

**UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA**

<b>UNITED STATES OF AMERICA</b>	)	
	)	
Plaintiff,	)	<b>3:01-cr-00035JWS</b>
	)	
vs.	)	<b>ORDER FROM CHAMBERS</b>
	)	
<b>DAVID JOHNSON,</b>	)	<b>[Re: Petitions at dockets 42 and 49 ]</b>
	)	
Defendant.	)	
	)	

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**I. BACKGROUND**

At docket 42, a petition to revoke David Johnson's supervised release was filed. An amended petition was filed at docket 49. The amended petition at docket 49 sets out three violations of the conditions of Johnson's supervised release. Charged violation 1 was commission of the crime of Assault in the Fourth Degree witnessed by a minor child, a Grade A violation. Charged violation 2 was excessive use of alcohol, a Grade C violation. Charged violation 3 was failure to make payments on a fine when they were due, a Grade C violation. Defendant consented to have the magistrate judge conduct an evidentiary hearing on the charged violations. Magistrate Judge Roberts conducted the hearing, and a transcript was prepared and filed at docket 53. The magistrate judge filed an initial report and recommendation at docket 55 in which he recommended that charged violations 2 and 3 be dismissed for lack of sufficient evidence, but that charged violation 3 was established and should proceed to disposition. Johnson filed a timely objection, and the magistrate judge granted him leave to submit additional evidence. The government responded to Johnson's objection. Thereafter, the magistrate judge issued an amended report at docket 62. No

objections were filed to the amended recommendation. The amended recommendation added a discussion supporting the conclusion that charged violation 1 was a Grade A violation.

## **II. STANDARD OF REVIEW**

The district court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.”<sup>1</sup> When reviewing a magistrate judge’s report and recommendation in a case such as this one, the district court conducts *de novo* review of all conclusions of law,<sup>2</sup> and any findings of fact to which objections have been made.<sup>3</sup> Uncontested findings of fact are reviewed for clear error.<sup>4</sup>

## **III. DISCUSSION AND CONCLUSION**

This court has reviewed the file and applied the standard of review articulated above. Based thereon, this court can find no fault with the magistrate judge’s recommended findings and conclusions. Magistrate Judge Roberts has correctly found the facts and applied the law in his initial report as modified by his amended report. For the preceding reason, this court adopts the findings of fact and conclusions of law recommended by the magistrate judge. Based on the preceding,

### **IT IS ORDERED:**

- 1) David Johnson is adjudged guilty of Violation 1.
- 2) Violation 1 is a Grade A violation.

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<sup>1</sup>28 U.S.C. § 636(b)(1).

<sup>2</sup>*Barilla v. Ervin*, 886 F.2d 1514, 1518 (9<sup>th</sup> Cir. 1989), *overruled on other grounds by Simpson v. Lear Astronics Corp.*, 77 F.3d 1170, 1174 (9<sup>th</sup> Cir. 1996).

<sup>3</sup>28 U.S.C. § 636(b)(1).

<sup>4</sup>*Taberer v. Armstrong World Industries, Inc.*, 954 F.2d 888, 906 (3d Cir. 1992).

3) This court will conduct a disposition hearing on June 15, 2006, at 9:00 AM.

4) Violations 2 and 3 are each **DISMISSED**.

DATED at Anchorage, Alaska, this 6th day of June, 2006.

/s/  
JOHN W. SEDWICK  
UNITED STATES DISTRICT COURT JUDGE