

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Cause No. 1:17-cr-0244-JPH-MJD
)	
CHARLES BRANT EVANS,)	
)	
Defendant.)	

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REPORT AND RECOMMENDATION

On July 10, 2019, the Court held a hearing on the Petition for Warrant or Summons for Offender Under Supervision filed on June 26, 2019. Defendant Evans appeared in person with his appointed counsel Joseph Cleary. The government appeared by Lawrence Hilton, Assistant United States Attorney. U. S. Parole and Probation appeared by Officer Brent Witter.

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 Evans of his rights and ensured he had a copy of the Petition. Defendant Evans orally waived his right to a preliminary hearing and reading of the Petition.
2. After being placed under oath, Defendant Evans admitted violation number 1 as set forth in the Petition. [Docket No. 15.] The Government moved to dismiss violation numbers 2 and 3 and the same was granted.
3. The allegations to which Defendant admitted, as fully set forth in the petition, are:

**Violation
Number**

Nature of Noncompliance

- 1 **“The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance.”**

On May 23, 2019, Mr. Evans submitted a urine sample which was confirmed positive by Alere Laboratory for marijuana. He denies use.

Previously, the Court was advised Mr. Evans tested positive for marijuana and admitted use on December 19, 2018, and April 11, 2019. Additionally, Mr. Evans tested positive for marijuana on April 25, 2019; however, that was viewed as residual use as it was within the 30 day detection window. As a result of the positive drug tests, the Court concurred with the probation officer's recommendation to modify Mr. Evans' conditions to include substance use disorder treatment. To date, Mr. Evans is actively participating in outpatient treatment.

4. The Court finds that that:
- (a) The highest grade of violation is a Grade C violation.
 - (b) Defendant’s criminal history category is II.
 - (c) The range of imprisonment applicable upon revocation of supervised release, therefore, is 4 to 10 months’ imprisonment.
5. The parties jointly recommended modification to include the following terms:

You shall submit to stand-alone GPS monitoring for a period of 90-days, to commence as soon as practical, and shall abide by the rules and regulations of the technology requirements.

You shall pay the costs associated with the following imposed conditions of supervised release, to the extent you are financially able to pay:
Location monitoring.

During the period in which the GPS monitoring condition is imposed, Defendant is authorized to travel outside the District and the State of Indiana at the discretion of the supervising officer.

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 set forth in violation no. 1 of the Petition, and recommends that Defendant's supervised release be modified as follows:

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. Justification: This condition is an administrative requirement of supervision.
2. You shall report to the probation officer in a manner and frequency directed by the court or probation officer. Justification: This condition is an administrative requirement of supervision.
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. Justification: This condition will assist the probation officer in monitoring the offender for protection of the community.
4. You shall not knowingly leave the judicial district without the permission of the court or probation officer. Justification: This condition is an administrative requirement of supervision.
5. You shall answer truthfully the inquiries by the probation officer, subject to your 5th Amendment privilege. Justification: This condition is an administrative requirement of supervision.
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. Justification: This condition is aimed at reducing the risk of recidivism and for protection of the community.
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. Justification: This condition will assist the probation officer in monitoring the offender for protection of the community.
8. You shall not own, possess, or have access to a firearm, ammunition, destructive device or dangerous weapon. Justification: This condition will assist the probation in

monitoring the offender for protection of the community and is a requirement pursuant to federal law.

9. You shall notify the probation officer within 72 hours of being arrested, charged, or questioned by a law enforcement officer. Justification: This condition is an administrative requirement of supervision.
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. Justification: This condition will ensure the offender maintains gainful employment and aid in reducing recidivism.
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. Justification: This condition is aimed at reducing recidivism and to monitor the offender for protection of the community.
12. As directed by the probation officer, you shall notify third parties who may be impacted by the nature of the conduct underlying your current or prior offense(s) of conviction and/or shall permit the probation officer to make such notifications and/or confirm your compliance with this requirement. Justification: This condition is aimed at reducing recidivism and for protection of the community.
13. You shall make a good faith effort to follow instructions of the probation officer necessary to ensure compliance with the conditions of supervision. Justification: This condition is aimed at reducing the risk of recidivism and for protection of the community.
14. You shall pay the costs associated with the following imposed conditions of supervised release, to the extent you are financially able to pay for substance abuse treatment and substance abuse testing. The probation officer shall determine your ability to pay and any schedule of payment. Justification: This condition will make the offender invest in their sobriety and rehabilitation.
15. 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. Justification: This condition will aid in addressing the offenders history of substance abuse.
16. 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. Justification: This condition will aid in addressing the offender's history of substance abuse.

17. 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: This condition will assist in ensuring the offender is compliant with a drug-free lifestyle.
18. You shall not knowingly purchase, possess, distribute, administer, or otherwise use any psychoactive substances (e.g., synthetic marijuana, bath salts, Spice, glue, etc.) that impair a person's physical or mental functioning, whether or not intended for human consumption. Justification: This condition will aid in ensuring compliance with a drug-free lifestyle and the offenders rehabilitation.
19. 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: This condition will assist the probation officer in monitoring the offender for protection of the community.
20. You shall not have unsupervised meetings, activities, or visits, or intentional communications with any minor unless they have been disclosed to the probation officer and approved by the court. You shall not have supervised meetings, activities, visits, or intentional communications with any minor unless they have been approved by the probation officer. Before you may request approval for such meetings, activities, visits, or intentional communications (unsupervised or supervised), you must notify the person(s) having custody of any such minor(s) about the conviction in this case and the fact that you are under supervision. Justification: This condition will assist the probation officer in monitoring the offender for protection of the community.
21. You shall not participate in unsupervised meetings, intentional communications, activities, or visits with persons you know to be a registered sex offender or to have been convicted of a felony sex offense involving an adult or minor, including any child pornography offense, except as disclosed to the probation officer and approved by the court. This condition is not intended to prevent you from participating in treatment programs or religious services with felons in such programs/services so long as the activity has been disclosed as described above. Justification: This condition will assist the probation officer in monitoring the offender for protection of the community.

22. You shall not enter or remain at a place for the primary purpose of observing or contacting children under the age of 18. Justification: This condition will assist the probation officer in monitoring the offender for protection of the community.
23. You shall not possess any child pornography or visual depictions of child erotica or nude minors. Any such material found in your possession shall be considered contraband and will be confiscated by the probation officer. Justification: This condition is to assist the probation officer in monitoring the offender and protecting the community. The offender is a convicted sexual offender.
24. You shall participate in a program of treatment for sexual disorders, including periodic polygraph examinations, as directed by the probation officer. The treatment provider should determine the type and timing of such polygraph examinations. The court authorizes the release of the presentence report and available psychological evaluations to the treatment provider, as approved by the probation officer. Justification: This condition will aid in addressing the offenders history of sexual addiction and sexual attraction to minors. It will also hold the offender accountable while being supervised in the community.
25. You shall consent, at the direction of the probation officer, to having installed on your computer(s), telephone(s), electronic devices, and any hardware or software, systems to monitor your use of these items. Monitoring will occur on a random and/or regular basis. You will warn other occupants or users of the existence of the monitoring hardware or software. To promote the effectiveness of this monitoring, you shall disclose in advance all cellular phones, electronic devices, computers, and any hardware or software to the probation officer and may not access or use any undisclosed equipment. Justification: This condition will assist the probation officer in monitoring the offender for protection of the community.


In addition to the above conditions listed in the Revocation Parameters Worksheet [Dkt. 15-3], the Defendant agreed to the following conditions.

26. You shall submit to stand-alone GPS monitoring for a period of 90-days, to commence as soon as practical, and shall abide by the rules and regulations of the technology requirements.
27. You shall pay the costs associated with the following imposed conditions of supervised release, to the extent you are financially able to pay: Location monitoring.
28. During the period in which the GPS monitoring condition is imposed, Defendant is authorized to travel outside the District and the State of Indiana at the discretion of the supervising officer.

Defendant reviewed the foregoing conditions and they were reviewed by defendant with his attorney. Defendant, on the record, waived reading conditions 1 through 25 of the above-noted conditions of supervised release. Conditions 26 through 28 were read into the record.

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: 15 JUL 2019



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

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