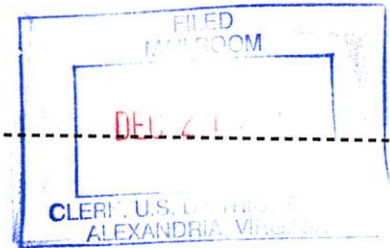


TRULINCS 28576509 - STEWART, ROBERT S JR - Unit: TDG-V-A



FROM: 28576509
TO:
SUBJECT:
DATE: 12/14/2021 07:24:14 AM

United States of America,

v.

Robert S. Stewart, Jr.

CASE: 1:21-CR-005 (RDA)

PETITIONER's RESPONSE to GOVERNMENT'S NON-OPPOSITION POSITION, In RE MOTION to AMEND
THE JUDGEMENT & CONVICTION ORDER

I. BACKGROUND

On 16 June 2021 this Honorable Court sentenced the petitioner, Mr. Stewart, to a term of imprisonment of 21 months for One Count of Wire Fraud in violation of 18 USC 1343, One Count of False Statements in violation of 18 USC 1001 and One Count of Theft of Government Funds in violation of 18 USC 641. On 20 October 2021, Mr Stewart petitioned the court via a Pro Se Motion for "Judicial Recommendation of 12 months of Residential Re-entry Center Placement," on 7 November 2021, the Government responded with is "Non-Opposition" of the petitioner's motion; this motion is the second certified copy of the original reply to the government's response sent on 19 NOV 2021.

II. Discussion

In Re the Government's response, it outlines its non-objection to Mr. Stewart's petitioner. However, within their response it was noted that "The petitioner seeks Amendment of the Judgement and Conviction Order." During submission of the Pro Se Motion, Mr. Stewart took great care in not seeking an Amendment to the J&C order, as by Fed. R. of Crim. Procedure nor by statute 18 USC 3582(c), there is not a method in which a Judicial Recommendation can be achieved via a modification of a J&C order; Mr. Stewart proffers to this Honorable Court, clarification of his initial request for a "Judicial Recommendation of 9 to 12 months of Residential Re-entry Center (RRC) Placement," and not modifying the original J&C. While the Movant concurs with the Government's overall Non-objection of placement in the RRC program by the BOP, the petitioner does object to the Government's recommendation to the Court in not granting the Judicial RRC recommendation.

It is well established that (quoting 18 USC 3621(b)(4)) "Federal District Courts throughout the country have differed in their decisions as to whether a district court can make a imprisonment placement recommendation on a defendant's post-sentence motion." (United States v. Ferguson 6:16-cr-007-07.) In Re Ferguson the Court held

[We agree to what appears to be the majority position, while the Court may not modify the original Judgement and Conviction (J&C) order or otherwise Order the BOP to grant pre-release time in response to a petitioner's post-sentencing motion; It may issue a non-binding recommendation. Because such recommendations are 'Advisory' only; it does not run afoul of the limitations on modifying sentences authorized by 18 USC 3582 nor Fed. R. Crim. 35(b); which directs the BOP to CONSIDER "any statement" by the court that imposed the stence, not just statements made at the time of sentencing, the Court, may issue such a recommendation at any time."]

The petitioner contends that there a several cases where by prescendent within the 4th Circuit controls Judicial Recommendations for Residential Re-entry placement 9 to 12 months of halfway house time. See United States v. Smith (W.D. Va. 2019 WL 4016211.), United States v. Patterson, 2019. WL 127962 at 2., United States v. McCoy 3:18-cr-232, United States v. Kenney 1:17-00195-004. In each of the aforementioned case(s) "A solid majority of federal courts throughout the country and within this very circuit have concluded that a sentencing court may make imprisonment placement recommendations on a defendant's post-sentence motion, with regard to 12 months of residential re-entry center placement.

III. Analysis

It is well established within the 4th Ciruit, that a Sentencing Court exercises extraordinary discretion in imposing a sentence that is "Sufficient but not greater than necessary," to deter future criminal conduct. In that regard the Government's response cites, " Mr. Stewart, on the other hand will have served a relatively short term in prison," while on its face this statement is accurate from the lens of Mr. Fitzpatrick, it is the rule of law that supports this Court's discretion in imposing a sentence of 21 months in prison; Moreover, the petitioner argues that the it is the Court's discretion as to imposition of sentencing and any

TRULINCS 28576509 - STEWART, ROBERT S JR - Unit: TDG-V-A

recommendation of said imposition (e.g. at a certain BOP facility or recommendation of requisite treatment programs.) Accordingly, the BOP references five factors in making a determination with respect to RRC placement, the movant respectfully petitions this court to "issue a judicial recommendation 9 to 12 months of RRC placement." This request hinges on the fact that the petitioner, upon self surrender was enrolled in post-graduate Legal education, maintained full time employment and was given access to mental and medical health on a routine basis. Since his surrender, Mr. Stewart has experienced a severe and abrupt impact to his ability to continue education and maintain full time employment, subsequent to his self surrender, Mr. Stewart has experienced termination of his employment and has taken a sabbatical with regard to his education. Additionally, because of his termination of employment Mr. Stewart filed Chapter 7 Bankruptcy (See 21-01609-TOM7.) Finally, the current BOP facility does not offer any mental health treatment to support Mr. Stewart's clinical diagnosis.

In re the Court's statements dated 16 June 2021, a recommendation that "[T]he defendant shall complete a mental health course as a part of the sentence imposed...] It was proffered that "... Perhaps through advice of counsel Mr. Stewart could use the Court's transcript to infer the Court's position with respect to RRC.." in reviewing the transaction detail via PACER for the Sentencing Transcript, it was not found by either Mr. Stewart or counsel.

In speaking with the BOP RRC coordinator, it was highlighted that re-entry programs for individuals similar to Mr. Stewart's education, background and career objectives due exist within the RRC's programs. Currently, Mr. Stewart's education is beyond the level of education or training that the current facility offers, additionally, he has requested that his legal studies be sent correspondence to the facility on multiple occasion(s), at each occasion the Facility's Receiving and Discharge Mail Room has returned the correspondence materials (see Exhibit 'A'.) The movant contends that if this court were to grant the relief for 9 to 12 months of RRC placement, he would be able to complete the requisite mental health course as ordered by this court; he would also be in a better position to complete his post graduate studies and have time to re-enter the employment market by leveraging the RRC's placement programs for ex-felons. Its important to note that each of these activities various in different times for each offender, and that generally it as difficult for a person who has had a lengthy sentence as one who has had a 'relatively short sentence,' to find gainful employment an re-enter society. Lastly, more time in the RRC placement program would enable Mr. Stewart to complete financial literacy programming and rebuild his finances in order to properly re-enter society.

The impact of incarceration on Mr. Stewart has been significant, and will deter any future criminal activity. Mr. Stewart's employment, continued education and access to mental health have been frustrated by his imprisonment. During incarceration Mr. Stewart, has taken advantage of each BOP program that has been made available to him (e.g. Parenting, Real Estate investing, Money Mangement and First Step Act initiatives) in addition to these BOP offered programs, Mr. Stewart has been working full time in FPC Talladega's Law Library as the Law Clerk, during his tenure Mr. Stewart has helped numerous inmates with legal and administrative issues concerning their cases. In making its decision whether to grant this motion, Mr. Stewart requests consideration of the following, the limited resources afforded within Talladega FPC's facility to him given his background against the resources, training and overall availability of programs offered by the RRC managed against his re-entry plan with the United States Probation Office (USPO).

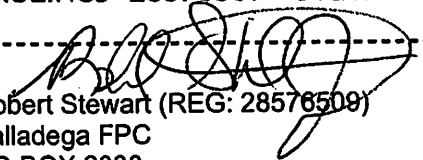
Lastly, should the Court grant the defendant's motion for a "Judicial Recommendation" the BOP would still maintain custody of Mr. Stewart while in RRC, additionally the BOP would be able to ensure that each facet of the J&C imposed is met without qualification; including the mental health course to be offered outside of Talladega FPC. In the Government's response, Mr. Fitzpatrick cites that "there is no procedural manner in which the court could grant Mr. Stewart's pro se motion," this statement is somewhat misleading as demonstrated by the aforementioned cases, in each of the provided cases the court issued its legal opinion and forward these opinions to The Director of The BOP, Warden of the Defendant's Facility and to the movant themselves. Similarly, in these cases, Mr. Stewart requests relief of this Honorable Court to follow suit with the controlling prescient as cited in the previous cases. (See Exhibit 'B' cited cases)

IV. Conclusion

For the foregoing reasons the petitioner requests that this Honorable Court GRANT the motion for a Non-Binding (an advisory) "Judicial Recommendation for 9 to 12 months of RRC placement." Accordingly, Mr. Stewart requests that a copy of this legal opinon be forwarded to the Director of BOP, Warden of Talladega FPC and Mr. Stewart.

I hereby certify a copy has been sent via United States Post Office to all parties. Please upload this motion into CM/EF (PACER) to become part of the official court record. Please note that this is second copy of this request as the previous request was sent via USPS certified mail and as of 13 December has not been uploaded into PACER (USPS CERTIFIED MAIL Tracking 7013 2250 0001 8254 4009 CONFIRMS receipt on 23 NOV 2021.)

TRULINCS 28576509 - STEWART, ROBERT S JR - Unit: TDG-V-A


Robert Stewart (REG: 28576509)
Talladega FPC
PO BOX 2000
Talladega, AL 35160

13 DECEMBER 2021
DATE

TRULINCS 28576509 - STEWART, ROBERT S JR - Unit: TDG-V-A

FROM: 28576509
TO: R&D/Mailroom
SUBJECT: ***Request to Staff*** STEWART, ROBERT, Reg# 28576509, TDG-V-A
DATE: 08/20/2021 06:57:31 AM

To:
Inmate Work Assignment: In Re:Mail

Good Morning,

I wanted to inquire if you had recieved any legal/law books - I was notified by family that the publishing company had sent several packages to the facility around a week ago but I have yet to receive them.

Also - I have approval from health services to have a CPAP machine, my father notified me that you returned it back to him. There was a copy of the approval in the box (envelope) can you advise if he can resend it, as I am in need of my CPAP to sleep.

thanks,

Robert Stewart

Exhibit - 'A'

UNITED STATES OF AMERICA, Petitioner v. WILLIAM LEE PATTERSON, Defendant.
UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, NORFOLK
DIVISION

2019 U.S. Dist. LEXIS 3547

CRIMINAL NO. 2:00cr187

January 7, 2019, Decided

January 8, 2019, Filed

Editorial Information: Prior History

United States v. Patterson, 277 F.3d 709, 2002 U.S. App. LEXIS 782 (4th Cir. Va., Jan. 18, 2002) ---
Judges: {2019 U.S. Dist. LEXIS 1} Robert G. Doumar, UNITED STATES DISTRICT JUDGE.

Opinion

Opinion by: Robert G. Doumar

Opinion

OPINION AND ORDER

This matter comes before the Court on William Lee Patterson's ("Defendant") Motion Requesting **Judicial Recommendation** Concerning Halfway House Placement ("Motion"). ECF No. 95. The United States ("Government") does not oppose Defendant's Motion. ECF No. 97. For the reasons stated herein, the Court **GRANTS** Defendant's Motion and issues a non-binding and advisory recommendation to the Bureau of Prisons ("BOP") that Defendant be placed in a Residential Re-entry Center ("RRC") or halfway house for the final twelve (12) months of his sentence.

I. PROCEDURAL AND FACTUAL BACKGROUND

On April 26, 2001, Defendant was sentenced to a term of imprisonment of three hundred sixty (360) months, followed by a term of supervised release of five (5) years, after a jury found him guilty of possession with intent to distribute cocaine base and aiding and abetting the same, in violation of 21 U.S.C. § 841(a)(1) and 21 U.S.C. § 843. ECF No. 32. On May 27, 2008, Defendant's sentence was reduced to three hundred twenty-four (324) months pursuant to 18 U.S.C. § 3582(c)(2). ECF No. 77. On December 9, 2014, the Court again reduced Defendant's sentence to two hundred sixty-two (262) months. ECF {2019 U.S. Dist. LEXIS 2} No. 91. As such, Defendant's projected release date is January 24, 2020.

On December 17, 2018, Defendant filed the instant Motion requesting that this Court recommend he spend the last twelve (12) months of his sentence at a RRC, otherwise known as a halfway house. ECF No. 95 at 1. In such Motion, Defendant requests the "Court to issue a **judicial recommendation** to the Bureau of Prisons ("BOP") that the Defendant receive twelve (12) months of Residential Re-entry Center ("RRC") or halfway house placement preceding the end of his sentence." *Id.* On December 27, 2018, the Government filed its Response to Defendant's Motion Requesting **Judicial Recommendation** ("Response"), ECF No. 97, indicating that the Government does not oppose Defendant's Motion.

II. DISCUSSION

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Exhibit-B'

incarceration and would benefit from placement in a RRC or halfway house during the final twelve (12) months of his sentence.

III. CONCLUSION

In light of the Court's authority to make the requested advisory and non-binding recommendation, the Defendant's incarceration record, the Government's lack of opposition to Defendant's Motion, and the substantial benefits provided by placement in a RRC or halfway house, Defendant's Motion Requesting Judicial Recommendation Concerning Halfway House Placement is GRANTED.

Therefore, the Court hereby **RECOMMENDS** to the Bureau of Prisons that the Defendant be placed in a Residential Re-entry Center ("RRC") or halfway house for the final twelve (12) months of his sentence.

The Clerk is **DIRECTED** to forward a copy of this Order to Defendant and to all Counsel of Record and to the Bureau of Prisons.

IT IS (2019 U.S. Dist. LEXIS 6) SO ORDERED.

/s/ Robert G. Doumar

Robert G. Doumar

UNITED STATES DISTRICT JUDGE

Norfolk, VA

January 7, 2019

UNITED STATES OF AMERICA, Vs. BRADFORD ALLEN, Defendant.
UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA,
ASHEVILLE DIVISION
2020 U.S. Dist. LEXIS 128902
1:15-cr-64-MOC-WCM-1
July 22, 2020, Decided
July 22, 2020, Filed

Editorial Information: Prior History

United States v. Allen, 909 F.3d 671, 2018 U.S. App. LEXIS 33367 (4th Cir. N.C., Nov. 28, 2018)

Counsel {2020 U.S. Dist. LEXIS 1} For USA, Plaintiff: Thomas Michael Kent,
LEAD ATTORNEY, Office of the U.S. Attorney-WDNC, Asheville, NC; Thomas R. Ascik,
United States Attorney's Office, Asheville, NC.

Judges: Max O. Cogburn, Jr., United States District Judge.

Opinion

Opinion by: Max O. Cogburn, Jr.

Opinion

ORDER

THIS MATTER is before the Court on Defendant's Motion Requesting a **Judicial Recommendation** Concerning Length of RRC/Halfway House Placement (Doc. No. 76). On March 30, 2016, Defendant pleaded guilty in this Court to one count of being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1). (Doc. No. 23). Thereafter, this Court sentenced Defendant to 77 months of imprisonment and a two-year term of supervised released. (Doc. No. 57). Defendant's release date is March 26, 2021.

The Second Chance Act of 2007 provides that the "Bureau of Prisons shall designate the place of the prisoner's imprisonment" and "may designate any penal or correctional facility that meets minimum standards of health and habitability established by the Bureau." 18 U.S.C. § 3621(b). In choosing a facility, the Bureau may consider "any statement by the court that imposed the sentence (A) concerning the purposes for which the sentence of imprisonment was determined to be warranted; or (B) recommending {2020 U.S. Dist. LEXIS 2} a type of penal or correctional facility as appropriate." *Id.* Several courts, including this one, have held this Act authorizes courts to issue non-binding, strictly advisory placement recommendations. See *United States v. Patterson*, No. 2:00-CR-187, 2019 U.S. Dist. LEXIS 3547, 2019 WL 127962, at *2 (E.D. Va. Jan. 8, 2019); *United States v. Ferguson*, No. 6:16-CR-00707-JMC-8, 2018 U.S. Dist. LEXIS 179905, 2018 WL 5095149, at *3 (D.S.C. Oct. 19, 2018); *United States v. Cabbie*, No. 3:09-CR-00084-MOC, 2018 U.S. Dist. LEXIS 165910, 2018 WL 4628324, at *1 (W.D.N.C. Sept. 27, 2018).

Defendant's evidence suggests he has made efforts to improve himself while incarcerated. Defendant asserts that he has participated in the following BOP programs and classes in an attempt to prepare for his release and aid in his rehabilitation: obtaining his GED, drug education,

UNITED STATES OF AMERICA v. GEORGETTA KENNEY
UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
2020 U.S. Dist. LEXIS 7766
CRIMINAL ACTION NO. 1:17-00195-004
January 16, 2020, Decided
January 16, 2020, Filed

Editorial Information: Prior History

United States v. Lester, 2018 U.S. Dist. LEXIS 5725 (S.D. W. Va., Jan. 12, 2018)

Counsel {2020 U.S. Dist. LEXIS 1} For United States of America, Plaintiff:
Christopher R. Arthur, Timothy D. Boggess, LEAD ATTORNEYS, UNITED STATES
ATTORNEY'S OFFICE, Charleston, WV; R. Gregory McVey, LEAD ATTORNEY, UNITED
STATES ATTORNEY'S OFFICE, Huntington, WV; Timothy D. Boggess, LEAD ATTORNEY,
U. S. ATTORNEY'S OFFICE, Charleston, WV; Eumi L. Choi, Monica D. Coleman, Philip H.
Wright, UNITED STATES ATTORNEY'S OFFICE, Charleston, WV; Monica D. Coleman, U.
S. ATTORNEY'S OFFICE, Charleston, WV.

Judges: David A. Faber, Senior United States District Judge.

Opinion

Opinion by: David A. Faber

Opinion

MEMORANDUM OPINION AND ORDER

Pending before the court is defendant's Motion for Judicial Recommendation Regarding 9-12 Months of RRC Placement, ECF No. 465. Defendant requests that the court make a recommendation to the BOP that she receive a placement of nine to twelve months in a Residential Re-entry Center ("RRC"). The government has not filed a memorandum opposing defendant's Motion. For the following reasons, the court **GRANTS** defendant's motion and issues a non-binding and advisory recommendation to the Bureau of Prisons ("BOP") that defendant be placed in a Residential Re-entry Center for the final twelve (12) months of her sentence.

I. Factual and Procedural {2020 U.S. Dist. LEXIS 2} Background

Defendant was charged in a 40-count indictment along with her husband and other members of her family. She was tried and convicted by jury on August 23, 2018, on seven counts, listed as follows: Arson Conspiracy, in violation of 18 U.S.C. § 844(m); Money Laundering Conspiracy, in violation of 18 U.S.C. § 1956(h); Mail Fraud, in violation of 18 U.S.C. §§ 1341 and 1342; Aiding and Abetting an Unlawful Monetary Transaction, in violation of 18 U.S.C. §§ 1957 and 1952; Mail Fraud, in violation of 18 U.S.C. § 1341; Money Laundering to Promote Scheme, in violation of 18 U.S.C. § 1956(a)(1)(A)(i), and Unlawful Monetary Transaction, in violation of 18 U.S.C. § 1957.

On December 20, 2018, this court sentenced defendant to 36 months of incarceration to run concurrently on all counts, a sentence below the Sentencing Guidelines calculation. See ECF No. 377. Defendant is currently serving her sentence at FPC Alderson in Alderson, West Virginia, and is

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UNITED STATES OF AMERICA vs. JULIAN JAREL MCCOY, Defendant.
UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA,
CHARLOTTE DIVISION
2021 U.S. Dist. LEXIS 61583
3:18-CR-232
March 30, 2021, Decided
March 31, 2021, Filed

Counsel: (2021 U.S. Dist. LEXIS 4) For USA, Plaintiff: Sanjeev Bhasker, LEAD
ATTORNEY, United States Attorney's Office, Charlotte, NC
Judges: Max O. Cogburn, Jr., United States District Judge.

Opinion

Opinion by: Max O. Cogburn, Jr.

Opinion

ORDER

THIS MATTER is before the Court on Defendant's pro se Motion for **Judicial Recommendation** on Residential Re-Entry Center Placement (Doc. No. 33).

The Second Chance Act of 2007 provides that the "Bureau of Prisons shall designate the place of the prisoner's imprisonment" and "may designate any penal or correctional facility that meets minimum standards of health and habitability established by the Bureau." 18 U.S.C. § 3621(b). In choosing a facility, the Bureau may consider "any statement by the court that imposed the sentence (A) concerning the purposes for which the sentence of imprisonment was determined to be warranted; or (B) recommending a type of penal or correctional facility as appropriate." *Id.* Several courts, including this one, have held this Act authorizes courts to issue non-binding, strictly advisory placement recommendations. See *United States v. Patterson*, No. 2:00-CR-187, 2019 WL 127962, at *2 (E.D. Va. Jan. 8, 2019); *United States v. Ferguson*, No. 6:16-CR-00707-JMC-8, 2018 WL 5095149, at *3 (D.S.C. Oct. 19, 2018); *United States v. Cabbie*, No. 3:09-CR-00084-MOC, 2018 WL 4628324, at *1 (W.D.N.C. Sept. 27, 2018).

Defendant's evidence suggests he has made efforts (2021 U.S. Dist. LEXIS 2) to improve himself while incarcerated. For example, he asserts that he has taken multiple programs since being in prison to work on his rehabilitation, he has maintained a clean record while in prison, and he is currently enrolled in the 500-hour residential drug abuse program. To the extent this partial report is commensurate with the remainder of Defendant's record, the Court recommends placement in a Residential Re-Entry Center. Still, the Court emphasizes that this recommendation is not binding; it is the Bureau, not the Court, that is uniquely qualified to determine when a re-entry program is appropriate for incarcerated persons. See *Cabbie*, 2018 WL 4628324, at *2.

ORDER

IT IS, THEREFORE, ORDERED that on Defendant's Motion for **Judicial Recommendation** on Residential Re-Entry Center Placement (Doc. No. 33) is **GRANTED**. Thus, to the extent that

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introduction to education, ace real estate, music business overview, mock job fair, learn to speak Spanish, vocational training: core curriculum, and vocational training: carpentry. The Court recommends placement in a Residential Re-Entry Center. Still, the Court emphasizes that this recommendation is not binding, as the Bureau, not the Court, is uniquely qualified to determine when a re-entry program is appropriate for incarcerated persons. See Cabbie, 2018 U.S. Dist. LEXIS 165910, 2018 WL 4628324, at *2.

IT IS, THEREFORE, ORDERED that on Defendant's Motion Requesting a **Judicial Recommendation** Concerning Length of RRC/Halfway (2020 U.S. Dist. LEXIS 3) House Placement (Doc. No. 76) is **GRANTED**. Thus, to the extent that Defendant's record demonstrates he has made efforts to improve himself while incarcerated, the court **RECOMMENDS** that Defendant be placed in a Residential Re-Entry Center.

Signed: July 22, 2020

/s/ Max O. Cogburn, Jr.

Max O. Cogburn, Jr.

United States District Judge

introduction to education, ace real estate, music business overview, mock job fair, learn to speak Spanish, vocational training: core curriculum, and vocational training: carpentry. The Court recommends placement in a Residential Re-Entry Center. Still, the Court emphasizes that this recommendation is not binding, as the Bureau, not the Court, is uniquely qualified to determine when a re-entry program is appropriate for incarcerated persons. See Cabbie, 2018 U.S. Dist. LEXIS 165910, 2018 WL 4628324, at *2.

IT IS, THEREFORE, ORDERED that on Defendant's Motion Requesting a Judicial Recommendation Concerning Length of RRC/Halfway{2020 U.S. Dist. LEXIS 3} House Placement (Doc. No. 76) is **GRANTED**. Thus, to the extent that Defendant's record demonstrates he has made efforts to improve himself while incarcerated, the court **RECOMMENDS** that Defendant be placed in a Residential Re-Entry Center.

Signed: July 22, 2020

/s/ Max O. Cogburn, Jr.

Max O. Cogburn, Jr.

United States District Judge