

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA, )  
)  
Plaintiff, )  
)  
v. ) Cause No. 1:13-cr-0091-WTL-MJD-1  
)  
MARK SHANE GRIFFIS, )  
)  
Defendant. )

Magistrate Judge’s Report and Recommendation

This matter is before the undersigned according to the Order entered by the Honorable William T. Lawrence, directing the duty magistrate judge to conduct a hearing on the Petition for Warrant or Summons for Offender Under Supervision (“Petition”) filed on July 3, 2013, and to submit proposed Findings of Facts and Recommendations for disposition under 18 U.S.C. §§ 3401(i) and 3583(e). Proceedings were held on July 18, 2014, and July 21, 2014, in accordance with Rule 32.1 of the *Federal Rules of Criminal Procedure*.<sup>1</sup>

On July 18, 2014, defendant Mark Shane Griffis appeared in person with his appointed counsel, Mike Donahoe. The government appeared by MaryAnn Mindrum, Assistant United States Attorney. The United States Probation Office (“USPO”) appeared by Officer Diane Asher, who participated in the proceedings.

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<sup>1</sup> All proceedings were recorded by suitable sound recording equipment unless otherwise noted. *See* 18 U.S.C. § 3401(e).

The court conducted the following procedures in accordance with *Federal Rule of Criminal Procedure* 32.1(a)(1) and 18 U.S.C. § 3583:

1. The court advised Mr. Griffis of his right to remain silent, his right to counsel, and his right to be advised of the charges against him. The court asked Mr. Griffis questions to ensure that he had the ability to understand the proceedings and his rights.

2. A copy of the Petition was provided to Mr. Griffis and his counsel, who informed the court they had reviewed the Petition and that Mr. Griffis understood the violations alleged. Mr. Griffis waived further reading of the Petition.

3. The Court advised Mr. Griffis of his right to a preliminary hearing and its purpose in regard to the alleged violations of his supervised release specified in the Petition. Mr. Griffis was advised of the rights he would have at a preliminary hearing. Mr. Griffis stated that he wished to waive his right to a preliminary hearing.

4. Mr. Griffis stipulated that there is a basis in fact to hold him on the specifications of violations of supervised release as set forth in the Petition. Mr. Griffis executed a written waiver of the preliminary hearing, which the court accepted.

5. The court advised Mr. Griffis of his right to a hearing on the Petition and of his rights in connection with a hearing. The court specifically advised him that at a hearing, he would have the right to present evidence, to cross-examine any witnesses presented by the United States, and to question witnesses against him unless the court determined that the interests of justice did not require a witness to appear.

Parties orally moved to continue the revocation hearing and the same was granted and continued until July 25, 2014.

On July 25, 2014, defendant Mark Shane Griffis appeared in person with his appointed counsel, Mike Donahoe. The government appeared by MaryAnn Mindrum, Assistant United States Attorney. The United States Probation Office (“USPO”) appeared by Officer Troy Adamson, who participated in the proceedings.

The court conducted the following procedures in accordance with *Federal Rule of Criminal Procedure* 32.1(a)(1) and 18 U.S.C. § 3583:

1. Mr. Griffis, by counsel, stipulated that he committed Violation Number 1 set forth in the Petition as follows:

<b><u>Violation Number</u></b>	<b><u>Nature of Noncompliance</u></b>
1	<p><b>“The defendant shall not commit another federal, state, or local crime.”</b></p> <p>On June 27, 2013, the offender allegedly broke into a home in Lynn, Indiana. He was discovered in the home by its residents, at which time the offender pointed a loaded .38 caliber revolver at them and told them to leave. The offender then fled into a nearby wooded area and was apprehended six hours later after an extensive search by eight law enforcement agencies. The offender is being held at the Randolph County, Indiana, Jail, with preliminary felony charges of burglary, robbery, theft, burglary of a non-residence, and criminal recklessness. Formal charges in Randolph County are pending.</p>

2. The Court placed Mr. Griffis under oath and directly inquired of Mr. Griffis whether he admitted violation 1 of his supervised release set forth above. Mr. Griffis admitted violation 1 as set forth above.

3. The parties and the USPO further stipulated that:
  - (a) The highest grade of Violation (Violation 1) is a Grade A violation (U.S.S.G. § 7B1.1(a)(2)).
  - (b) Mr. Griffis' criminal history category is VI.
  - (c) The range of imprisonment applicable upon revocation of Mr. Griffis' supervised release, therefore, is 33-41 months' imprisonment. (*See* U.S.S.G. § 7B1.4(a).)

4. The parties agreed on the appropriate disposition of the Petition to recommend to the court as follows: (a) the defendant's supervised release is to be revoked; and (b) the defendant is sentenced to the custody of the Attorney General or his designee for a period of thirty-three (33) months with no supervised release to follow. The defendant is remanded to the custody of the United States Marshal pending the district court's action on this Report and Recommendation.

The court, having heard the admissions of the defendant, the stipulations of the parties, and the arguments and position of each party and the USPO, **NOW FINDS** that the defendant, MARK SHANE GRIFFIS, violated the above-specified conditions in the Petition and that his supervised release should be and therefore is **REVOKED**, and he is sentenced to the custody of the Attorney General or his designee for a period of thirty-three (33) months with no supervised release to follow. The defendant is remanded to the custody of the United States Marshal pending the district court's action on this Report and Recommendation.

\*\*\*Counsel for the parties and Mr. Griffis stipulated in open court waiver of the following:

1. Notice of the filing of the Magistrate Judge's Report and Recommendation;

2. Objection to the Report and Recommendation of the undersigned Magistrate Judge pursuant to Title 28 U.S.C. ' 636(b)(1)(B) and (C); and, Federal Rules of Criminal Procedure 59(b)(2).

\*\*\*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)(B) and (C) and Rule 72(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.

Counsel for the parties and Mr. Griffis entered the above stipulations and waivers after being notified by the undersigned Magistrate Judge that the District Court may refuse to accept the stipulations and waivers and conduct a revocation hearing pursuant to Title 18 U.S.C. ' 3561 *et seq.* and Rule 32.1 of the Federal Rules of Criminal Procedure and may reconsider the Magistrate Judge's Report and Recommendation, including making a *de novo* determination of any portion of the Report or specified proposed findings or recommendation upon which he may reconsider.

WHEREFORE, the magistrate judge **RECOMMENDS** the court adopt the above recommendation revoking Mr. Griffis' supervised release, imposing a sentence of imprisonment of thirty-three (33) months, with no supervised release to follow. The defendant is remanded to

the custody of the United States Marshal pending the district court's action on this Report and Recommendation.

IT IS SO RECOMMENDED.

Date: 08/08/2014



Denise K. LaRue  
United States Magistrate Judge  
Southern District of Indiana

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