

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Cause No. 3:14-cr-3-RLY-CMM-4
)	
D'MARIEA FOX,)	
)	
Defendant.)	

REPORT AND RECOMMENDATION

On March 2, 2021, the Court held a hearing on the Petition for Warrant or Summons for Offender Under Supervision filed on February 23, 2021 (Docket No. 432). Defendant D'Mariea Fox appeared via video conference from the White County Jail. His appointed counsel Barry Blackard also appeared via video conference. The government appeared by Lauren Wheatley, Assistant United States Attorney, via video conference. U. S. Probation appeared by Officer Katrina Sanders, via video conference. At each of the hearings in the matter, the defendant consented on the record to the proceedings being held via video conference.

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 Mr. Fox of his rights and provided him with a copy of the petition.
2. Mr. Fox waived his right to a preliminary hearing.
3. The Final Revocation Hearing was set for March 5, 2021 at 2:00 PM (Eastern) via video conference.

4. On March 5, 2021, the parties again appeared via video conference. At that time, the Defendant requested a continuance of the Final Revocation Hearing which was granted without objection. Final Revocation Hearing was reset for March 9, 2021 at 3:00 PM (Eastern) via video conference.
5. On March 9, 2021 the parties again appeared via video conference. The parties then advised that defendant was willing to admit to the violations, but no agreement has been reached as to the appropriate disposition.
6. After being placed under oath, Mr. Fox admitted Violations 1 and 2 (Docket No. 432).
7. The allegations to which Defendant admitted, as fully set forth in the petition, are:

**Violation
Number**

Nature of Noncompliance

- | | |
|----------|---|
| 1 | "The defendant shall not commit another federal, state or local crime."

On February 22, 2021, the offender was arrested and charged in Vanderburgh County, Indiana, Superior Court Case No. 82D05-2102-CM-959. |
| 2 | "The defendant shall refrain from excessive use of alcohol and shall not purchase, possess use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician."

On February 22, 2021, the offender was arrested and charged in Vanderburgh County, Indiana, Superior Court Case No. 82D05-2102-CM-959. According to the probable cause affidavit, the controlled substance tested positive for cocaine. |

8. The Court finds 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 27 months' imprisonment.

9. The Government presented the testimony of Vanderburgh County Sheriff's Deputy Skye Terhune and U.S. Probation Officer Katrina Sanders.

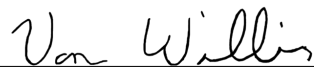
10. The government argued for revocation of the defendant's supervised release and requested a sentence of 24 months imprisonment with no term of supervised release to follow.

11. The defendant argued for modification of the conditions of defendant's supervised release, rather than a term of imprisonment.

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 21 months with no term of supervised release to follow.

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: 3/11/2021



VAN WILLIS
United States Magistrate Judge
Southern District of Indiana

Distribution:

All ECF-registered counsel of record via email generated by the court's ECF system

United States Probation
United States Marshal