

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

UNITED STATES OF AMERICA

v.

CRIMINAL ACTION NO. 1:12CR97

TAMMY KENNEDY,
Defendant.

ORDER/OPINION

On the 6th day of May, 2013, came the United States of America by Shawn A. Morgan, its Assistant United States Attorney, and also came the defendant, Tammy Kennedy, in person, and by her counsel, Craig P. Erhard, for hearing on an Amended Petition for Action on Conditions of Pretrial Release (post-plea) [Docket Entry 72] filed by Matthew Schmitt, Defendant's Adult Pretrial Services Officer, on May 1, 2013, alleging:

- 1) Violation of Condition 7(m): The defendant must not use or unlawfully possess a narcotic drug or other controlled substance defined in 21 USC section 802 unless prescribed by a medical practitioner.
- 2) Violation of Condition 7(t): The defendant must not purchase, possess or consume any organic or synthetic intoxicants, including bath salts, synthetic cannabinoids or other designer stimulants.
- 3) Violation of Condition 7(m): The defendant must not use or unlawfully possess a narcotic drug or other controlled substance defined in 21 USC section 802 unless prescribed by a medical practitioner.
- 4) Violation of Condition 7(s): The defendant must not purchase, possess or use any

paraphernalia related to any controlled substance.

Prior to the taking of evidence, Defendant admitted the violations contained in the Amended Petition. Upon inquiry, the Court determined Defendant's admission was knowingly, freely, and voluntarily made.

The Government invoked mandatory detention pursuant to Title 18, United States Code, Section 3143(a)(2). Defendant, through counsel, advised she was not objecting to detention.

Upon consideration of all which, the Court finds by clear and convincing evidence that Defendant violated her conditions of pretrial release¹.

The Government's Motion to Detain is **GRANTED**. Defendant is remanded to the custody

¹Defendant was released on an Order Setting Conditions of Release signed by the Magistrate Judge on October 15, 2012 [DE 9]. November 28, 2012 Defendant pled guilty before the District Judge and was continued on release [DE 38 and 39]. December 3, 2012 the Probation Officer filed a petition and filed a second or amended petition on December 4, 2012 [DE 41, 42, 43, 44, 45, 46, 49, 50]. A bond revocation hearing was held before the Magistrate Judge on December 18, 2012 resulting in denial of the government's motion to revoke and detain Defendant and the entry of an order on December 18, 2012 further restricting Defendant in order to address her needs and the concerns the Magistrate Judge expressed on the record of the hearing [DE 52].

Thereafter, by sealed motion filed [DE 53] by the United States and joined in by counsel for Defendant, the District Judge was requested to modify Defendant's original conditions of release established by the Order dated October 15, 2012. The DE 53 motion did not mention or note the intervening revocation hearing of December 18, 2012 or Order resulting therefrom. Nor did counsel advise the District Judge of the Magistrate Judge's concerns expressed during the December 18th, 2012 hearing.

Absent the information from the Magistrate Judge's order and December 18, 2012 concerns expressed on the record and being provided with only the government's motion concurred in by counsel for Defendant, the District Judge entered a series of orders modifying Defendant's October 15, 2012 conditions of release and continuing Defendant's sentencing [DE 57, 59, 60 and 61].

Thereafter, the Defendant committed the violations which now bring the Defendant before the undersigned Magistrate Judge and resulted in this Order of revocation.

of the United States Marshal pending further proceedings in this matter.

It is so **ORDERED**.

The Clerk shall file this Order and direct copies of this order to counsel for the United States, to counsel for the defendant, to the United States Marshal, and to the United States Probation Officer.

DATED: May 7, 2013.

John S. Kaul
JOHN S. KAULL
UNITED STATES MAGISTRATE JUDGE