

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA	:	
	:	
v.	:	CR No. 16-0090-WES
	:	
EDRED BUCHANAN	:	

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, Defendant appeared for a revocation hearing on April 28, 2022. At this hearing, Defendant, through counsel and personally, admitted that he was in violation of his supervised release conditions as to the charged violations, as amended. At this hearing, I ordered Defendant detained pending final sentencing before District Judge William E. Smith.

Background

On January 26, 2022, the Probation Office petitioned the Court for the issuance of a summons. On January 27, 2022, the District Court ordered the issuance of a summons. Defendant appeared before the Court for a revocation hearing on April 28, 2022. At the hearing, Defendant knowingly and voluntarily admitted to the following charges:

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

On December 28, 2021, the defendant committed the offense of Shoplifting as evidenced by an incident report provided by the Warwick Police Department.

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

On January 5, 2022, the defendant committed the offense of Larceny Over \$1200 as evidenced by a warrant report provided by the Seekonk Police Department.

As Defendant had 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 was previously imposed; therefore, the term cannot be extended.

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 or 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. If a term of imprisonment was imposed as a result of a previous supervised release revocation, that term of imprisonment must be subtracted from the above-stated maximums to arrive at the current remaining statutory maximum sentence. Defendant was on supervision for a Class C

felony. Therefore, he may not be required to serve more than two years' imprisonment upon revocation.

Sections 3583(h) and 7B1.3(g)(2) 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. The authorized statutory maximum term of supervised release is three years. The Court may impose the above-noted statutory maximum, minus the term of imprisonment that is to be imposed for this revocation.

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 has 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 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 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 outstanding restitution in the amount of \$2,536.00.

Section 7B1.4(a) provides that the Criminal History Category is the category applicable at the time Defendant originally was sentenced. 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. 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) 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 was convicted of two counts of bank robbery in 2017 and received a 48 month sentence. He has a history notable for mental health impairments and substance abuse. He started supervised release on September 1, 2020. He was living with his supportive wife and engaged in both mental health and substance abuse treatment. At some point in 2021, Defendant disengaged from treatment and relapsed.

During this time, Defendant cut off contact with Probation and committed the instant shoplifting/larceny offenses. In both cases, he stole laptop computers from Best Buy stores in Warwick and Seekonk. Although he reportedly made threatening comments to the store personnel while walking out with the computers, Defendant did not engage in any violence and he was apparently not in possession of any weapons at the time.

He has been held since his arrest on February 16, 2022. Defendant has admitted to Grade B violations and the guideline range is 12-18 months. The Government recognizes that Defendant's actions were committed during a period of relapse and discontinuance of his mental health treatment/medication. Thus, it argues for a below guideline sentence of 6 months. Defendant's attorney asks for a sentence of time served at the time of final sentencing.

On balance, I conclude that a 4 month sentence is warranted considering the seriousness of the offenses and the mitigating circumstances, and so recommend. I also recommend a further term of 24 months of supervised release with treatment conditions to assist Defendant in his transition.

Conclusion

After considering the various factors set forth in 18 U.S.C. § 3553(a), I recommend that Defendant be committed to the Bureau of Prisons for a term of four months followed by a twenty-four month term 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 Office.

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. LR Cr 57.2; Fed. R. Crim. P. 59. 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 28, 2022