IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. HEATHER SUE HARTZELL, Defendant.	No. 23-CR-2045 CJW-MAR **ORDER REGARDING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION CONCERNING DEFENDANT'S GUILTY PLEA**

I. INTRODUCTION AND BACKGROUND

On August 9, 2023, a six-count Indictment was filed against defendant and one other person. Defendant was charged in counts 1 and 2. On December 21, 2023, defendant appeared before United States Magistrate Judge Mark A. Roberts and entered a plea of guilty to count one of the Indictment. On December 21, 2023, Judge Roberts filed a Report and Recommendation ("R&R") in which he recommended defendant's guilty plea be accepted. On December 28, 2023, defendant filed objections to Judge Roberts' R&R on the ground that the box on the R&R regarding "dismissal of charges" was not marked or checked. Defendant's plea agreement did include the dismissal of count 2 at the time of sentencing. The government filed a response essentially agreeing with defendant's objection. In light of this, Judge Roberts filed an amended R&R to reflect that the parties' plea agreement does call for the dismissal of charges as stated in the plea agreement. The parties did not file objections to the amended R&R. The Court, therefore, undertakes the necessary review of Judge Roberts' recommendation to accept defendant's plea in this case.

II. ANALYSIS

Under the statute, this Court's standard of review for a magistrate judge's R&R is as follows:

> A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.

28 U.S.C. § 636(b)(1)(C).

When parties do not object to a magistrate judge's report and recommendation, the Court reviews the report and recommendation for clear error. 28 U.S.C. § 636(b)(1)(A). Similarly, Federal Rule of Criminal Procedure 59(b) provides for review of a magistrate judge's R&R on dispositive motions, where objections are made, as follows:

> The district judge must consider de novo any objection to the magistrate judge's recommendation. The district judge may accept, reject, or modify the recommendation, receive further evidence, or resubmit the matter to the magistrate judge with instructions.

FED. R. CRIM. P. 59(b)(3).[1]

In this case, the parties filed no objections to the amended R&R, and it appears to the Court upon review that Judge Roberts' findings and conclusions are not clearly erroneous.

[1] *United States v. Cortez-Hernandez*, 673 F. App'x 587, 590-91 (8th Cir. 2016) (per curiam), suggests that a defendant may have the right to de novo review of a magistrate judge's recommendation to accept a plea of guilty even if no objection is filed.

Therefore, the Court **ACCEPTS** Judge Roberts' amended R&R of January 4, 2024, and **ACCEPTS** defendant's plea of guilty in this case to count one of the Indictment.

IT IS SO ORDERED this 19th day of January, 2024.

C.J. Williams
United States District Judge
Northern District of Iowa