

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) Cause No. 3:11-cr-0040-RLY-WGH-3
)
TODD BURKHARDT,)
)
 Defendant.)

REPORT AND RECOMMENDATION

On April 5, 2016, the Court held a hearing on the Petition for Warrant or Summons for Offender Under Supervision filed on March 30, 2016. Defendant Burkhardt appeared in person with his appointed counsel Mike Donahoe. The government appeared by Matt Rinka, Assistant United States Attorney. U. S. Parole and Probation appeared by Officer Angie Smith.

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 Burkhardt of his rights and provided him with a copy of the petition. Defendant Burkhardt waived his right to a preliminary hearing.
2. After being placed under oath, Defendant Burkhardt admitted violation 1, and 2. [Docket No. 104.]
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.”**

On March 25, 2016, the defendant admitted to the probation officer that while under the location monitoring program and at the library completing job applications, he met an ex-girlfriend and obtained morphine pills from her. He did not have a valid prescription for these pills.

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

On February 18, 2016, the defendant submitted a urine specimen that yielded positive for opiates (morphine) and suboxone. On March 8, 2016, he submitted a urine specimen that returned positive for suboxone; and on March 25, 2016, a specimen yielded positive for opiates. On that same date, he admitted consuming morphine pills three days prior to the collection of the sample. Negative urine screens were submitted on March 5, and March 23, 2016.

4. The government orally moved to dismiss violation 3 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 VI.

(c) The range of imprisonment applicable upon revocation of supervised release, therefore, is 21 to 24 months’ imprisonment.

5. The parties jointly recommended a sentence of 18 months in the Federal Bureau of Prisons with supervised release to follow. Defendant asked for placement near Talladega, Alabama.

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, that his 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 eighteen (18) months, followed by two (2) years of supervised release. In addition to the mandatory conditions of supervision, the Court imposed 13 administrative conditions to be provided by USPO on Judgement and Commitment Order. Each condition imposed was read and explained to the defendant. The Court recommends placement at a facility close to Talladega, Alabama. 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: 04/08/2016



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

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