

IP 98-0156-CR 1 H/F USA v Bryant
Magistrate Kennard P. Foster

Signed on 3/6/06

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.) Cause No. IP 98-156-CR-01 (H/F)
)
 DANNY E. BRYANT,)
)
 Defendant.)

MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION

This matter is before the undersigned U. S. Magistrate Judge pursuant to the Order entered by the Honorable David F. Hamilton, Judge, on February 9, 2006, designating this Magistrate Judge to conduct a hearing on the Petition for Summons or Warrant for Offender Under Supervision filed with the Court on February 9, 2006, and to submit to Judge Hamilton proposed Findings of Facts and Recommendations for disposition under Title 18 U.S.C. §§3401(i) and 3583(e). All proceedings regarding this matter were held on February 28, 2006, in accordance with Rule 32.1 of the *Federal Rules of Criminal Procedure*. Mr. Bryant appeared in person and his appointed counsel, James McKinley, Office of the Indiana Federal Community Defender’s Office. The government appeared by Josh Minkler, Assistant United States Attorney. U. S. Parole and Probation appeared by Ross Carothers, U. S. Parole and Probation Officer, who participated in the proceedings.

The Court conducted the following procedures in accordance with Rule 32.1(a)(1) *Federal Rules of Criminal Procedure* and Title 18 U.S.C. §3583:

1. That James McKinley, Office of the Indiana Federal Community Defender, was present and appointed by the Court to represent Mr. Bryant in regard to the pending Petition for Revocation of Supervised Release.

2. A copy of the Petition for Revocation of Supervised Release was provided to Mr. Bryant and his counsel who informed the Court they had read and understood the specifications of violation charged herein and waived further reading thereof.

3. That Mr. Bryant was advised of his right to a preliminary hearing and its purpose in regard to the alleged specified violations of his supervised release contained in the pending Petition.

4. That Mr. Bryant would have a right to question witnesses against him at the preliminary hearing unless the Court, for good cause shown, found that justice did not require the appearance of a witness or witnesses.

5. That Mr. Bryant had the opportunity to appear at the preliminary hearing and present evidence on his own behalf.

6. That if the preliminary hearing resulted in a finding of probable cause that Mr. Bryant had violated an alleged condition or conditions of his supervised release set forth in the Petition, he would be held for a revocation hearing before the undersigned Magistrate Judge, in accordance with Judge Hamilton's designation entered on February 9, 2006.

7. Mr. Bryant stated his readiness to waive the preliminary hearing. Mr. Bryant then waived, in writing, the preliminary hearing and he was held to answer.

8. Mr. Bryant, by counsel, stipulated that he admitted the specified violations of his supervised release, as set forth in the Petition for Warrant or Summons for an Offender Under Supervision, filed on February 9, 2006, described as follows:

<u>Violation Number</u>	<u>Nature of Noncompliance</u>
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- 1 **“The defendant shall not possess or consume alcoholic beverages while on supervised release. This condition shall supercede the ‘no excessive us of alcohol’ language in Standard Condition #7.”**

The Court modified the offender’s conditions of supervision on September 8, 2004, to include the special condition listed above. At 11:30 p.m., on February 3, 2006, this officer was contacted by the Bartholomew County Sheriff’s Department in reference to a domestic disturbance at the offender’s residence. Upon arriving at the residence, this officer confronted the offender about an odor on his person commonly associated with alcohol. He admitted entering a liquor store this date where he purchased a half pint of vodka and consumed it when he arrived home. The offender tested .09% blood alcohol content. g vodka after work and drinking it when he arrived home. The Court was notified of this noncompliance in a Report on Offender Under Supervision, which was filed on July 19, 2005. It was recommended that the Court take no action at the time.

- 2 **“The defendant shall participate in the home confinement program for a period of 6 months, to commence immediately, and shall abide by all requirements of the program. The home confinement program will include electronic monitoring. The defendant shall maintain a telephone at his place of residence without any special services, modems, answering machines, or cordless telephones for the above period. The defendant shall pay the costs of the program. During this time the defendant will be restricted to his residence at all times except for employment; education; religious services; medical, substance abuse, or mental health treatment; attorney visits; court appearances; court-ordered obligations; or other activities as pre-approved by the probation officer. The probation officer may terminate the defendant early from the home confinement program based on compliance.”**

On January 4, 2006, a violation hearing was held in response to the offender’s non-compliance on supervision. The Court modified the offender’s conditions which added the above condition of electronic monitoring. The offender was placed on electronic monitoring the same day. On February 3, 2006, the offender entered a liquor store in Columbus, Indiana, while on electronic monitoring, to purchase alcohol. He did not have the probation officer’s permission to enter a liquor store.

- 3 **“The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person**

convicted of a felony unless granted permission to do so by the probation officer.”

On numerous occasions, this officer instructed the offender to have no contact with Penny Bryant, DOB: 9/02/60. Ms. Bryant is a felon and has served time in the Indiana Department of Correction for a Possession of a Controlled Substance (methamphetamine) conviction. At 11:30 p.m. on February 3, 2006, this officer was contacted by the Bartholomew County Sheriff’s Department in reference to a domestic disturbance at the offender’s residence. Upon arriving at the residence, this officer confronted the offender about associating with Ms. Bryant; he admitted associating with her but said she could get all her stuff and get out because he is done with her. This officer also spoke with Penny Bryant at the residence and instructed her to avoid contact with the offender. No arrests were made.

The Court placed Mr. Bryant under oath and he admitted the above violations.

Counsel for the parties further stipulated the following:

- 1) Mr. Bryant has a relevant criminal history category of I. *See*, U.S.S.G. §7B1.4(a).
- 2) The most serious grade of violation was stipulated to by the parties to be a Grade C violation, pursuant to U.S.S.G. §7B1.1(b).
- 3) Pursuant to U.S.S.G. §7B1.4(a) upon revocation of supervised release, the range of imprisonment applicable to Mr. Bryant is 3-9 months.
- 4) The parties agreed on the appropriate disposition of the case as follows:
The defendant be sentenced to a period of confinement of 8 months to the custody of the Attorney General, with no supervised release to follow.
- 5) Mr. Bryant argued for self-surrender, and the government opposed self-surrender to serve the term of imprisonment. Each party will present evidence and argument on that issue.

The Court, having heard the admissions of the defendant, the stipulations and evidence submitted by the parties, and the arguments and discussions on behalf of each party, **NOW FINDS** that the defendant violated the above-delineated conditions of his supervised release. The defendant’s supervised release is therefore **REVOKED** and Danny Bryant is sentenced to the

custody of the Attorney General or his designee for a period of 8 months. After service of his sentence, the defendant shall not be subject to supervised release. The Court, having heard the arguments of Mr. Bryant and the government, now **DENIES** Mr. Bryant's request for self-surrender.

You are hereby notified that the District Judge may reconsider any matter assigned to a Magistrate Judge pursuant to Title 28 U.S.C. §636(b)(91)(B) and (c) and Rule 72(b) of the *Federal Rules of Civil Procedure*. You shall have within ten days after being served with a copy of this Report and Recommendation to serve and file written objections to the proposed findings of facts and conclusions of law and recommendations of this Magistrate Judge. If written objections to the Magistrate Judge's proposed findings of facts and recommendations are made, the District Judge will make a *de novo* determination of those portions of the Report or specified proposed findings or recommendations to which an objection is made.

WHEREFORE, the U. S. Magistrate Judge **RECOMMENDS** the Court adopt the above report and recommendation revoking Mr. Bryant's supervised release and the sentence imposed of imprisonment of 8 months, in the custody of the Attorney General or his designee. There shall be no term of supervised release at the conclusion of Mr. Bryant's term of incarceration. Service of Mr. Bryant's term of imprisonment is to begin immediately.

The Magistrate Judge requests that Ross Carothers, U. S. Parole and Probation Officer, prepare for submission to the Honorable David F. Hamilton, Judge, as soon as practicable, a supervised release revocation judgment, in accordance with these findings of facts, conclusions of law and recommendation.

IT IS SO RECOMMENDED this 6th day of March, 2006.

Kennard P. Foster, Magistrate Judge
United States District Court
Southern District of Indiana

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