

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

UNITED STATES OF AMERICA,

Plaintiff,

ORDER

v.

95-CR-67-C-02

JOEY HICKS,

Defendant.

A hearing on the revocation of Joey Hicks's supervised release was held in this case on February 8, 2007, before United States District Judge Barbara B. Crabb. The government appeared by Assistant United States Attorney Rita Rumbelow. Defendant was present in person and by counsel, Traci Tadwalt. Also present was United States Probation Officer Michael D. Harper.

From the record and defendant's stipulations, I make the following findings of fact.

FACTS

Defendant was sentenced in the Western District of Wisconsin on April 2, 1996,

following his conviction for malicious destruction of property used in interstate commerce, in violation of 18 U.S.C. § 844(I). This crime is a Class C felony. Defendant was committed to the custody of the Bureau of Prisons to serve a term of imprisonment of 100 months, with a 36-month term of supervised release to follow, and ordered to pay restitution in the amount of \$67,519.92.

On January 6, 2004, defendant began his term of supervised release. On September 15, 2004, I modified the conditions of his release by adding special condition No. 2, requiring the defendant to abstain from all use of alcohol.

Defendant has stipulated that he violated general condition No. 1 on June 17, 2005, by committing a state felony (theft of movable property with a value greater than \$5,000 but less than \$10,000), as charged in the Circuit Court for Adams County, Wisconsin, case no. 2005CF000078.

Defendant's state conviction falls into the category of a Grade B violation, as defined by 7B1.1(a)(2) of the sentencing guidelines policy statement for violations of supervised release. In addressing such violations, the prescribed penalties include revocation of supervised release.

CONCLUSIONS

The three-year term of supervised release imposed on defendant on April 2, 1996,

will be revoked. A Grade B violation and a criminal history category of VI result in a guideline range of imprisonment of 21 to 27 months. However, the statutory maximum custody sentence to which defendant can be sentenced upon revocation is 24 months, pursuant to 18 U.S.C. § 3583(e)(3), which provides that a person whose term of supervised release is revoked may not be required to serve more than two years' custody if the offense for which he was sentenced previously was a class C felony. This statutory cap makes the advisory guideline range of imprisonment 21 to 24 months.

I have selected a sentence below the guideline range. A sentence of 12 months to be run consecutively to the three-year sentence imposed upon defendant in state court, it will be sufficient to hold defendant accountable for his criminal activity, reflect the seriousness of his conduct and protect the community.

ORDER

IT IS ORDERED that the period of supervised release imposed on defendant is REVOKED and defendant is committed to the custody of the Bureau of Prisons for a term of 12 months to be served consecutively to the three-year term of imprisonment imposed on defendant in the Circuit Court for Adams County, Wisconsin, case no. 2005CF00078. I recommend that defendant serve the last 30 days of his confinement in a federally approved

residential re-entry center with work release privileges. No term of supervised release will follow imprisonment. Defendant is to be registered with local law enforcement agencies and the state attorney general before his release from confinement. The restitution obligation imposed on defendant on April 2, 1996, is affirmed. Defendant is to make restitution in the amount of \$50,639.94 to Nautilus Insurance Company and in the amount of \$16,879.98 to Lloyds of London.

Defendant does not have the financial means or earning capacity to pay the cost of incarceration.

Entered this 9th day of February, 2007.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge