

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,
Plaintiff,

v.

Criminal No. 2:04cr22
2:06cr6

KENNETH DOUGLAS KEY,
Defendant.

REPORT AND RECOMMENDATION/OPINION

On the 2nd day of December 2010, came the defendant, Kenneth Douglas Key, in person and by his counsel, L. Richard Walker, and also came the United States by its Assistant United States Attorney, Stephen D. Warner, pursuant to a Petition for Warrant or Summons for Offender Under Supervision filed in this case on July 29, 2010, alleging:

- 1) Violation of Mandatory Condition: The defendant shall not commit another federal, state, or local crime.
- 2) Violation of Mandatory Condition: The defendant shall not illegally possess a controlled substance.

Prior to receiving evidence in the matter, Defendant, through counsel, advised that he was willing to admit to the violations contained in the Petition, waive both the preliminary and final revocation hearings, have the undersigned United States Magistrate Judge make a recommendation to the United States District Judge regarding the disposition of the matter, and, if the United States District Judge determined the recommended disposition was appropriate, to have the United States District Judge enter an appropriate revocation and sentencing order, including but not limited to a Judgment and Commitment Order, without additional hearings and in the absence of Defendant. The United States concurred in the recommended disposition.

Thereupon, the undersigned Magistrate Judge inquired of Defendant and from said inquiry determines and finds Defendant's admission to the violations, waiver of the preliminary, final revocation, and sentencing hearings, and willingness to have the undersigned recommend certain disposition to the District Judge were all freely, knowingly, and voluntarily made.

Upon consideration of all which, the undersigned United States Magistrate Judge finds Defendant did violate his Conditions of Supervised Release as alleged in the Petition filed July 29, 2010.

The undersigned further respectfully **RECOMMENDS** to Chief United States District Judge John Preston Bailey, the following, which are agreed upon by Defendant and the United States:

- 1) Defendant's period of supervised release be revoked.
- 2) Defendant be sentenced without additional hearing to a term of incarceration of five (5) months, followed by a term of supervised release of thirty-six (36) months.
- 3) Defendant be permitted to remain on release pursuant to Conditions of Release until after January 1, 2011.
- 4) Defendant be permitted to self-surrender to a designated BOP facility on or after that date.
- 5) The Court request Defendant be designated to a facility the lowest designation level, and nearest to his place of residence in Ohio.

Upon inquiry of Defendant, the undersigned finds Defendant understands that the Chief District Judge is not bound by or required to accept the foregoing recommendations and may order him to appear before the Court and may sentence him to a sentence greater than that agreed upon by the parties and recommended by the undersigned.

Any party may, within fourteen (14) days after being served with a copy of this Report and Recommendation, file with the Clerk of the Court written objections identifying the portions of the

proposed Report and Recommendation to which objection is made and the basis for such objection. A copy of such objections should also be submitted to the Honorable John Preston Bailey, Chief United States District Judge. Failure to timely file objections to the proposed Report and Recommendation set forth above will result in waiver of the right to appeal from a judgment of this Court based upon such proposed findings and recommendation. 28 U.S.C. § 636(b)(1); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); Thomas v. Arn, 474 U.S. 140 (1985).

The Clerk of the United States District Court for the Northern District of West Virginia is directed to provide a copy of this proposed Report and Recommendation to counsel of record.

DATED: December 2, 2010.

John S. Kaul

JOHN S. KAULL

UNITED STATES MAGISTRATE JUDGE