

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) Cause No. 4:13-cr-25-SEB-VTW
)
 NICHOLAS J. PARSCH,)
)
 Defendant.)

REPORT AND RECOMMENDATION

On October 3, 2016, the Court held a hearing on the Petition for Summons for Offender Under Supervision filed on September 7, 2016 (Docket No. 86). Defendant Nicholas J. Parsch appeared in person with his appointed counsel Jennifer Culotta. The government appeared by Todd Shellenbarger, Assistant United States Attorney. U. S. Probation appeared by Officer Ross Carothers.

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 Mr. Parsch of his rights and provided him with a copy of the petition. Defendant submitted a financial affidavit which was approved by the Court. Jennifer Culotta appointed to represent Mr. Parsch in this matter.
2. Defendant waived his right to a preliminary hearing, and executed a written waiver of the same.
3. The parties advised the Court they had reached an agreement to resolve the allegations in the Petition.
4. After being placed under oath, Mr. Parsch admitted Violation Nos. 1-7, (Docket No. 86.)

5. The allegations to which Defendant admitted, as fully set forth in the petition, are:

**Violation
Number**

Nature of Noncompliance

1 "The defendant shall refrain from any unlawful use of a controlled substance."

The offender submitted a urine sample on July 18, 2016, which tested positive for marijuana. On August 1, 2016, the offender admitted using marijuana prior to his last drug test. His drug treatment counselor was notified.

As previously reported to the Court, the offender submitted a urine sample on June 15, 2016, which tested positive for marijuana. While he denied illicit drug use at the time of collection, he called the probation officer later the same day to apologize for being untruthful and admitted using marijuana the preceding two weeks.

2 "The defendant shall not possess any pornography, erotica or nude images. Any such material found in the defendant's possession shall be considered contraband and may be confiscated by the probation officer."

On July 26, 2016, the offender submitted to a polygraph and admitted he had watched x-rated movies more than 10 times, which he purchased at an adult bookstore in Bloomington, IN.

3 "The defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer."

The offender failed to submit monthly written reports, as directed, for the months of June, July, and August, 2016.

4 "The defendant shall notify the probation officer within 72 hours of being arrested or questioned by a law enforcement officer."

According to court records, the offender had contact with police on or about April 15, 2016, in Johnson County, Indiana, and was cited for a cracked front windshield. He had contact with police on or about July 12, 2016, in Monroe County, Indiana, and was cited for speeding. He also had contact with police on or about August 1, 2016, in Monroe County when he was cited for improperly passing and speeding. The offender failed to notify the probation officer within 72 hours of each incident as directed.

- 5 "The defendant shall participate in a program of treatment for sexual disorders, including periodic polygraph examinations, as directed by the probation officer."**

On July 26, 2016, the offender submitted to a polygraph and admitted to viewing pornography, using illegal drugs, consuming alcohol, and accessing the Internet without permission. These are prohibited activities while in the sex offender treatment program.

- 6 "The defendant shall not commit another federal, state or local crime."**

As previously reported to the Court, on March 3, 2016, the offender was charged with Failure to Register as a Sex or Violent Offender in Lawrence County, Indiana (47D01-1603-F6-000243). According to the Affidavit for Probable Cause, police determined on February 20, 2016, the offender failed to register a 1997 Jeep, which he purchased on February 3, 2016, within 72 hours. The offender was arrested on March 9, 2016, and bonded out the following day. The matter is pending.

- 7 "The defendant shall not commit another federal, state or local crime."**

On March 7, 2016, the probation officer observed a facebook page under the name of Nick Parsch. On March 10, 2016, the offender admitted having a facebook page. He was instructed to have it removed, and he complied. Having a facebook page and failing to report it under his sex offender registration is a violation of Indiana State Law (I.C. 11-8-8-8).

6. The parties stipulated that:

- (a) The highest grade of violation is a Grade B violation.
- (b) Defendant's criminal history category is I.
- (c) The range of imprisonment applicable upon revocation of supervised release, therefore, is 4 to 10 months' imprisonment.

7. The parties jointly recommended Mr. Parsch be sentenced to serve 5 months at a residential reentry facility. Thereafter, defendant shall be returned to supervised release, under the terms and conditions outlined in the R&R until September 18, 2019.

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 MODIFIED, and that he should be sentenced to serve 5 months at a residential reentry facility, and thereafter shall return to supervised release, under the terms and conditions outlined the R&R until September 18, 2019. The Court will make a recommendation of placement at the VOA facility located in Indianapolis, Indiana.

In addition to the mandatory conditions of supervision, it is recommended the following conditions be imposed to assist the probation officer in supervising Mr. Parsch and to ensure the safety of the community.

You shall report to the probation office in the district to which you are released within 72 hours of release from the custody of the Bureau of Prisons. (Supervised Release cases only)

You shall report to the probation officer in a manner and frequency directed by the court or probation officer.

You shall permit a probation officer to visit you at a reasonable time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer.

You shall not knowingly leave the judicial district without the permission of the court or probation officer.

You shall answer truthfully the inquiries by the probation officer, subject to your 5th Amendment privilege.

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.

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 residence occupants, job positions, job responsibilities). When prior notification is not possible, you shall notify the probation officer within 72 hours of the change.

You shall not own, possess, or have access to a firearm, ammunition, destructive device or dangerous weapon.

You shall notify the probation officer within 72 hours of being arrested, charged, or questioned by a law enforcement officer.

You shall maintain lawful full time employment, unless excused by the probation officer for schooling, vocational training, or other reasons that prevent lawful employment.

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.

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 shall permit the probation officer to make such notifications and/or confirm your compliance with this requirement.

You shall make a good faith effort to follow instructions of the probation officer necessary to ensure compliance with the conditions of supervision.

You shall pay the costs associated with the following imposed conditions of supervised release, to the extent you are financially able to pay: substance abuse testing and treatment, sexual disorder treatment and physiological testing. The probation officer shall determine your ability to pay and any schedule of payment.

Residential Reentry Center

Placement in a residential reentry center (RRC) will allow Mr. Parsch to benefit from job placement services, establish a stable release plan, facilitate a stable reentry into society, and focus on his drug counseling and rehabilitation.

You shall reside in a residential reentry center for a term of 5 months. You shall abide by the rules and regulations of the facility.

Search and Seizure

Considering the nature and circumstances, a search condition would assist the probation office in attempts to monitor Mr. Parsch.

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.

Substance Abuse Treatment, Testing, and Abstinence

Substance abuse treatment, testing, and abstinence conditions are recommended to detect illegal drug use and ensure Mr. Parsch is provided tools to prevent continued drug use.

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.).

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.

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 pay some or all of the costs of testing, if financially able. You shall not attempt to obstruct or tamper with the testing methods.

Sex Offender Conditions

Mr. Parsch is a convicted sex offender, and the following conditions are recommended to assist the probation officer in monitoring Mr. Parsch's behavior and to protect the community.

You shall not have any unsupervised meetings, non-incident communications, activities, or visits with any minor, unless they have been disclosed to the probation officer and approved by the court. In determining whether to recommend approval of such activities involving members of your family, the probation officer shall determine if you have notified the persons having custody of any such minors about the conviction in this case and the fact that you are under supervision. If this notification has been made, and if the person having custody consents to these activities, then this condition is not intended to prevent recommended approval of the activity.

You shall not possess any obscene material, child pornography, child erotica, or nude images of minors. Any such material found in your possession shall be considered contraband and will be confiscated by the probation officer.

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.

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.

Employment Restrictions

All employment shall be approved in advance by the probation officer.

Each recommended condition was read and explained to the defendant.

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: 10/17/2016



VAN WILLIS
United States Magistrate Judge
Southern District of Indiana