IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff

v.

JEREMY J. HUART,

Defendant.

REPORT AND RECOMMENDATION

12-cr-114-wmc

REPORT

A federal grand jury in this district has returned a one-count indictment against defendant Jeremy J. Huart, charging him with possessing images of child pornography on a cellular telephone seized from his bedroom at a federal halfway house where Huart was completing his sentence on a 2008 conviction for possession of child pornography. Huart has filed two motions to suppress evidence, claiming first, that the seizure of his cell phone by halfway house staff violated his reasonable expectation of privacy in the phone, and second, that after the FBI obtained a warrant from this court to search the contents of Huart's phone, the Bureau waited too long actually to access the information stored in it. *See* dkts. 18 and 19. For the reasons stated below, I am recommending that this court deny both motions.

This court held an evidentiary hearing on January 10, 2013. Having reviewed the exhibits, having heard and seen the witnesses testify, and having made credibility determinations, I find the following facts:

Facts

In 2008, in the United States District Court for the Northern District of Illinois, Jeremy Huart pled guilty to possessing child pornography and was sentenced to 65 months in the custody of the Bureau of Prisons (BOP), followed by three years of supervised release. On

September 15, 2010, in preparation for his transfer from USP-Marion[1] to a BOP-contracted transitional facility (also referred to as a halfway house), Huart met with his case manager and signed a Resident Behavior Contract (Gov. Exh. 4, dkt. 29-4). Among other things, this contract commemorated Huart's understanding and acknowledgment that:

- Because of his conviction of a sex offense, additional security and accountability measures may be imposed upon him by the halfway house;
- To promote accountability and personal responsibility, staff at the halfway house routinely would search the living areas of all inmates;
- That the following items (among others) were contraband to Huart: pornographic or sexually explicit photographs; photography, pictures/ drawings of nude or partially nude adults or children; any obvious collection of photographs, pictures or drawing depicting adults or children in sexually explicit or suggestive poses or situations;
- Huart shall not utilize any mobile communication device with internet capability, i.e., a cell phone.

On May 11, 2011, BOP transferred Huart's custody to Rock Valley Community Programs (Rock Valley) a halfway house in Janesville, Wisconsin, to serve the last 5½ months of his sentence of imprisonment before beginning his term of supervised release on November 1, 2011. On the day he arrived at Rock Valley, Huart signed a document titled "Conditions of Residential Treatment Programs" (Gov. Exh. 3, dkt. 29-3) in which he acknowledged that he was currently in the custody of the United States Attorney General serving a sentence, and he acknowledged that he was required to abide by the rules and regulations promulgated by Rock Valley.

[1] There is some indication that Huart was imprisoned at USP-Leavenworth, but the location of the penitentiary is irrelevant.

Part of Rock Valley's contract with BOP was a Statement of Work (Gov. Exh. 5, Dkt. 5) which required Rock Valley to create and implement written policies and procedures for searches to control and dispose of contraband, which would be made available to offenders. BOP's statement of work further required Rock Valley to conduct searches of the facility and the personal belongings of offenders as needed but at least once per month. In Rock Valley's written policy (Gov. Exh. 6, dkt. 29-6) staff were directed, when searching an offender's room, to search thoroughly all dressers, beds, closets, cupboards and all possible hiding places, so to assure a contraband free facility. To ensure the necessary thoroughness when searching a room, staff were to remove sheets pillows and the mattress cover from the bed, flip the mattress, examine all personal property, including going through the pockets of all clothing in the room and looking inside shoes. When searching, staff also would open closed containers, page through notebooks, mail and other documents, remove HVAC vent covers, and unscrew socket covers.

Rock Valley defines contraband as any item that has not been approved by staff, was not on an offender's inventory list, or was being used in ways other than originally designed. Sexually explicit photographs were one specific example of contraband listed in Rock Valley's search policy. Rock Valley performed random searches of offenders based on a list generated each month.

Julie Lenzendorf, Rock Valley's Director, personally told Huart that he was not allowed to possess a cell phone while he was at Rock Valley. Therefore Huart knew he was not allowed to have a cell phone. (Huart already knew this from the Resident Behavior Contract he signed before leaving the penitentiary). Therefore, any cell phone in Huart's possession was contraband. Because Huart could not possess a cell phone, staff at Rock Valley did not provide

him with Rock Valley's pre-printed form explaining the rules of cell phone use to offenders who were allowed to possess and use a cell phone. For instance, any Rock Valley resident who is granted permission to possess a cell phone was required to sign an agreement that included a pledge not to keep any sexually explicit pictures on the telephone and an acknowledgment that "ANY STAFF may request at ANY TIME to view the contents of your phone with or without reason." Gov. Exh. 2 (dkt. 29-2), emphasis in original.

The distinction between the cell phone haves and have-nots was addressed more generally in Rock Valley's handout titled "Resident Information Packet and Program Rules" (Gov. Exh. 1, dkt. 29-1). Staff at Rock Valley provided this handout to Huart upon his arrival May 11, 2011, and would have discussed it with Huart at an orientation meeting. This document states that unauthorized cell phones are prohibited and that only a case manager could authorize an offender to possess a cell phone. The section discussing policies for authorized cell phones begins by noting that not all offenders residing at Rock Valley would be eligible for the use of a cell phone due to their individual offenses and supervision requirements. This handout also stated that "ANY STAFF may request at ANY TIME to view the contents of the clients [*sic*] cell phone with or without reason." *Id.* at 11, emphasis in original.

Pursuant to its room search policy, staff at Rock Valley could search even an authorized cell phone left unattended in an offender's bedroom without first requesting permission because it was simply another piece of property. Because unauthorized cell phone were contraband, staff could confiscate them and search them to determine if they contained evidence of other prohibited activity, such as violation of a no-contact order, drug dealing, child pornography, or other internet crimes.

While Huart was serving his sentence at Rock Valley, the facility required that he be accounted for all times, 24 hours each day. Huart was allowed to leave the Rock Valley facility, but only pursuant to a set of strict policies and rules that tightly regulated and monitored exactly when, where, with whom, why and how long he was off premises. Huart's freedom of movement within the facility also was tightly restricted, so that he could not travel about as he pleased. To leave his locked wing, Huart would have to obtain staff permission, sign out, then pass through locked doors. Huart was required to be present in the dining hall for meals. Huart was subjected to a head count every two hours. Huart was not allowed into another offender's bedroom for any reason. Huart could not open the window in his bedroom–which was alarmed–without permission. Huart had a nightly curfew and lights-out requirement. Huart could not have a television in his room, nor could he keep food in his room; only certain listed items of personal property were permitted, and all of his belongings were to be meticulously searched and inventoried by staff when he arrived. Huart was required to keep his room and possessions clean and in good order, which included required daily specified straightening-up. Huart was aware that he was subject to room inspections on a random basis. Huart's clothing had to comply with Rock Valley's written dress code.

Offenders residing at Rock Valley who did not obey the rules and procedures were subject to BOP disciplinary proceedings and were answerable to BOP because they still were in BOP custody. For instance, an offender did not have the right to refuse to allow his room or his possessions to be searched by Rock Valley; such a refusal would have resulted in the offender's dismissal from the facility.

During Huart's stay at Rock Valley, he was subjected to random searches of his room and belongings, just like the other residents. Two staff members conducted a such a random search

of Huart's room on August 19, 2011. When they entered his room Huart was lying on his bed. The staff members directed Huart to leave while they searched. On the bed the staff members found a cell phone. Because Huart was not authorized to possess a cell phone, pursuant to Rock Valley's policies this phone was contraband, subject to confiscation and search for evidence of additional contraband. The staff members did not ask Huart's permission to search this cell phone.

The staff members took the cell phone Matthew Barnett, Rock Valley's Assistant Director, who searched the phone and found 214 multimedia images, most of which in his opinion contained images of child pornography. Neither the staff members nor Barnett specifically told Huart that they intended to search the cell phone and they did not ask his permission to search its contents. The Rock Valley Sheriff's Department was contacted and Huart was removed from Rock Valley in custody.

That same day, August 19, 2011, Barnett wrote and filed a BOP incident report against Huart, charging him with possession of a cellular telephone and with use of a telephone to further criminal activity. (Def. Exh. 2, dkt. 29-9). BOP's Center Disciplinary Committee investigated these charges and imposed discipline on the charge possession of a cell phone, apparently dropping the second charge. *Id.* During these disciplinary proceedings, Huart admitted that he knew that possessing a cell phone violated the rules at Rock Valley.

On October 11, 201, the Rock County Sheriff's Department turned Huart's cell phone over to FBI Special Agent Brian Baker. Baker stored the cell phone in a secure location while he investigated this case.

On December 8, 2011, Agent Baker applied to this court for a warrant to search Huart's cell phone. The evidence establishing probable cause was Agent Baker's recitation of Barnett's

description of some of the images he had seen on the cell phone. *See* dkt. 18-3. The warrant ordered that the FBI was to search the cell phone on or before December 15, 2011.

On the same day that he obtained the search warrant, Agent Baker retrieved Huart's cell phone from storage and turned it on by pressing its power button. He was confronted with a security screen asking for a four digit security code. Agent Baker did not have the code, so he turned off the cell phone. If Agent Baker had known the pass code, he would have entered it and searched the contents of the phone at that time. Agent Baker did not attempt to guess at a pass code because he did not know if the phone had a security feature that would dump the phone's data if the wrong pass code was entered too many times. Agent Baker did not attempt to contact staff at Rock Valley to ask how they had accessed the contents of Huart's cell phone.

Agent Baker sent Huart's cell phone to the FBI office in Milwaukee for its Computer Analysis Response Team (CART) to examine. On December 13, 2011, Agent Brian Nashita attempted to access the data in Huart's cell phone but was unsuccessful. On January 11, 2012, Agent Nashita sent Huart's cell phone to the FBI's Forensic Electronic Device Analysis group in Quantico, Virginia. The analysts at Quantico received the cell phone on January 25, 2011and were able to navigate past the pass code screen and access the data in the phone. They discovered the images of child pornography that have been charged against Huart in the instant prosecution.

ANALYSIS

I. Rock Valley's Search of Huart's Cellular Telephone

Huart claims that he had a reasonable expectation of privacy in the contents of his cellular telephone and that Rock Valley staff violated his Fourth Amendment rights when they searched his cell phone without his permission. Huart is incorrect. He had absolutely no expectation of privacy in that cell phone. Huart acknowledges the Supreme Court's holding that:

> Society is not prepared to recognize as legitimate any subjective expectation of privacy that a prisoner might have in his prison cell and that, accordingly, the Fourth Amendment proscription against unreasonable searches does not apply with the confines of the prison cell. The recognition of privacy rights for prisoners in their individual cells simply cannot be reconciled with the concept of incarceration and the needs and objectives of penal institutions.
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> *Hudson v. Palmer* 458 U.S. 517, 526 (1984).

Huart admits that "if the court concludes that Huart's room at RVCP amounts to a prison cell, than his claim . . . may sink under *Hudson."* Def. Br., dkt. 31 at 8-9. The court so concludes and Huart's claim sinks accordingly.

The facts found above clearly and unequivocally establish that Huart was in the custody of the BOP serving a sentence of incarceration while residing at Rock Valley. The only published case I have found on this point reaches the same conclusion. *See United States v. Dixon*, 546 F.Supp.2d 1198, 1202-03 (D.Kan. 2008)(defendant serving his BOP sentence at a halfway house had no Fourth Amendment right to challenge a search of his property because he was in the legal and physical custody of the BOP and was subject to and had agreed to physical searches of his person and his property at any time without cause).

Huart points to the differences between serving a sentence in a halfway house and a penitentiary. Duly noted and rejected as irrelevant and fallacious. The BOP intentionally loosens its grip on prisoners who are nearing the end of their custodial sentences in order to smooth their transition into the free world (on supervised release) but it does not let them go. Halfway house placement still constitutes BOP custody. As Huart's Resident Behavior Contract made clear, while at the halfway house, he was "a resident of a facility that falls under the operational control of the Bureau of Prisons." Gov. Exh. 4, dkt. 29-4, at 1. Huart's bedroom at the halfway house may have been less Spartan than his penitentiary cell, but Huart was still a BOP prisoner in a BOP cell in a BOP facility, as evidenced by the myriad rules governing what Huart could and could not keep or do in that room and on the premises. Huart still was subject to–and ultimately subjected to–BOP disciplinary proceedings and punishment for his misconduct at Rock Valley. *Hudson v. Palmer* applies to him with full force.

Even if this court were to accept Huart's contention that an inmate in a halfway house might harbor some minuscule expectation of privacy in his room and his personal property, the Resident Behavior Contract that Huart signed before being transferred to Rock Valley would have utterly disabused Huart of any such quixotic expectation. This contract alerted Huart that staff would routinely search his room to promote his accountability and personal responsibility. Indeed, Huart acknowledged by signing this contract that due to his conviction of a sex offense, he was aware that *additional* security and accountability measures might be imposed on him. In the face of these clear policies and admonitions reviewed and signed by Huart, his assertion of a subjective expectation of privacy in his room and his property at Rock Valley is puzzling; his assertion that his subjective expectation of privacy is objectively reasonable is untenable.

Which segues to Huart's claim that he had some right to be *asked* by staff to search the cell phone they found on his bed, followed by the implication that he also had the right to *refuse* permission to search. As support for these claims, Huart points to Rock Valley's written policies regarding staff searches of *allowed* cell phones. This argument is so misdirected that it transcends sophistry. First, it is a self-serving and probably incorrect gloss of Rock Valley's cell phone policy. More to the point, Judy Lenzendorf, Rock Valley's Director, personally told Huart that he could not have a cellular telephone. Huart previously had signed a Resident Behavior Contract telling him the same thing. Given Huart's child pornography conviction, the reason for this prohibition was pellucid. Therefore, Huart's cell phone was contraband, just like a bindle of crack or a handgun, and Huart knew it at the time.[2] Huart had no privacy interest whatsoever in the conspicuous contraband that staff found on his bed.

Suppose staff had discovered a foil bindle on Huart's bed; would Huart claim a constitutional right to refuse permission for staff to open it up to look for rocks? What if it had been a semiautomatic handgun; would Huart dispute staff's right to open the clip to check for bullets unless he okayed it first? These are meant to be rhetorical questions, but Huart might well respond that yes, he did have a Fourth Amendment to refuse permission for halfway house staff to open up his contraband, at the price of being terminated from the halfway house. This circles back to the principle underlying the Court's holding in *Hudson v. Palmer*, as refined by the actual written and oral warnings and admonitions BOP and its agents provided repeatedly to Huart. Huart was a prisoner in BOP custody. His possessions were subject to search without

[2] Lenzendorf's testimony on this point was credible, unequivocal and uncontroverted. At the January 10, 2013 evidentiary hearing, Huart chose to provide limited testimony intended to imply that he had an expectation of privacy in the cell phone. *See* Transcript, dkt. 30, at 63-64. But when the court asked Huart directly whether he recalled being told that he was not supposed to have a cell phone, his attorney objected and I withdrew the question. *Id.* at 65. Huart can't have it both ways.

notice or permission, although Huart *had* provided permission to search by signing the Resident Behavior Contract. Huart had no right to possess contraband, and he had no cognizable privacy interest that would protect contraband in his possession from seizure and inspection by halfway house staff. Huart's cell phone was contraband and he knew it. Rock Valley staff members did exactly what they were supposed to do–require to do–when they seized Huart's cell phone and inspected its contents. There is no basis to suppress the evidence that they discovered.

II. The FBI's Execution of This Court's Search Warrant[3]

Citing to *Sgro v. United States*, 287 U.S. 206, 210-11 (1932), Huart contends that this court should quash the evidence obtained by the FBI when it finally accessed the contents of his cell phone because this did not occur until late January, 2012, in violation of the December 15, 2012 deadline imposed by the warrant. The government responds that F.R. Crim. Pro. 41(e)(2)(B) specifically accounts for situations like this:

> A warrant . . . may authorize the seizure of electronic storage media or the seizure or copying of electronically stored information. Unless otherwise specified, the warrant authorizes a later review of the media or information consistent with the warrant. The time for executing the warrant . . . refers to the seizure or on-site copying of the media or information and not to any later off-site copying or review.

The 2009 Advisory Committee Notes point out that this rule acknowledges the need for a two-step process in which the agent seizes or copies the storage medium and review it later, with no

[3] Because the cell phone was contraband seized by agents of the BOP, one might wonder whether the FBI actually needed a warrant to re-examine it, or whether Huart even has a right to challenge the FBI's search, but the parties did not address these issues and I don't have time to explore them sua sponte.

presumptive time limit for the review due to factors such as difficulties created by encryption, booby traps, and the workload of computer labs.

Courts confronted with challenges of the sort raised by Huart have rejected them. *See, e.g., United States v. Ivers*, 430 F. Appx 573, 575-76 (9th Cir. 2011)(search of computer one month after warrant execution deadline was reasonable and did not violate the Fourth Amendment); *United States v. Burgess*, 576 F.3d 1078, 1096-97 (10th Cir. 2009) (40 day delay between warrant expiration and forensic analysis did not violate Fourth Amendment because warrant was secured prior to seizure, probable cause did not dissipate, and officers were diligent); *United States v. Brewer*, 588 F.3d 1165, 1173 (87th Cir. 2009) (forensic analysis performed several months after execution deadline on state warrant did not violate Fourth Amendment; warrant had not become stale before computer analyzed); *United States v. Syphers*, 426 F.3d 461, 468-69 (1st Cir. 2005)(collecting cases where courts permitted delays in the execution warrants involving computers); *United States v. Roberts*, 2010 WL 234719 at *17 (E.D. Tenn. 2010) (10-day warrant execution limit of Rule 41 applies to the seizure or computers or the imaging of their contents; the subsequent analysis of the computer's contents is not a search in the sense contemplated by Rule 41); *United States v. Tillotson*, 2008 WL 5140773 at *6 (E.D. Tenn.)(same); *In the Matter of the Search of the Scranton Housing Authority*, 436 F.Supp.2d 714, 727 (M.D. Pa. 2006)(purpose of Rule 41 time limit is to prevent stale warrants; once the data is "frozen in time," there is no staleness concern); *United States v. Hernandez*, 183 F.Supp.2d 468, 480 (D.P.R. 2002) (neither Rule 41 nor Fourth Amendment provides a specific time limit in which government must conduct forensic exam once it has been timely seized); *United States v. Triumph Capital Group, Inc.*, 211 F.R.D. 31, 66 (D. Conn. 2002)(Rule 41 time limit is to prevent

a stale warrant; it does not impose any time limitation on the forensic examination of the evidence seized).

I find the reasoning of these cases persuasive, particularly in light of the facts presented here: as noted above, the cellular telephone found on Huart's bed at the halfway house was contraband, *ipsa*. Unlike the suspects living in the free world whose cell phones and computers had had their data copied and who could eventually seek return of their devices (*see* Rule 41(g)), Huart will never get this cell phone back. For him to complain about the leisurely pace at which Agent Baker, Milwaukee's CART unit and Quantico's FEDA unit examined his computer is pointless. Although there is no testimony as to why there were delays, the first attempt to search was made the same day this court issued its search warrant and then it took only 45 days more for the FBI to make two more attempts to access the phone's data.

In his reply brief, Huart tries to distinguish this virtually unbroken line of cases by pointing out that the FBI already *had* his phone, so it would be "nonsensical" to suppose that this court's seven day deadline to execute the warrant would apply to anything but the FBI's actual–that is successful–circumvention of his pass code and accessing of his data. This argument reads a limitation into the search warrant that isn't present and isn't logical. The search warrant provided legal authority for the FBI to turn on the cell phone and open every electronic file to look for child pornography. To the extent the warrant even was necessary (and we are assuming it was, *see* note 3 above), the FBI had no right even to turn on the phone and look at its initial apps screen without court permission.

Let's analogize a cell phone search to a residence search: if the FBI had probable cause to believe that evidence of a crime was in a file cabinet inside the defendant's apartment, then its agents could not (in the ordinary case) open the apartment door and cross the threshold until

they obtained a warrant. Once they had a warrant, then the agents could enter the apartment to begin the actual search. Opening the front door of the defendant's apartment and crossing the threshold would constitute initiation of execution of the warrant. That would be the functional equivalent of turning on a cell phone. Let's further suppose that the agents, once inside the apartment, found an electronic lock built into the file cabinet that might incinerate the documents within if the agents attempted to pry the cabinet open. It would not be a violation of the warrant deadline, nor would they need a new warrant, for the searching agents to convey the file cabinet to their bomb squad to ensure the safe recovery of the documents it contained. This would seem to be a reasonable incremental approach to executing the search warrant; Huart, however, contends otherwise, deeming such an approach to his cell phone to be reckless and in bad faith, which not only violated his constitutional rights, but now triggers the exclusionary rule. *See* Reply, dkt. 36, at 5-6.

Having considered Huart's argument, I find it illogical and untenable. In this case, Agent Baker obtained a search warrant from this court and attempted to execute it immediately. He turned on the cell phone and was met immediately with a pass code screen that he did not dare challenge for fear of destroying the ESI that was the object of his search. At that juncture, the search had begun, and the timeout that Baker called was reasonable. The forensic analyses that followed were sufficiently timely to fit within the constraints of Rule 41(e)(2)(B). Contrary to Huart's contention, this process was not negligent, let alone reckless or "deliberate" in any constitutional sense.

But even if there were to have been some constitutionally unreasonable act or failure timely to act, suppression of the evidence recovered from the cell phone would be a highly disproportionate remedy to any such violation. As the government points, out, the principle of

proportionality demands that courts exclude evidence only where the constitutional violation has caused actual harm to the Fourth Amendment privacy interests of the defendant. *United States v. Espinoza*, 256 F.3d 718, 725 (7th Cir. 2001). To hold otherwise would grant a windfall to the defendant. *Id.* As the Court noted in *Herring v. United States*, 555 U.S. 135 (2009),

> To trigger the exclusionary rule, police conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the judicial system. As laid out in our cases, the exclusionary rule serves to deter deliberate, reckless, or grossly negligent conduct, or in some circumstances recurring or systemic negligence.
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> *Herring*, 555 U.S. at 144.

In other words, exclusion of evidence is an extreme sanction that applies only where it would result in appreciable deterrence. *United States v. Elst*, 579 F.3d 740, 747 (7th Cir. 2009). What sort of conduct is Huart asking the court to deter? The brief delays prior to the two FBI computer forensic units conducting their searches? Agent Baker's failure to return to this court to request another warrant with a longer time line, so that CART in Milwaukee could examine the phone, followed by a third warrant so that FEDA in Virginia could examine it? The Fourth Amendment did not require three search warrants for the FBI to examine Huart's cell phone. The agents complied with the warrant issued by this court, and if their conduct somehow could be deemed inconsistent with that warrant, then suppression of the evidence they found would be a completely disproportionate sanction for their incremental, logical approach to accessing the contents of Huart's cell phone.

RECOMMENDATION

Pursuant to 28 U.S.C. §636(b)(1)(B) and for the reasons stated above, I recommend that this court deny defendant Jeremy Huart's motion to suppress evidence and motion to quash the search warrant.

Entered this 4th day of February, 2013.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge

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February 4, 2013

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Re: United States v. Jeremy J. Huart
Case No. 12-cr-114-wmc

Dear Counsel:

The attached Report and Recommendation has been filed with the court by the United States Magistrate Judge.

The court will delay consideration of the Report in order to give the parties an opportunity to comment on the magistrate judge's recommendations.

In accordance with the provisions set forth in the memorandum of the Clerk of Court for this district which is also enclosed, objections to any portion of the report may be raised by either party on or before February 18, 2013, by filing a memorandum with the court with a copy to opposing counsel.

If no memorandum is received by February 18, 2013, the court will proceed to consider the magistrate judge's Report and Recommendation.

Sincerely,
/s/
Connie A. Korth
Secretary to Magistrate Judge Crocker

Enclosure

MEMORANDUM REGARDING REPORTS AND RECOMMENDATIONS

Pursuant to 28 U.S.C. § 636(b), the district judges of this court have designated the full-time magistrate judge to submit to them proposed findings of fact and recommendations for disposition by the district judges of motions seeking:

(1) injunctive relief;
(2) judgment on the pleadings;
(3) summary judgment;
(4) to dismiss or quash an indictment or information;
(5) to suppress evidence in a criminal case;
(6) to dismiss or to permit maintenance of a class action;
(7) to dismiss for failure to state a claim upon which relief can be granted;
(8) to dismiss actions involuntarily; and
(9) applications for post-trial relief made by individuals convicted of criminal offenses.

Pursuant to § 636(b)(1)(B) and (C), the magistrate judge will conduct any necessary hearings and will file and serve a report and recommendation setting forth his proposed findings of fact and recommended disposition of each motion.

Any party may object to the magistrate judge's findings of fact and recommended disposition by filing and serving written objections not later than the date specified by the court in the report and recommendation. Any written objection must identify specifically all proposed findings of fact and all proposed conclusions of law to which the party objects and must set forth with particularity the bases for these objections. An objecting party shall serve and file a copy of the transcript of those portions of any evidentiary hearing relevant to the proposed findings or conclusions to which that party is objection. Upon a party's showing of good cause, the district judge or magistrate judge may extend the deadline for filing and serving objections.

After the time to object has passed, the clerk of court shall transmit to the district judge the magistrate judge's report and recommendation along with any objections to it.

The district judge shall review de novo those portions of the report and recommendation to which a party objects. The district judge, in his or her discretion, may review portions of the report and recommendation to which there is no objection. The district judge may accept, reject or modify, in whole or in part, the magistrate judge's proposed findings and conclusions. The district judge, in his or her discretion, may conduct a hearing, receive additional evidence, recall witnesses, recommit the matter to the magistrate judge, or make a determination based on the record developed before the magistrate judge.

NOTE WELL: A party's failure to file timely, specific objections to the magistrate's proposed findings of fact and conclusions of law constitutes waiver of that party's right to appeal to the United States Court of Appeals. ***See United States v. Hall,*** **462 F.3d 684, 688 (7th Cir. 2006).**