

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

UNITED STATES OF AMERICA,

Plaintiff,

ORDER

v.

96-cr-11-bbc-3

CHUE HER,

Defendant.

A hearing on the probation office's petition for judicial review of Chue Her's term of supervised release was held on October 1, 2015, before U.S. District Judge Barbara B. Crabb. The government appeared by Assistant U.S. Attorney Laura Przybylinski-Finn. Defendant was present in person, by his cousin, who acted as an interpreter for defendant, who speaks little English, and by defense counsel, David Geier. Also present was Supervisory U.S. Probation Officer Michael Bell.

From the record and the parties' stipulation, I make the following findings of fact.

FACTS

Defendant was sentenced in the Western District of Wisconsin on January 29, 1999,

after having been convicted of two Class C felonies, specifically, two counts of traveling in interstate commerce for the purpose of engaging in a sexual act with a juvenile, in violation of 18 U.S.C. § 2423(b). He was committed to the custody of the Bureau of Prisons to serve consecutive terms of 105 months, for a total term of imprisonment of 210 months, with a three-year term of supervised release to follow on each count, to be served concurrently.

Defendant violated the mandatory condition requiring him to report to the probation office in the district to which he is released within 72 hours of his release from the custody of the Bureau of Prisons. Defendant was released from custody on or about October 3, 2013 and began living in Warren, Michigan. He failed to report to the U.S. Probation Office in the Eastern District of Michigan within 72 hours of his release from imprisonment as required.

Defendant's conduct falls into the category of a Grade C violation. Under § 7B1.3(a)(1) of the advisory guidelines, the court may revoke supervised release upon finding a Grade C violation.

CONCLUSIONS

Defendant's violations warrant revocation. With his criminal history category of I and a Grade C violation, defendant has an advisory guideline imprisonment range of three to nine months. Under 18 U.S.C. § 3583(e)(3), the statutory maximum to which he can

be sentenced upon revocation is 24 months because the original offense of conviction was a Class C felony at the time of defendant's conviction.

After reviewing the non-binding policy statements of Chapter 7 of the Guidelines Manual, I have selected a sentence below the advisory guideline range. This sentence takes into consideration defendant's compliance with Immigration and Customs Enforcement requirements. Although defendant failed to report to the probation office after he was released from prison, he keep in regular contact with immigration agents. The sentence will hold defendant accountable for his behavior and protect the community. 18 U.S.C. § 3553(a).

ORDER

IT IS ORDERED that the period of supervised release imposed on defendant on January 29, 1999, is REVOKED and defendant is sentenced to 14 days in the custody of the Bureau of Prisons. The term of imprisonment is to be followed by a 34-month term of supervised release.

The standard and special conditions of supervised release imposed on defendant at the time of his January 29, 1999 sentencing were reasonably related to the offense of conviction and to his personal history and characteristics. Under *United States v. Thompson*, 777 F. 3d 368 (7th Cir. 2015), I find that the following non-mandatory conditions of supervision are reasonably related to the offense of conviction, defendant's recent

noncompliance and his personal history and characteristics. Counsel has gone over these conditions with his client; defendant has not objected to any of them. On the record defendant has waived any right to have them read aloud and specifically justified, as has his counsel and the Assistant United States Attorney. (It should be noted that proposed condition no. 15 was changed at the hearing as a means for determining whether defendant is an abuser of alcohol, rather than barring him from any and all use of alcohol, as previously drafted.)

NON-MANDATORY CONDITIONS OF SUPERVISION

JUSTIFICATION

1)	Defendant shall not leave the judicial district in which defendant is being supervised without the permission of the Court or probation officer.	To provide community protection, rehabilitation for defendant, and to enable the supervising probation officer's statutory duty to keep informed of defendant's location, conduct, condition, and compliance. 18 U.S.C. § 3553(a)(1), (a)(2)(B) and (C); 18 U.S.C. § 3563(b)(14); 18 U.S.C. § 3603(2) and (7); USSG §5B1.3(b)(1)(A), (C), (D) and (b)(2); USSG §5D1.3(b)(1)(A), (B), (C) and (b)(2).
2)	Defendant is to report to the probation office as directed by the Court or probation officer and shall submit a complete written report within the first five days of each month, answer inquiries by the probation officer, and follow the officer's instructions. The monthly report and the answer to inquiries shall be truthful in all respects unless a fully truthful statement would tend to incriminate defendant, in violation of defendant's constitutional rights, in which case defendant has the right to remain silent.	To provide community protection, rehabilitation for defendant, to ensure officer and defendant safety, and to enable the supervising probation officer's statutory duty to keep informed of defendant's location, conduct, condition, and compliance. 18 U.S.C. § 3553(a)(1), (a)(2)(B), (C) and (D); 18 U.S.C. § 3563(b)(15) and (17); 18 U.S.C. § 3603(2), (3), (4) and (7); USSG §5B1.3(b)(1)(B)(C), (D), (E) and (b)(2); USSG §5D1.3(b)(1)(B), (C), (D) and

		(b)(2).
3)	Defendant shall maintain lawful employment, seek lawful employment, or enroll and participate in a course of study or vocational training that will equip defendant for suitable employment, unless excused by the probation officer or the Court.	Evidence based practice research indicates that lawful, stable employment and education are pro-social activities that reinforce the rehabilitation of defendant. Employment and education have been identified as risk factors for recidivism. 18 U.S.C. § 3553(a)(2)(B), (C) and (D); 18 U.S.C. § 3563(b)(4) and (5); 18 U.S.C. § 3603(2), (3), (4) and (7); USSG §5B1.3(b)(1)(C), (D) and (E); USSG §5D1.3(b)(1)(B), (C) and (D).
4)	Defendant shall notify the probation officer within seventy-two hours of any change in residence, employer, or any change in job classification.	To provide community protection, rehabilitation for defendant, to ensure officer and defendant safety, and to enable the supervising probation officer's statutory duty to keep informed of defendant's location, conduct, condition, and compliance. 18 U.S.C. § 3553(a)(2)(C); 18 U.S.C. § 3563(b)(13), (15), (16) and (19); 18 U.S.C. § 3603(2), (3), (4) and (7); USSG §5B1.3(b)(1)(D) and (b)(2); USSG §5D1.3(b)(1)(C).
5)	Defendant shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.	Evidence based practice research indicates the use of illicit chemicals is a risk factor for recidivism. This condition is recommended to assist with defendant's rehabilitation, officer and defendant safety, and to protect the public. 18 U.S.C. § 3553(a)(1), (a)(2)(A), (B) and (C); 18 U.S.C. § 3563(b)(7); 18 U.S.C. § 3603(3); USSG §5B1.3(b)(1)(A), (B), (C) and (D); USSG §5D1.3(b)(1)(A), (B) and (C).
6)	Defendant shall not visit places where defendant knows or has reason to believe controlled substances are illegally sold, used, distributed, or administered.	Evidence based practice research indicates that frequenting places where illicit chemicals are sold, used, distributed or administered increases the risk that defendant will purchase, use or possess illicit chemicals. Individuals involved in the distribution of illicit chemicals present a risk of peer association as identified in

		the research. This condition supports rehabilitation of defendant and promotes public safety. 18 U.S.C. § 3553(a)(1), (a)(2)(B) and (C); 18 U.S.C. § 3563(b)(6); 18 U.S.C. § 3603(3); USSG §5B1.3(b)(1)(A), (B), (C), (D) and (b)(2); USSG §5D1.3(b)(1)(A), (B) and (C).
7)	Defendant shall not meet, communicate, or spend time with any persons defendant knows to be engaged in criminal activity or planning to engage in criminal activity.	Evidence based practice research indicates that association with peers involved in criminal activity increases the risk of recidivism. This condition promotes and encourages pro-social relationships that are conducive to a law-abiding lifestyle. 18 U.S.C. § 3553(a)(1), (a)(2)(A), (B) and (C); 18 U.S.C. § 3563(b)(6); 18 U.S.C. § 3603(3); USSG §5B1.3(b)(1)(B), (C) and (D); USSG §5D1.3(b)(1)(B) and (C).
8)	Defendant shall permit a probation officer to visit defendant at home, work, or elsewhere at any reasonable time and shall permit confiscation of any contraband observed in plain view by the probation officer.	Community contacts ensure compliance with court-ordered conditions and assist defendant in maintaining a law-abiding lifestyle. 18 U.S.C. § 3553(a)(1), (a)(2)(A), (B), and (C); 18 U.S.C. § 3563(b)(13), (15), (16) and (17); 18 U.S.C. § 3603(2), (3), (4) and (7); USSG §5B1.3(b)(1)(A), (B), (C), (D) and (b)(2); USSG §5D1.3(b)(1)(A), (B), (C) and (b)(2).
9)	Defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.	To provide for community safety and rehabilitation of defendant. 18 U.S.C. § 3553(a)(1), (a)(2)(A), (B) and (C); 18 U.S.C. § 3563(b)(18); 18 U.S.C. § 3603(2), (3), (4) and (7); USSG § 5B1.3(b)(1)(A), (B), (C) and (D); USSG § 5D1.3 (b)(1)(A), (B) and (C).
10)	Defendant 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.	Evidence based practice research indicates contact with criminals and potential involvement in facilitating other crimes sanctioned by law enforcement officers directly contradicts the condition of no new offenses and criminal associations.

		<p>which are risk factors for recidivism. Therefore, strict monitoring by the Court/probation office is necessary for the safety of the community, defendant, and the supervising probation officer. 18 U.S.C. § 3553(a)(1), (a)(2)(A), (B) and (C); 18 U.S.C. § 3563(b)(5), (6), (15), (17) and (18); 18 U.S.C. § 3603(2), (3), (4) and (7); USSG §5B1.3(b)(1)(A), (B), (C) and (D); USSG §5D1.3(b)(1)(A), (B) and (C).</p>
11)	<p>As directed by the probation officer, defendant shall notify third parties of risks that may be occasioned by defendant's criminal record or personal history or characteristics. The probation officer may also take steps to confirm defendant's compliance with this notification requirement or provide such notifications directly to third parties.</p>	<p>To protect the public from further crimes perpetrated by defendant. 18 U.S.C. § 3553(a)(1), (b)(2)(A), (B) and (C); 18 U.S.C. § 3563(b)(3), (4), (5), (6), (13) and (16); in a case of crimes against property 18 U.S.C. § 3555; 18 U.S.C. § 3603(2), (3), (4) and (7); USSG §5B1.3(b)(1)(A), (B), (C) and (D) and (b)(2); USSG §5D1.3(b)(1)(A), (B), (C) and (b)(2).</p>

12)	<p>Comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C §16901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which defendant resides, works, is a student or was convicted of a qualifying offense.</p>	<p>Imposed based on defendant's offenses of conviction and to ensure the protection of the public.</p>
13)	<p>Submit person, property, residence, papers, vehicle, or office to a search conducted by a U.S. probation officer at a reasonable time and manner, whenever the probation officer has reasonable suspicion of contraband or of the violation of a condition of release relating to substance abuse or illegal activities; failure to submit to a search may be a ground for revocation; defendant shall warn any other residents that the premises defendant is occupying may be subject to searches pursuant to</p>	<p>Imposed based on the nature of the offenses of conviction, the need to protect the public from further criminal activity perpetrated by defendant as suggested by his criminal history, and the need to ensure the safety of the supervising U.S. probation officer.</p>

	this condition.	
14)	As approved by the supervising U.S. Probation Officer, undergo psychosexual evaluations which may involve use of polygraph examinations. Defendant shall participate in an outpatient sex offender counseling program if recommended by the evaluator, which may involve the continued use of polygraph examinations. Defendant's answers to questions by the treatment provider, probation officer and polygraph examiner shall be truthful in all respects unless a fully truthful statement would tend to incriminate defendant, in violation of defendant's constitutional rights, in which case defendant has the right to remain silent. Defendant shall follow all treatment requirements and restrictions. If defendant is eligible for funding from any source to cover the cost of treatment, defendant is to make reasonable efforts to obtain such funding. Participation in treatment does not require payment by defendant unless it is clear defendant can afford it. Defendant shall allow reciprocal release of information between the supervising U.S. probation officer and the treatment provider.	Imposed based on the nature of the offenses of conviction, to ensure public safety and further the sentencing goal of rehabilitation.
15)	Submit to an AODA evaluation to determine whether he is an abuser of alcohol.	Imposed based on the findings by U.S. Probation Officer's in the Eastern District of Michigan regarding reports that subject has been abusing alcohol.
16)	Spend 180 days in a residential reentry center, as approved by the supervising U.S. probation officer, with admission upon the first available vacancy. Defendant may be absent from the center for employment purposes, for mental health counseling and treatment and for passes consistent with program rules. Defendant is to pay defendant's own medical expenses, if any, and is to pay 25% of defendant's gross income towards the daily cost of residence. Defendant may be discharged early from the facility upon the approval of both the facility administrator and the supervising U.S. probation officer.	Imposed based on the fact that the defendant does not have an appropriate residence in which to reside. A residential reentry center placement will allow the defendant to obtain employment and a suitable residence.

Defendant does not have the financial ability to pay the cost of incarceration. He is to be registered with local law enforcement agencies and the state attorney general before his release from incarceration.

Entered this 2d day of October, 2015.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge