UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

UNITED STATES OF AMERICA,

Plaintiff

vs. Case No. 2:07-cr-00001-LJM-CMM

DAVID JASON ZIEMENDORF,

Defendant

REPORT TO DISTRICT JUDGE—
PROPOSED FINDINGS OF FACT AND
CONCLUSION OF LAW

A hearing was convened in this matter on October 7, 2014, on a Petition for Warrant or Summons for Offender Under Supervision filed September 23, 2014 [Doc. 2]. A warrant was issued and the Court set this matter for an initial appearance. This matter was referred to the Magistrate Judge for hearing pursuant to 18 U.S.C. 3401(i) in an Entry and Order issued by The Hon. Larry J. McKinney, Senior U. S. District Judge, on October 3, 2014 [Doc. 5]. The defendant waived his right to preliminary hearing in writing. [Doc. 11] The October 7 hearing constituted a hearing on the defendant's alleged violations of the terms and conditions of his sentence while on supervised release.

The Government appeared by Todd Shellenbarger, Assistant United States Attorney; the defendant, David Jason Ziemendorf, appeared in person (in custody) and by counsel, Joe Cleary.

The Government and defense counsel advised the Court that the parties had reached an agreement on admission of certain violations and a proposed disposition. The Court advised the

defendant of his constitutional rights and the burden of proof with respect to the alleged violations. The defendant answered preliminary questions to ascertain his ability to understand the proceedings. The defendant was provided a copy of the Petition and waived his right to a preliminary hearing.

The parties then proposed a resolution of the matter by which the Defendant admitted violations 1 through 4, inclusive, set forth in the Petition and a proposed modification in the terms and conditions of release. Specifically, the parties stipulated that the Defendant should serve four months in the custody of the Bureau of Prisons followed by two years of supervised release under the same terms and conditions previously imposed. Violation 5 will be deemed dismissed upon the District Judge's acceptance of the recommendation in this report.

The Court finds that the defendant, after being placed under oath, made a knowing, intelligent and voluntary admission of violations 1 through 4, inclusive, outlined in the Petition with the advice of counsel.

The undersigned recommends to the Court adoption of the following Findings of Fact and Conclusions of Law:

Findings of Fact

1. The defendant, David Jason Ziemendorft, was sentenced on October 5, 2007, in the U. S. District Court for the Southern District of Indiana on a charge of Possession with Intent to Distribute in Excess of 50 Grams of Methamphetamine (Actual). The original sentence included 70 months confinement and three years of supervised release. Supervised release commenced on November 26, 2011.

2. While on supervised release, the defendant violated the terms of supervised release as follows:

a. Failed to work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reason (specifically, he failed to report his unemployed status for all of 2014);

b. Failed to refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any controlled substance or any paraphernalia related to controlled substances, except as prescribed by a physician;

c. Frequented places where controlled substances are illegally sold, used, distributed, or administered (defendant failed a drug screen on August 28, 2014 and tested positive for methamphetamine);

d. Associated with persons engaged in criminal activity or persons convicted of a felony without consent of probation officer (current girl friend and mother of his child born March 29, 2011, is a convicted felon).

3. The defendant was under supervision of the U.S. Probation Office in the Southern District of Indiana on September 23, 2014, the date on which the Petition was filed.

4. The defendant admitted these allegations in open court, under oath, and after the advice of counsel.

5. Ziemendorf's actions violated the terms of supervised release from the original sentence.

Conclusions of Law

1. The Court finds by a preponderance of the evidence that the defendant violated the terms of supervised release on and after his release from the Bureau of Prisons and while under supervision of the U. S. Probation Office.

2. The violations noted in the Findings of Fact under 2 (a) through (d) constitute either Grade B or Grade C violations under §7B1.1(b), *United States Sentencing Guidelines* (Chapter 7, Violations of Probation and Supervised Release).

3. The defendant’s criminal history under §7B1.4(a) is Category I.

4. The sentencing options for this defendant include a range of imprisonment of at least four months but not more than 10 months based upon these findings and conclusions. *See*, §7B1.4(a).

5. Based upon these findings and conclusions, the Magistrate Judge recommends that the defendant be sentenced to a term of four months in the custody of the U.S. Bureau of Prisons. The Magistrate Judge further recommends that supervised release be extended for a period of two years after the defendant's release. This recommendation is consistent with the agreement of the Government and the defendant—an agreement the Magistrate Judge recommends be accepted and incorporated in the disposition of this matter.

6. In reaching these conclusions, the Court has considered the factors set forth in 18 U.S.C. 3553(a)(1) [nature and circumstances of the offense and the history and characteristics of the defendant, here, the multiple violations of the terms of supervised release], (a)(2)(B) [affording adequate deterrence to criminal conduct, here, consideration of the defendant's multiple violations and disregard of reasonable rules of supervised release], (a)(2)(c) [to protect the public from further crimes of the defendant], (a)(2)(D) [not applicable], (a)(4), (a)(5) [not applicable here], (a)(6) [the need to avoid unwarranted sentence disparities among defendants with similar records], and (a)(7) [not applicable here].

Recommendation

The undersigned recommends to the Court adoption of these Findings of Fact and Conclusions of Law and the revocation of the defendant's supervised release and the imposition of term of incarceration of four months followed by supervised release for a period of two years.

The defendant is ORDERED detained pending the District Court's consideration of this recommendation.

Dated: 10 October 2014

CRAIG M. MCKEE, Magistrate Judge
United States District Court
Southern District of Indiana

Distribution to:
Bradley Blackington, U.S. Attorney's Office
Joe Cleary
Ryan Sharp, U.S. Probation Office
Greg Snyder, U. S. Marshal's Office