

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA :
 :
v. : CR No. 15-00041-JJM
 :
MACKENZY SCOTT :

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 February 19, 2021, 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 released pending my Report and Recommendation and final sentencing before Chief Judge John J. McConnell, Jr.

Based upon the following analysis and the admission of Defendant, I recommend that Defendant’s current conditions of supervised release be modified to impose a period of 120 days of home confinement with GPS electronic monitoring.

Background

On February 11, 2021, the Probation Office petitioned the Court for the issuance of a summons. On February 12, 2021, the District Court reviewed the request and ordered the

issuance of a summons. Defendant appeared before the Court for a revocation hearing on February 19, 2021 at which time he admitted to the following charges:

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

From December 11, 2020 until January 6, 2021, Defendant failed to update the sex offender registry in accordance with Rhode Island sex offender registration guidelines, as evidenced by GPS points and his own admission.

Violation No. 2. Mandatory Condition: Defendant must refrain from any unlawful use of a controlled substance.

Defendant used marijuana, as evidenced by a positive drug test on January 7, 2021, as well as an admission made to his Probation Officer on January 14, 2021.

Violation No. 3. Standard Condition: Defendant must not knowingly leave the federal judicial district where he is authorized to reside without first getting permission from the Court or the Probation Officer.

Defendant traveled outside of the District of Rhode Island on seven occasions since December 11, 2020 without approval from his Probation Officer, as evidenced by GPS points.

Violation No. 4. Standard Condition: Defendant must live at a place approved by the Probation Officer. If he plans to change where he lives or anything about his living arrangements (such as the people he lives with) he must notify the Probation Officer at least ten days before the change. If notifying the Probation Officer in advance is not possible due to unanticipated circumstances, he must notify the Probation Officer within seventy-two hours of becoming aware of a change or expected change.

In December 2020 and January 2021, Defendant failed to notify his Probation Officer of changes to his residence, as evidenced by GPS points and his own admission.

Violation No. 5. Standard Condition: Defendant must not communicate or interact with someone he knows is engaged in criminal activity.

Defendant acted as the intermediary between the seller and purchaser of illicit substances, evidenced by his own admission on February 4, 2021.

Violation No. 6. Special Condition: Defendant shall have no contact with any child under the age of eighteen, with the exception of his brother P.S., without the presence of an adult who is aware of Defendant's criminal history and is approved, in advance, by the Probation Officer.

Defendant had ongoing contact with his seven-year-old daughter without prior approval from his Probation Officer, as evidenced by an in-person community contact on February 3, 2021 as well as his own admission on February 4, 2021.

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 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 B 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. The first provision applies 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 I 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 B violation and has a Criminal History Category of I. Therefore, the applicable range of imprisonment for this violation is four to ten 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 is only twenty-four years old and has already served a five-year sentence on a sex trafficking conviction. He was released and commenced a five-year term of supervised release on November 26, 2019. In December of 2020, his conditions were modified to impose a ninety-day period of GPS monitoring. The modification was in response to Defendant's appearance in a music video that included several firearms that reasonably appeared to be authentic. Although Defendant claimed they were "props," he never provided any substantiation of that claim to his Probation Officer.

The GPS bracelet revealed that Defendant was leading a transient lifestyle, residing in hotels and leaving the District without permission to attend late-night parties. He was the victim of gun violence in June 2020 and was present during the filming of a music video in October where a performer, his cousin, was shot and killed. His behavior and accountability on supervision has deteriorated, and it reasonably appears Defendant is associating with people connected to drugs and violence.

As a condition of release on this pending violation, Defendant has been placed on a curfew in addition to the GPS bracelet to try to bring some stability to his life. His attorney

indicated that Defendant has talent as a lyricist and wishes to continue to pursue a career in music but is also seeking out more traditional jobs at this point. The Government asked for a four-month prison sentence to give Defendant a wake-up call. Defendant's counsel asked for a four-month period of home detention as an alternative to incarceration. This is a close call, but I lean towards the defense recommendation at this point, given Defendant's age and the nature of the violations charged. While I recommend a non-incarcerative sanction at this point, Defendant has been given an opportunity to improve his behavior and accountability while he awaits final sentencing on this violation. If Defendant violates the curfew in the interim period and continues down the same path that led to this violation case, then the Court should strongly consider rejecting my recommendation and accepting the Government's four-month sentence request.

Conclusion

After considering the sentencing factors set forth in 18 U.S.C. § 3553(a), I recommend that Defendant's current conditions of supervised release be modified to impose a period of 120 days of home confinement with GPS electronic monitoring and that Defendant participate in a manualized behavioral program as directed by the Probation Officer. Such program may include group sessions led by a counselor or participation in a program administered by the Probation Officer.

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
February 22, 2021