

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

|                          |   |                   |
|--------------------------|---|-------------------|
| UNITED STATES OF AMERICA | : |                   |
|                          | : |                   |
| v.                       | : | CR No. 19-131-WES |
|                          | : |                   |
| DAVID POOLE              | : |                   |

**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 David Poole is in violation of the terms of 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 August 15 and 29, 2022, November 1, 2022, and January 6, 2023. At the August 29, 2022, hearing, Defendant waived a revocation hearing and admitted all violations. Based on Defendant's admissions and the following analysis, I recommend that the Court impose a sentence of time served, followed by a fifteen-month term of supervised release. While on supervised release, I recommend that Defendant be required to comply with the following conditions:

**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.**

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

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

**The defendant shall participate in a manualized behavioral program as directed and approved by the Probation Office. Such program may include**

**group sessions led by a counselor or participation in a program administered by the USPO.**

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

**The 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, to conduct a search of the defendant's residence, automobile, workplace, computer, and other electronic communication or data storage devices or media.**

## **I. BACKGROUND**

On June 23, 2022, 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 must live at a place approved by the probation officer. If the defendant plans to change where he lives or anything about his living arrangements (such as the people the defendant lives with), the defendant must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, the defendant must notify the probation officer within 72 hours of becoming aware of a change or expected change.**

David Poole left his residence on May 17, 2022, as evidenced by his father's report, and at the time of . . . writing [the petition] has not updated USPO of his whereabouts.

**Violation No. 2: The defendant must refrain from any unlawful use of a controlled substance. The defendant must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.**

David Poole used marijuana as evidenced by his positive drug screens on December 30, 2021, January 11, 2022, March 2, 2022, and April 28, 2022. David Poole used fentanyl as evidenced by his positive drug screen on December 30, 2021, and a treatment program report on May 5, 2022. David Poole used cocaine as evidenced by a treatment program report on May 5, 2022.

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

David Poole was discharged from his substance abuse treatment program on May 25, 2022, for lack of engagement, as evidenced by program clinician reports.

Defendant initially appeared on August 15, 2022,<sup>1</sup> when I ordered that he be detained at least until the hearing scheduled for August 29, 2022, with the possibility of release to an inpatient treatment program. At the August 29, 2022, hearing, Defendant waived a revocation hearing and admitted all violations; based on Defendant's admissions, I found Defendant guilty of violating the terms and conditions of his supervised release. Regarding detention, I ordered that Defendant should be released but not until he procured placement in a residential drug treatment program. On October 7, 2022, I issued an order releasing Defendant on October 11, 2022, for immediate entry into such a program. A status conference was held on November 1, 2022, without Defendant present, because he was in treatment. An additional status conference was scheduled for December 2, 2022, and rescheduled for January 6, 2023, as Defendant was doing well in treatment. Defendant appeared before the Court again on January 6, 2023, with confirmation of anticipated successful completion of residential treatment on January 9, 2023, with a discharge plan in place.

## **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

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<sup>1</sup> Defendant was arrested on August 3, 2022, but his initial appearance was delayed due to serious medical concerns related to addictive disease symptoms.

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. In this case, Defendant was on supervision for Class C felonies; therefore, he may not be required to serve more than two years 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 three years.

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 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 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, and 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 Grade C violations; therefore, the Court may revoke, extend or modify the conditions of 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. The first 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 remains an outstanding special assessment balance of \$200.00.

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 II 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 Grade C violations and has a Criminal History Category of II. Therefore, the applicable range of imprisonment for this violation is four to ten 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 June 25, 2020, Defendant resolved this case by pleading guilty to being a felon in possession of a firearm and possession of a machine gun. He was sentenced to three years of probation, projected to expire on June 24, 2023. On September 22, 2021 and again on April 2,

2022, Defendant's conditions were modified to address noncompliance. Less than a year after probation began, it was revoked based on Defendant's commission of the crime of driving under the influence of alcohol, as well as pervasive drug use; he was sentenced to five months of incarceration to be followed by a two-year term of supervised release. Supervised release recommenced on December 22, 2021, with an expiration date of December 21, 2023.

The current set of Violations all appear to be rooted in Defendant's addictive disease. Violation No. 1 is based on Defendant's being asked by his father to leave the residence because the father suspected Defendant had taken a bank check and a credit card that did not belong to him; Defendant failed to advise his supervising officer that he left the residence or of his whereabouts. Violation No. 2 is based on Defendant's five positive drug tests, which all showed the presence of either marijuana, fentanyl or cocaine. Violation No. 3 is based on Defendant's discharge from substance abuse treatment for failing to attend. However, this troubling pattern of noncompliance abruptly ended once the current petition was filed. Specifically, since his release to treatment on October 11, 2022, Defendant has engaged appropriately in residential treatment, which is now successfully completed, and is moving on to the next phase. As far as the Court is aware, there have been no issues with noncompliance.

Based on the admitted Violations, but mindful of Defendant's appropriate response to treatment, the parties concur that the Court should revoke supervision but leniently impose an incarcerative sentence limited to the time already served. I agree. Defendant's recovery should be allowed to proceed unimpeded by any further consequence that might adversely impact his ability to continue to engage with it.

The parties disagree regarding the length of the new term of supervision to follow and the conditions that should be imposed. The government asks the Court to impose a twenty-four-

month term of supervised release with curfew or home detention for an initial period, based on the need to continue monitoring Defendant to ensure he stays on track. In contrast, Defendant urged the Court to impose a twelve-month term of supervised release, which essentially would replicate the length of the term to be revoked, set to end on December 23, 2023, but for these Violations. Regarding conditions, Defendant argued (corroborated by his supervising probation officer) that neither a curfew nor home detention is necessary. The parties do not dispute the appropriateness of the imposition of the other conditions recommended below, including that Defendant would benefit from MRT and that the same reasonable suspicion search condition should remain in place. On allocution, Defendant apologized for his conduct and thanked the Court for giving him the opportunity to prove himself.

Upon consideration, I find that a term of supervision that is a few months longer than the to-be-revoked term (set to end on December 21, 2023) is appropriate in light of Defendant's ongoing engagement in treatment and need for the benefit of supervision as it progresses. Therefore, a term of fifteen months to run from the date on which sentence is imposed appears adequate but not excessive. Based on the supervising officer's perspective that neither a curfew nor home detention is necessary, I do not recommend that either be imposed.

Based on the foregoing, I recommend that the Court impose an incarcerative sentence of time served. I further recommend that the Court impose a fifteen-month term of supervised release with the conditions listed below.

#### **IV. CONCLUSION**

After considering the appropriate factors set forth in 18 U.S.C. § 3553(a) and for the reasons expressed above, I recommend that the Court impose a sentence of time served, followed

by a fifteen-month term of supervised release. While on supervised release, I recommend that Defendant be required to comply with the following conditions:

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.

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

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

The defendant shall participate in a manualized behavioral program as directed and approved by the Probation Office. Such program may include group sessions led by a counselor or participation in a program administered by the USPO.

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

The 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, to conduct a search of the defendant's residence, automobile, workplace, computer, and other electronic communication or data storage devices or media.

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  
January 10, 2023