Crim. P. 59; LR Cr 57.2. Failure to file specific objections in a timely manner constitutes a waiver of the right to review by the District Court and the right to appeal the District Court's Decision. United States v. Valencia-Copete, 792 F.2d 4 (1st Cir. 1986); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603 (1st Cir. 1980).

/s/ Lincoln D. Almond
LINCOLN D. ALMOND
United States Magistrate Judge
April 27, 2023