

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

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UNITED STATES OF AMERICA,

Plaintiff,

ORDER

v.

92-CR-59-C-01

MARK HERMAN,

Defendant.  
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A hearing on the revocation of Mark Herman's supervised release was held in this case on July 30, 2004, before United States District Judge Barbara B. Crabb. The government appeared by Assistant United States Attorney Timothy O'Shea. Defendant was present in person and by counsel, Jill Burchardt. Also present was United States Probation Officer Michael D. Harper.

From the record and defendant's stipulation to the violation charged against him, I make the following findings of fact.

FACTS

Defendant was sentenced in the Western District of Wisconsin on November 19,

1992, following his conviction for possession with intent to distribute cocaine in violation of 21 U.S.C. § 841(a)(1), a Class B felony; and for use of a firearm during a drug crime in violation of 18 U.S.C. § 921(c)(1), a class D felony. Defendant was committed to the custody of the Bureau of Prisons to serve a term of imprisonment of 92 months for the drug offense and also ordered to serve a consecutive 60-month term of imprisonment for the firearm offense, for a total term of imprisonment of 142 months. A five-year term of supervised release was to follow the term of imprisonment.

On June 19, 1996, I vacated defendant's sentence because the government conceded that it could not prove that defendant had possessed or used a firearm during the commission of the drug offense. On October 22, 1996, I re-sentenced the defendant to a 110-month term of imprisonment for possession with intent to distribute cocaine, a class B felony, in violation of 21 U.S.C. § 841(a)(1). The five-year term of supervised release remained in effect.

Among other special conditions of supervised release, defendant was required to abstain from the use of alcohol and illegal drugs and from associations with drug users and sellers. Defendant began his term of supervised release on April 3, 2000. On May 13, 2004, he was given a breath test by staff at Attic Correctional Services. The test scored an alcohol content of .108. A second breath test scored .056. Defendant admitted to staff that he had consumed alcohol to excess on May 12, 2004, and was suffering from a "hangover."

Defendant has stipulated that he violated special condition #1 requiring him to abstain from alcohol use by consuming alcohol to excess on May 12, 2004, and testing positive for the use of alcohol on May 13, 2004.

Defendant's conduct falls into the category of Grade C violations, as defined by § 7B1.1(a)(3)(B) of the sentencing guidelines policy statement for violations of supervised release. In addressing such violations, the court has the discretion to revoke supervised release, extend it or modify the conditions of release.

### CONCLUSIONS

Defendant's violation does not require revocation. Defendant acknowledges his drinking problem and has scheduled an intake assessment for August 10, 2004, at Lutheran Social Services to determine his course of treatment through this agency. I am convinced that defendant is motivated to overcome his addiction and deserves another opportunity for treatment in the community.

Accordingly, after reviewing the non-binding policy statements in Chapter 7 of the sentencing guidelines, I have decided that modification of defendant's supervised release is sufficient to ensure that defendant remains in compliance with his conditions. A modification will also provide defendant with the structure to overcome his alcohol addiction and help him complete his supervised release successfully. Modifying defendant's term of

supervised release to include a 60-day term of home confinement with electronic monitoring and prohibiting defendant from frequenting establishments where alcohol is the principal item of sale will address the seriousness of the violation and protect the community.

#### ORDER

IT IS ORDERED that defendant's term of supervised release imposed on November 19, 1992, is modified to include the following special conditions: Special Condition #4: "Defendant shall not enter any place where alcohol is the principal item of sale" and Special Condition #5: "Defendant is to participate in home confinement with electronic monitoring or other local verification system for a period of 60 days. Defendant is required to pay a rate not to exceed \$3.47 per day. Defendant is restricted to his residence between the hours of 9:30 p.m. and 7:00 a.m. daily, unless he obtains advance approval from his supervising probation officer to leave his residence for work, attending substance abuse counseling and treatment or participating in mental health counseling." The term of home confinement is to commence no later than August 13, 2004.

Entered this 30th day of July 2004.

BY THE COURT:

BARBARA B. CRABB

Chief District Judge