

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Case No. 2:14-cr-00015-LJM-CMM

CRUZ PEREZ,

Defendant.

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

A hearing was convened in this matter on June 2, 2015, on a Petition for Warrant or Summons for Offender Under Supervision filed May 19, 2015 [Doc. 6]. 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, U. S. District Judge, on May 27, 2015 [Doc. 9]. The June 2 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 James M. Warden, Assistant United States Attorney; the defendant, Cruz Perez, appeared in person (in custody) and by counsel, Michael Donahoe.

The Government and defense counsel advised the Court that the parties had reached an agreement on admission of violation and a proposed disposition. The Court advised the defendant of his constitutional rights and the burden of proof with respect to the alleged

violation. 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 the violations 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 one month in the custody of the Bureau of Prisons and any further supervised release contemplated in the defendant's original sentence should be voided.

The Court finds that the defendant made a knowing, intelligent and voluntary admission of the violation outlined in the Petition with the advice of counsel. The Government and the defendant stipulated to the revision of terms and conditions of release as described above.

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

Findings of Fact

1. The defendant, Cruz Perez, was sentenced on June 18, 2008, in the U. S. District Court for the Western District of Texas on Transportation of Illegal Aliens for Financial Gain. The original sentence included eight months confinement and three years of supervised release. On June 13, 2013, supervision was revoked and defendant was sentenced to 12 months imprisonment (time served) and 24 months of supervised release. He has been transferred from Texas to the Northern District of Illinois and, lately, to the Southern District of Indiana for supervision. The current term of supervision will expire on June 18, 2015. [See Doc. 6].

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

- a. Committed another federal, state or local crime.

In this regard, Perez admitted that on May 11, 2015, he was arrested by City of Terre Haute Police officers as part of a domestic disturbance and charged with battery against a public safety official, intimidation, resisting law enforcement, and disorderly conduct. Those allegations were charged in Vigo Superior Court and adjudicated with an extended term of probation.

3. The defendant was under supervision of the U.S. Probation Office in the Southern District of Indiana on May 19, 2013, the date on which the Petition was filed.

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

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

6. Perez acknowledged that he had violated the terms of his supervised release.

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) is Grade A violation 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. Based upon these conclusions, the sentencing options for this defendant include a range of imprisonment of 12 to 18 months based upon these findings and conclusions. *See*, §7B1.3(c)(2).

5. Based upon these findings and conclusions, the Magistrate Judge concurs with the stipulation of the parties as to the disposition of this matter. The Magistrate Judge further recommends that supervised release be voided from the defendant's original sentence and that the defendant be sentence to one month incarceration. 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. The Magistrate Judge further takes note that the defendant will be under probation supervision in Vigo County, Indiana after the expiration of supervised release on his federal sentence.

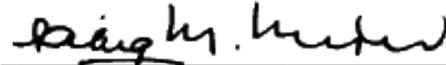
6. In reaching these conclusions, the Court has considered the factors set forth in 18 U.S.C. 3553(a)(1) [nature and circumstances of the offense and the history and characteristics of the defendant], (a)(2)(B) [affording adequate deterrence to criminal conduct], (a)(2)(c) [not applicable], (a)(2)(D) [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 one month. Supervised release following incarceration is not recommended.

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

Dated: June 2, 2015



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

Distribution to:

James M. Warden, U.S. Attorney's Office
Michael Donahoe
Jennifer Considine, U.S. Probation Office
Greg Snyder, U. S. Marshal's Office