

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Cause No. 1:15-cr-0152-SEB-TAB
)	
MARK NELSON,)	
)	- 07
Defendant.)	

REPORT AND RECOMMENDATION

On April 11, 2019, the Court held a hearing on the Petition for Warrant or Summons for Offender Under Supervision filed on February 22, 2019. Defendant Nelson appeared in person with his appointed counsel Dominic Martin. The government appeared by Michelle Brady, Assistant United States Attorney. U. S. Parole and Probation appeared by Officer Angela Smith.

The Court conducted the following procedures in accordance with Fed. R. Crim. P. 32.1(a)(1) and 18 U.S.C. § 3583:

1. The Court advised Defendant Nelson of his rights and provided him with a copy of the petition. Defendant Nelson orally waived his right to a preliminary hearing.
2. After being placed under oath, Defendant Nelson admitted violation numbers 1, 2, 3, and 4. [Docket No. 363.]
3. The allegations to which Defendant admitted, as fully set forth in the petition, are:

<u>Violation Number</u>	<u>Nature of Noncompliance</u>
1	<p>“You shall not use or possess any controlled substances prohibited by applicable state or federal law.”</p> <p>On February 19, 2019, the offender reported to the probation office and submitted a urine specimen which yielded positive for opiates. He admitted consuming Vicodin, which is not prescribed to him, on February 17, 2019.</p>
2	<p>“You shall submit to substance abuse testing. You shall not attempt to obstruct or tamper with the testing methods.”</p> <p>Mr. Nelson reported to the office following his violation court proceeding on February 14, 2019, to submit a urine specimen but could not provide a sample. He was directed to report by 4 pm on February 15, 2019, but failed to report or contact this officer with justification for missing his urine test. On February 19, 2019, he admitted he took an Uber to work but did not take the Uber downtown to provide his urine screen after work.</p>
3	<p>“You shall not use or possess alcohol.”</p> <p>Mr. Nelson reported for Moral Reconciliation Therapy (MRT) session at the probation office on February 19, 2019. The facilitator in charge of the program smelled alcohol on him and gave him a portable breath test. The test registered positive for alcohol. The MRT facilitator further advised he had smelled alcohol on the offender the week before but did not test him. Mr. Nelson admitted he has been consuming alcohol to deal with some relationship troubles.</p>
4	<p>“You shall participate in a cognitive behavioral program, such as Moral Reconciliation Therapy (MRT), at the direction of the probation officer and abide by the rules of the program.”</p> <p>Mr. Nelson reported for his second to last Moral Reconciliation Therapy (MRT) session at the probation office on February 19, 2019, and tested positive for alcohol. Due to his noncompliance, and his excessive history of non-compliance in this program. He was terminated from that program indefinitely.</p>

4. The parties stipulated that:
 - (a) The highest grade of violation is a Grade B violation.
 - (b) Defendant's criminal history category is I.
 - (c) The range of imprisonment applicable upon revocation of supervised release, therefore, is 4 to 10 months' imprisonment.

5. The government argued for a sentence of twelve months with no supervised release to follow. The defendant argued for no jail time and to remain on conditions of supervised release.

The Magistrate Judge, having considered the factors in 18 U.S.C. § 3553(a), and as more fully set forth on the record, finds that the Defendant violated the conditions in the petition, that his supervised release should be revoked, that he should be sentenced to the custody of the Attorney General or his designee for a period of seven months, that the seven-month sentence should be suspended as long as Defendant commits no further violations of release, and that Defendant should be released on his current conditions of supervised release. In addition to the mandatory conditions of supervision, the following conditions of supervised release will be imposed:

1. You shall report to the probation office in the judicial district to which you are released within 72 hours of release from the custody of the Bureau of Prisons.
2. You shall report to the probation officer in a manner and frequency directed by the court or probation officer.
3. You shall permit a probation officer to visit you at a reasonable time at home, or another place where the officer may legitimately enter by right or consent, and shall permit confiscation of any contraband observed in plain view of the probation officer.
4. You shall not knowingly leave the judicial district without the permission of the court or probation officer.
5. You shall answer truthfully the inquiries by the probation officer, subject to your 5th Amendment privilege.

6. You shall not meet, communicate, or otherwise interact with a person you know to be engaged, or planning to be engaged, in criminal activity. You shall report any contact with persons you know to be convicted felons to your probation officer within 72 hours of the contact.
7. You shall reside at a location approved by the probation officer and shall notify the probation officer at least 72 hours prior to any planned change in place or circumstances of residence or employment (including, but not limited to, changes in who lives there, job positions, job responsibilities). When prior notification is not possible, you shall notify the probation officer within 72 hours of the change.
8. You shall not own, possess, or have access to a firearm, ammunition, destructive device or dangerous weapon.
9. You shall notify the probation officer within 72 hours of being arrested, charged, or questioned by a law enforcement officer.
10. You shall maintain lawful full time employment, unless excused by the probation officer for schooling, vocational training, or other reasons that prevent lawful employment.
11. You shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
12. You shall make a good faith effort to follow instructions of the probation officer necessary to ensure compliance with the conditions of supervision.

Justification: These conditions are recommended to assist the probation officer in supervising the offender and facilitating re-entry into the community, as well as to promote respect for the law and reduce recidivism.

13. You shall participate in a substance abuse or alcohol treatment program approved by the probation officer and abide by the rules and regulations of that program. The probation officer shall supervise your participation in the program (provider, location, modality, duration, intensity, etc.). The court authorizes the release of the presentence report and available evaluations to the treatment provider, as approved by the probation officer.
14. You shall not use or possess any controlled substances prohibited by applicable state or federal law, unless authorized to do so by a valid prescription from a licensed medical practitioner. You shall follow the prescription instructions regarding frequency and dosage.
15. You shall submit to substance abuse testing to determine if you have used a prohibited substance or to determine compliance with substance abuse treatment.

Testing may include no more than 8 drug tests per month. You shall not attempt to obstruct or tamper with the testing methods.

Justification: These conditions will address the defendant's history of substance abuse and hold him accountable to maintaining a sober lifestyle.

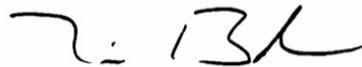
16. You shall submit to the search by the probation officer of your person, vehicle, office/business, residence, and property, including any computer systems and hardware or software systems, electronic devices, telephones, and Internet-enabled devices, including the data contained in any such items, whenever the probation officer has a reasonable suspicion that a violation of a condition of supervision or other unlawful conduct may have occurred or be underway involving you and that the area(s) to be searched may contain evidence of such violation or conduct. Other law enforcement may assist as necessary. You shall submit to the seizure of contraband found by the probation officer. You shall warn other occupants these locations may be subject to searches.

Justification: The offender has a history of drug use, drug distribution, and possessing a firearm. This condition will assist the probation officer in monitoring compliance and protection of the community.

Defendant reviewed the foregoing conditions and they were reviewed by defendant with his attorney. Defendant, on the record, waived reading of the above-noted conditions of supervised release.

The parties are hereby notified that the District Judge may reconsider any matter assigned to a Magistrate Judge. The parties have fourteen days after being served a copy of this Report and Recommendation to serve and file written objections with the District Judge.

Dated: 04/18/2019



Tim A. Baker
United States Magistrate Judge
Southern District of Indiana

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