

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) Cause No. 1:94-cr-007-SEB-TAB
)
 BEN WILLETT,)
)
 Defendant.)

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

This matter is before the Court pursuant to the September 27, 2013 Order entered by the Honorable Sarah Evans Barker designating the duty Magistrate Judge to conduct a hearing on the Petition for Summons or Warrant for Offender Under Supervision filed on September 25, 2013. Pursuant to that Order, the Court herein submits proposed Findings of Facts and Recommendations for disposition under Title 18 U.S.C. ' ' 3401(i) and 3583(e). Proceedings were held on December 11, 2013, in accordance with Rule 32.1 of the *Federal Rules of Criminal Procedure*.¹

On December 11, 2013, Ben Willett (AWillett@) appeared in person with appointed counsel, Joseph Cleary. The government appeared by Doris Pryor, Assistant United States Attorney. U.S. Parole and Probation appeared by Tim Hardy, U.S. Parole and Probation officer.

The Court conducted the following procedures in accordance with Fed. R. Crim. P. 32.1(b)(2) and Title 18 U.S.C. ' 3583:

¹ All proceedings were recorded by suitable sound recording equipment unless otherwise noted. See, Title 18 U.S.C. ' 3401(e).

1. Willett was advised of his rights and the nature of the violations alleged against him and acknowledged receipt of the notice of said allegations.
2. Willett stipulated that he committed Violations 1 through 4, as set forth in the Petition for Warrant or Summons for an Offender Under Supervision, filed with the Court on September 25, 2013 and December 5, 2013 as follows:

**Violation
Number**

Nature of Noncompliance

- | | |
|----------|---|
| 1 | <p>AThe defendant shall not commit another federal, state, or local crime.@</p> <p>On or about December 3, 2013, Willett was convicted of Invasion of Privacy, a Class A Misdemeanor, in Marion County, Indiana Superior Court.</p> |
| 2 | <p>AThe defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substance, except as prescribed by a physician.@</p> |
| 3 | <p>AThe defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.@</p> |
| 4 | <p>AThe defendant shall not unlawfully possess a controlled substance.@</p> <p>On November 15, 2013, Willett submitted a urine specimen which tested positive for marijuana.</p> |

3. The highest grade of Violation (Violation 1-4) is alleged as a Grade B violation, pursuant to U.S.S.G. ' 7B1.1(a)(2).
4. Willett's criminal history category is VI.
5. The term of imprisonment applicable upon revocation of Willett-s supervised release, therefore, is 21-27 months=imprisonment. *See*, U.S.S.G. ' 7B1.4(a).
6. The parties agreed that modification of the terms of defendant's supervised release is an appropriate disposition of the case.

The Court, having heard the admissions of the defendant, the stipulations of the parties, and the arguments and discussions on behalf of each party, **NOW FINDS** that the defendant, Ben Willett, violated the above-delineated conditions in the Petition.

Mr. Willett's supervised release is therefore **MODIFIED** and his conditions of release are modified as follows (1) Mr. Willett shall be monitored by Radio Frequency (RF) Monitoring for a period of ninety (90) days which shall commence at the direction of the probation officer; (2) Mr. Willett shall pay all or part of the costs of participation in the RF Monitoring program as directed by the Court or the probation officer; (3) Mr. Willett shall be restricted to his residence at all times, except for employment, education, religious services, medical treatment, substance abuse or mental health treatment, attorney visits, court-ordered obligations, or other activities as pre-approved by the probation officer.

The Magistrate Judge requests that Tim Hardy, U. S. Parole and Probation Officer, prepare for submission to the Honorable Sarah Evans Barker, District Judge, as soon as practicable, a supervised release modification judgment, in accordance with these findings of facts, conclusions of law and recommendation.

The parties are hereby notified that the District Judge may reconsider any matter assigned to a Magistrate Judge pursuant to Title 28, U.S.C. ' 636(b)(1) and Rule 59(b) of the *Federal Rules of Criminal Procedure*. Any party desiring said review shall have fourteen days after being served a copy of this Report and Recommendation to serve and file written objections to the proposed findings of facts and conclusions of law and recommendations of this Magistrate Judge. If written objections to the Magistrate Judge's proposed findings of fact and recommendations are made, the District Judge will make a *de novo* determination of those portions of the Report or specified proposed findings or recommendations to which an objection is made.

WHEREFORE, the U. S. Magistrate Judge **RECOMMENDS** the Court adopt the above report and recommendation modifying Mr. Willett's supervised release.

IT IS SO RECOMMENDED this 27th day of January, 2012.



Mark J. Dinsmore
United States Magistrate Judge
Southern District of Indiana

Distribution:

Doris Pryor
Assistant United States Attorney

Joe Cleary
Indiana Community Federal Defender

U. S. Parole and Probation

U. S. Marshal