

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES RESPONSE TO MOTION TO MODIFY RELEASE CONDITIONS

The defendant, Robert Pawlowski, filed a motion (Doc. 117) requesting that this Court modify his supervised release conditions to permit him to use “medical” marijuana. The motion requests authorization to violate federal law and a mandatory condition of federal supervised release. The motion should be denied.

Marijuana possession is illegal under federal law. 21 U.S.C. § 844(a). Federal defendants who are on supervised release must be subject to a condition that they “not commit another Federal, State, or local crime during the term of supervision. . . .” 18 U.S.C. §§ 3583(d). In 2019, Mr. Pawlowski was released to supervised release after he completed his prison sentence for attempting to entice a minor to engage in sexual conduct with him. One of his release conditions is that he “not commit another Federal, state, or local crime. . . .” (Doc. 77).

Mr. Pawlowski's pending motion indicates that he recently obtained a certification to use medical marijuana to treat anxiety. The motion and its exhibits contain very few details regarding his anxiety and what other treatment options were attempted. Mr. Pawlowski's Pre-sentence Report demonstrates that he previously abused controlled substances, including marijuana, for years starting in childhood. The PSR also indicates that his anxiety was being effectively treated, while pending sentencing, through non-marijuana prescription medication. It should be noted that he tested positive for marijuana use in 2020 prior to being certified to use medical marijuana.

Neither the pending motion, nor the exhibits that were included with it, explain why it is necessary for Mr. Pawlowski to violate federal law and a mandatory release condition by using marijuana. His history of abusing controlled substances, including marijuana, starting in childhood and extending well into his adult years, in addition to his positive test for marijuana in 2020, is a factor that weighs heavily against marijuana use while on supervised release in violation of federal law. *See, e.g., United States v. Anderson*, Crim. No. 12-200, Doc. 547, p. 1 (W.D.Pa. Feb. 26, 2020) (denying motion to use medical marijuana while on federal supervised release because of, among other reasons, the defendant's history of substance abuse). His prior effective treatment of his anxiety through non-marijuana prescription medications is also a factor that does not support a conclusion that Ms. Pawlowski must use marijuana in violation of federal law while on supervised release.

Many federal courts in this district and elsewhere, although not all federal courts, have denied motions, like the pending motion, requesting authorization to use marijuana while on federal pretrial or supervised release. *See, e.g., United States v. Schostag*, 895 F.3d 1025, 1028 (8th Cir. 2018) (concluding that the "use of marijuana – even for medical purposes – contravenes federal law" and a "district court ha[s] no discretion to allow [a federal supervisee] to use medical marijuana"); *United States v. Bey*, 341 F.Supp.3d 528, 531-32 (E.D.Pa. 2018) (joining what was described as a "chorus of federal courts around the country" by "concluding a federal supervisee's state-authorized possession and use of medical marijuana violates the terms of federal supervised release"); *United States v. Perla*, Crim. No. 20-281, Doc. 32, p. 4 (W.D.Pa. Feb. 9, 2021) (denying motion to use medical marijuana while on pretrial release because, "although Pennsylvania has legalized medical marijuana use under certain regulated conditions, the possession of marijuana violates federal law, contrary to the clear requirement of the Bail Reform Act"); *United States v.*

Anderson, Crim. No. 12-200, Doc. 547, p. 1 (W.D.Pa. Feb. 26, 2020) (denying motion to use medical marijuana while on federal supervised release because it would violate federal law and the defendant had a history of substance abuse).

In the brief (Doc. 118) Mr. Pawlowski submitted in support of his pending motion, he argues that his motion should be granted because of, according to the defense brief, Section 531 of “the Consolidated Appropriations Act, 2020, funding the federal government through September 30, 2020. See Consolidated Appropriations Act, 2020, Pub. L. No. 116-93, 133 Stat. 2317 (2019).” Even if the appropriation rider relied upon by Mr. Pawlowski limits the expenditure of Department of Justice funds in a manner that would restrict the DOJ’s ability to enforce federal law, it does not affect this Court’s or the United States Probation Office’s capacity and responsibility to apply federal law and mandatory release conditions. *See, e.g., United States v. Nixon*, 839 F.3d 885, 887-88 (9th Cir. 2016) (affirming the district court’s order denying a motion to modify release conditions to allow medical marijuana use, based on the then-applicable appropriations rider, because the rider does not restrict federal courts or federal probation offices and “restricts only the DOJ’s ability to use certain funds on particular prosecutions during a specific fiscal year”); *United States v. Perla*, Crim. No. 20-281, Doc. 32, p. 7-8 (W.D.Pa. Feb. 9, 2021) (denying motion to use medical marijuana while on pretrial release and noting that the defendant’s reliance on an appropriations rider was, at best, premature because there was no pending violation petition).

Mr. Pawlowski’s pending motion should be denied. This Court should not authorize a defendant to violate federal law and a mandatory release condition while on federal supervised release, particularly not when the defendant has a significant history of substance abuse. This Court should likewise refuse to effectively immunize a defendant from any sanctions for violating

federal law by preemptively condoning a violation of a mandatory release condition. The United States Probation Office was consulted concerning the pending motion and expressed that the Office does not support the violation of federal law.

Respectfully submitted,

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