

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA :

vs.

NO.

**MOTION TO DISMISS PETITION REGARDING
REVOCATION OF SUPERVISED RELEASE**

Introduction

Defendant moves to dismiss the Petition For Warrant or Summons For Offender Under Supervision. The grounds for dismissal is that his hearing was not held within a "reasonable" period of time, as required by Fed.R.Cr.P. 32.1(b)(2).

Defendant will appear before the Court for a hearing on [REDACTED]. The Government attorney, [REDACTED], does not object to the time of filing of the instant motion.

The undersigned believes the facts concerning delay are not in dispute and the legal issue can be quickly resolved by the Court.

Procedural Background

1. Defendant began a three-year term of supervised release on [REDACTED]. Absent the pending violations, supervision will end on [REDACTED].

2. According to the petition, Defendant initially did well on supervision. He obtained a commercial driver's license and worked at [REDACTED]. He later took a job at [REDACTED], although he was terminated in that job in [REDACTED].

██████████ He later worked at ██████████ and did well until he quit because of physical problems. He worked other short-term jobs, and he has paid a total of \$2174.02 on restitution.

3. Around ██████████, the Defendant absconded supervision. He traveled to Florida, where he found employment.

4. On ██████████, the Court issued a warrant for Defendant's arrest. Defendant was arrested in Florida on ██████████. (EX 1).

5. Defendant appeared before a Florida Magistrate Judge on ██████████. Defendant was ordered removed to the MDNC. (EX 2 & 3).

6. The Defendant arrived in the MDNC around ██████████. He signed a waiver of detention hearing on ██████████. (EX 4).

7. Magistrate Judge ██████████ approved the waiver and ordered detention on February 25. Judge ██████████'s order states that the "revocation hearing will be noticed by the Clerk's office." (EX 5).

8. The docket report for this case shows that on ██████████, the hearing was set for ██████████. Defense does not know why there was a delay in setting the case for a hearing.

9. From the date of arrest in Florida (██████████) until the revocation hearing (██████████) 98 days will have elapsed. From the date that Defendant arrived in the MDNC (██████████) until

██████████ 86 days will have elapsed. From the date that Magistrate Judge ██████████ accepted Defendant's waiver of detention and probable cause hearing (██████████) until ██████████ 70 days will have elapsed.

Law and Argument

9. Federal Rule of Criminal Procedure 32.1 provides the rule regarding timing of a revocation hearing. A district court "must hold the revocation hearing within a reasonable time in the district having jurisdiction." F.R.Cr.P. 32.1(b)(2).

10. The Advisory Committee Notes to Rule 32.1 provide the following guidance:

Subdivision (a)(2) mandates a final revocation hearing within a reasonable time to determine whether the probationer has, in fact, violated the conditions of his probation and whether his probation should be revoked. Ordinarily this time will be measured from the time of the probable cause finding However, what constitutes a reasonable time must be determined on the facts of the particular case, such as whether the probationer is available or could readily be made available.

Although the Advisory Committee note only refers to "probation" as opposed to supervised release, the analysis of delay will be identical for probation and supervised release cases. See, United States v. Sanchez, 225 F.3d 172, 175 (2d Cir. 2000).

11. Exhibit 6 (attached) is the unpublished case of United States v. Ruiz, 2007 WL 1437485 (D.Puerto Rico 2007). The Ruiz court found that a 70-day delay from the time that the defendant

was returned to Puerto Rico until the revocation hearing, was unreasonable. That district judge dismissed the petition. Likewise, dismissal is appropriate in the instant case.

12. In evaluating whether delay is reasonable, courts have also been guided by cases examining the Sixth Amendment right to a speedy trial. United States v. Rasmussen, 881 F.2d 395, 398 (7th Cir. 1989), *citing* Barker v. Wingo, 407 U.S. 514 (1972)(factors include length of delay, reason for delay, defendant's assertion of his right, and prejudice to defendant). The Rasmussen court held that a 13-month delay from notice of a probation action until the hearing date was not unreasonable. *See also*, United States v. Blunt, 680 F.2d 1216 (8th Cir. 1982)(10 month delay from state conviction to federal probation revocation not unreasonable).

13. In United States v. Grimmond, 137 F.3d 823, 827 (1998), the Fourth Circuit found no Sixth Amendment violation with a 35-month delay from indictment to arraignment.

14. Returning to the instant case, Defendant signed a waiver of detention hearing and preliminary exam on [REDACTED], which waiver was accepted on February 25. For some reason, no hearing date was set until on or about April 24, almost two months later. From the date of arrest in Florida ([REDACTED]) until the revocation hearing ([REDACTED]) 98 days elapsed, from the date that Defendant arrived in the MDNC ([REDACTED]) until [REDACTED]

●, 86 days elapsed, and from the date that Magistrate Judge Eliason accepted Defendant's waiver of detention and probable cause hearing [REDACTED] 70 days have elapsed.

Conclusion

This Court should dismiss the petition in this Defendant's case and order him returned to supervision. He will have less than two months remaining on his supervised release term. He will abide by the conditions placed on him and complete this supervision. He will have been punished for absconding supervision by the 98 days of imprisonment that he has served.

Respectfully submitted, [REDACTED].

[REDACTED]
Federal Public Defender

/s/ [REDACTED]
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:

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[REDACTED]

[REDACTED]

CERTIFICATE OF SERVICE

I hereby certify that on [REDACTED] [REDACTED] [REDACTED], I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: [REDACTED].

Respectfully submitted, [REDACTED].

[REDACTED]

Federal Public Defender

/s/ [REDACTED]

Assistant Federal Public Defender

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