

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

United States of America

v.

Aticha Jittaphol

No. 21-CR-10270-MLW

OPPOSITION TO PROBATION REVOCATION

Aticha Jittaphol hereby opposes the revocation of probation and urges the Court not to require participation in in-patient drug treatment as a condition of probation unless Ms. Jittaphol tests positive for methamphetamine and there is a determination that she needs in-patient treatment to remain sober.

Ms. Jittaphol was appointed counsel in July 2021. She immediately told counsel that she was addicted to methamphetamine and wanted to quit but did not think that she could do it without an in-patient detox program. She described becoming increasingly depressed as her massage business collapsed due to COVID, and then due to a criminal investigation, and turning to methamphetamine to ease her depression. She asked counsel to help her find treatment. At Ms. Jittaphol's request, counsel contacted Probation and asked if it was possible to place her in a detox program immediately. Probation advised that they could only get involved after a charge was initiated.

An Information was filed on September 13th, together with a "C" plea agreement, providing for Ms. Jittaphol to plead guilty to two counts of making false statements in violation of 18 U.S.C. § 1001, and for a sentence of 36 months of probation with no incarceration.

Probation arranged for Ms. Jittaphol to enter a one-week in-patient detox program at the BHN Carlson Recovery Center in Springfield in early December. She successfully completed the program and transitioned to a two-week step-down at the Hope Center in Springfield, also part of the Behavioral Health Network. She successfully completed that program on December 27th and went home. Certificates confirming successful completion of these programs are provided at Attachment 1.

The Hope Center has recommended that Ms. Jittaphol participate in long-term residential in-patient treatment. Probation advised counsel that it was looking to place her in a program in Springfield, leading counsel to suspect that the Hope Center has recommended that Ms. Jittaphol be placed in another Behavioral Health Network facility. Counsel's impression was that this recommendation did not take individual circumstances into account.

Probation takes the position that it is bound to follow the recommendation of Hope Center, even though there is no indication that Ms. Jittaphol has used methamphetamine since her discharge on December 27th. On January 12th, Probation told counsel that Ms. Jittaphol had not yet been tested. The condition of in-patient care preceded any testing. At counsel's insistence, Probation agreed to test Ms. Jittaphol that day. The results have not yet been provided.

Like any criminal lawyer, counsel has routinely represented individuals dealing with drug addiction. Ms. Jittaphol is the only client counsel has ever had, not charged with a drug crime, who immediately told counsel that they had an

addiction, wanted to stop, and needed help. Far more common is the client who acknowledges drug use but maintains that they do not have a problem. Ms. Jittaphol admitted her need for help and wanted it. She now feels that she can remain clean without further in-patient treatment. There is no reason to doubt her honesty and her commitment to sobriety. She states that she does not feel an urge to use. She may turn out to be wrong. She may relapse. She is using a skin patch for testing. It must be examined and changed every week. If she uses methamphetamine the results will be quickly known. There is no significant harm in seeing if she is correct that she can stay off methamphetamine on her own.

The defendant has filed a motion for funds to retain an addiction expert. In conversation with counsel, the proposed expert, Dr. Stuart Gitlow, told counsel that one of the most fundamental criteria for the need for in-patient care is a fact-based determination that the client is likely to use without it. It is not appropriate to use in-patient treatment as a prophylactic measure without patient-specific evidence that relapse is likely.

Ms. Jittaphol is a licensed massage therapist. She has worked as a massage therapist in medical offices. At present, she is seeing clients for massage therapy and earning in the range of \$600-\$700/week, while looking for employment in a sports medicine or physical therapy facility.

She rents her own apartment and has a lease that runs through July. She has a dog. She has friends in the Boston area where she lives. The plain truth is that giving up her apartment, her work, her dog, her contact with friends, and her

independence is likely to cause the sort of depression that led her to use methamphetamine to begin with.

In-patient treatment should not be required where:

- there is no evidence of continuing drug use;
- there is no patient-specific evidence that Ms. Jittaphol is likely to relapse;
- Ms. Jittaphol has been truthful about her addiction and her ability to stop using;
- the provider appears to have a financial interest in further in-patient treatment;
- Ms. Jittaphol will be proving Probation with an arm patch every week for testing;
- Ms. Jittaphol is willing to attend out-patient counselling, although she does not believe that she needs it to stay off methamphetamine;
- there would be no harm in deferring in-patient treatment until a time when Ms. Jittaphol tests positive and there is a fact-based determination that she needs in-patient treatment to stay clean;
- in-patient treatment would require Ms. Jittaphol to give up her current life, a sacrifice that inevitably would result in depression, where there is no basis to conclude that this sacrifice is necessary in order for her to remain sober; and
- in-patient residential treatment would expose Ms. Jittaphol to a much higher risk of contracting COVID.

Ms. Jittaphol urges the Court to reject Probation's demand for in-patient treatment. If the Court takes the matter under advisement, then she asks the Court to allow her to provide a report from an addiction expert, addressing the proper

criteria for requiring in-patient treatment and whether in-patient residential treatment is appropriate at this time.

For these reasons, Ms. Jittaphol's probation should not be revoked, and she should not be required to participate in in-patient treatment at this time.

ATTICHA JITTAPHOL
By her Attorney,

/s/ Keith Halpern
Keith Halpern, BBO # 545282
572 Washington Street, Suite 19
Wellesley, MA 02482
(617) 722-9952

CERTIFICATE OF SERVICE

I hereby certify that this document, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on January 18, 2022.

/s/ Keith Halpern