

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. ) Cause No. 1:02-cr-0169-JMS-DKL-17  
 )  
 ROBERT J. GARZA, )  
 )  
 Defendant. )

**REPORT AND RECOMMENDATION**

On November 18, 2015 and March 28, 2016, the Court held hearings on the Petition for Warrant or Summons for Offender Under Supervision filed on November 2, 2015. Defendant Garza appeared in person with his appointed counsel, Gwendolyn Beitz. The government appeared by Brad Blackington, Assistant United States Attorney. U. S. Parole and Probation appeared by Officer Jay Hardy.

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 Garza of his rights and provided him with a copy of the petition. Defendant Garza waived his right to a preliminary hearing.
2. After being placed under oath, Defendant Garza admitted violations 1, 2, 3, 4, and 5. [Docket No. 103.]
3. The allegations to which Defendant admitted, as fully set forth in the petition, are:

**Violation  
Number**

**Nature of Noncompliance**

- 1           **“The defendant shall refrain from any unlawful use of a controlled substance.”**

On July 23, 2013, the offender submitted a urine sample which tested positive for cocaine. The offender was confronted about his illegal drug use and denied he used illegal drugs. On August 5, 2013, Alere Laboratories confirmed the sample was positive for cocaine. This was previously reported to the Court.

- 2           **“The defendant shall not commit another federal, state, or local crime.”**

On November 7, 2011, the offender was arrested in Morgan County, Indiana for Operating a Motor Vehicle as a Habitual Traffic Offender, Class D felony, under cause number 55C01-1111FD-1418. On September 19, 2012, the offender was sentenced to 1 year and 6 months of incarceration. This was previously reported to the Court.

- 3           **“The defendant shall not commit another federal, state, or local crime.”**

On March 15, 2012, the offender was arrested in Marion County, Indiana, for Operating a Motor Vehicle as a Habitual Traffic Offender, Class D felony under cause number 49F24-1203FD-17658. On November 27, 2012, the offender was sentenced to 365 days of incarceration, 4 days executed, 361 days suspended to probation. This was previously reported to the Court.

- 4           **“The defendant shall not commit another federal, state, or local crime.”**

On April 12, 2012, the offender received a traffic citation in Allegany County, Maryland, for Driving While Suspended. A warrant was later issued for Failure to Appear under cause number 1RD0BW. On August 25, 2015, the offender was sentenced to 24 hours probation and ordered to pay a \$157.50 fine. This was previously reported to the Court.

- 5           **“The defendant shall not commit another federal, state, or local crime.”**

On June 6, 2012, the offender was arrested in Morgan County, Indiana for Operating a Motor Vehicle While Intoxicated, Class A misdemeanor, under cause number 55D01-1201-CR-0800. On October 2, 2012, the offender was sentenced to 9 months of incarceration consecutive to cause numbers 55C01-1111FD-1418 and 49F24-1203-FD-17658. This was previously reported to the Court.

4. The Government orally moved to dismiss violation 6 and the Court granted the same.

5. The parties stipulated that:

- (a) The highest grade of violation is a Grade B violation.
- (b) Defendant's criminal history category is IV.
- (c) The range of imprisonment applicable upon revocation of supervised release, therefore, is 12 to 18 months' imprisonment.

6. The parties jointly recommended a sentence of 1 day incarceration with no supervised release to follow.

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, and recommends that Defendant's supervised release should be **REVOKED**, and that he should be sentenced to the custody of the Attorney General or his designee for a period of 1 day with no supervised release to follow. The Defendant is to be taken into custody immediately pending the District Judge's action on this Report and Recommendation.

The parties are hereby notified that the District Judge may reconsider any matter assigned to a Magistrate Judge. The parties waived the fourteen-day period to object to the Report and Recommendation.

Dated: 31 MAR 2016

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

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