IP 04-0030-CR 1 H/F US v Tucker
Magistrate Kennard P. Foster Signed on 9/29/05

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 04-30-CR-01 (H/F)
	)	
DESHAWN LAMONT TUCKER,	)	
	)	
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 August 5, 2005, designating the Magistrate Judge to conduct hearings on the Petition for Summons or Warrant for Offender Under Supervision, filed with the Court on August 4, 2005, and to submit to Judge Hamilton proposed Findings of Facts and Recommendation for disposition under Title 18 U.S.C. §§3401(i) and 3583(e). All proceedings in this matter were held on September 28, 2005 pursuant to Title 18 U.S.C. §3583, and Rule 32.1(a)(1) of the *Federal Rules of Criminal Procedure*. The government appeared by Brad Blackington, Assistant United States Attorney. The defendant appeared in person with his appointed counsel, William Marsh, the Indiana Federal Community Defender. Robert Akers, U. S. Parole and Probation officer, appeared and 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 William Marsh, the Indiana Federal Community Defender, was present and appointed to represent Mr. Tucker in regard to the Petition for Revocation of Supervised Release.

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

3. Mr. Tucker 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. Tucker 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. Tucker 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. Tucker had violated the alleged condition or conditions of 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 on August 5, 2005.

7. Mr. Marsh stated that Deshawn Lamont Tucker would stipulate there is a basis in fact to hold him on the specifications of violation of supervised release set forth in the Petition. Mr. Tucker waived the preliminary examination, in writing, which was accepted by the Court.

8. Mr. Tucker, by counsel, stipulated that he committed violation of specification numbered 6 set forth in the Petition for Warrant or Summons for an Offender Under Supervision, filed with the Court on August 4, 2005, as follows:

Violation Number	Nature of Noncompliance

6 **The defendant shall participate in a program of testing and/or treatment for substance abuse and shall pay a portion of the fees of treatment as directed by the probation officer.**

Mr. Tucker has a substance abuse history which includes marijuana and cocaine usage. He has also abused alcohol in the recent past as evidenced in his Operating a Motor Vehicle While Intoxicated conviction (see petition dated November 10, 2004. The defendant was enrolled in substance abuse treatment and urine surveillance accordingly.

Mr. Tucker failed to report for submission of a random urine specimen on March 27, 2005. He was verbally reprimanded for the noncompliance via letter and during an office visit. Since that time, the defendant failed to report for random urine collection on the following dates: 5/29/05; 6/16/05; 7/5/05; 7/13/05; 7/20/05; 7/23/05; 7/27/05; and 7/31/05. As of the date of this petition, Mr. Tucker's last urine specimen was submitted on July 7, 2005, and it was negative for drug use. In addition, he has failed to make any payments toward his $150 substance abuse copayment.

9. The Court then placed Mr. Tucker under oath and inquired directly of him whether he admitted violation of specification number 6 of his supervised release set forth above. Mr. Tucker stated that he admitted the above violation of his supervised release as set forth. The government moved to dismiss specifications 1, 2, 3, 4 and 5 contained in the Petition to revoke Supervised Release, filed August 4, 2005, and the Court dismissed the same.

Counsel for the parties further stipulated to the following:

1) Mr. Tucker has a relevant criminal history category of IV, U.S.S.G. §7B1.4(a).

2) The most serious grade of violation committed by Mr. Tucker constitutes 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. Tucker is 6-12 months.

4) The parties agreed on the appropriate disposition of the case as follows:

The defendant be sentenced to a period of confinement of 9 months to the custody of the Attorney General. Further, upon release from confinement, Mr. Tucker is to be placed on supervised release for a period of two years, with the conditions of supervised release previously imposed to be reinstated for that two year term.

The Court having heard the evidence and/or arguments of Mr. Tucker, his counsel and the government, now finds that Mr. Tucker violated the specified conditions of supervised release as delineated above in the Petition to Revoke his supervised release.

Mr. Tucker's supervised release is therefore **REVOKED** and he is sentenced to the custody of the Attorney General or his designee for a period of 9 months. The service of the sentence is to begin immediately. Upon release from confinement, Mr. Tucker is to be placed on supervised release for a period of two years, with the conditions of supervised release previously imposed to be reinstated for that two year term.

The Magistrate Judge requests that Mr. Akers, 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.

Counsel for the parties and Mr. Tucker stipulated in open court waiver of the following:

1. Notice of the filing of the Magistrate Judge's Report and Recommendation;

2. Objection to the Report and Recommendation of the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §636(b)(1)(B); Rule 72(b), *Federal Rules of Civil Procedure*, and S.D.Ind.L.R.72.1(d)(2), *Local Rules of the U.S. District Court for the Southern District of Indiana*.

Counsel for the parties and Mr. Tucker entered the above stipulations and waivers after being notified by the undersigned Magistrate Judge that the District Court may refuse to accept the stipulations and waivers and conduct a revocation hearing pursuant to Title 18 U.S.C. §3561 *et seq.* and Rule 32.1 of the *Federal Rules of Criminal Procedure* and may reconsider the Magistrate Judge's Report and Recommendation, including making a *de novo* determination of any portion of the Report or specified proposed findings or recommendation upon which he may reconsider.

WHEREFORE, the U. S. Magistrate Judge **RECOMMENDS** the Court adopt the above recommendation revoking Mr. Tucker's supervised release and the sentence imposed of imprisonment of 9 months in the custody of the Attorney General or his designee. Further, that upon Mr. Tucker's release from confinement, he will be subject to a term of supervised release for a period of two years, with the conditions of supervised release previously imposed, to be reinstated for that two year term.

IT IS SO RECOMMENDED this 29th day of September, 2005.

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

Distribution:

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