

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

THANH QUOC NGUYEN,

Defendant.

ORDER

96-CR-87-C-01

A hearing on the revocation of Thanh Quoc Nguyen's supervised release was held in this case on October 2, 2003, before United States District Judge Barbara B. Crabb. The government appeared by Assistant United States Attorney Laura Przybylinski Finn. Defendant was present in person and by counsel, Adrienne Borisy. Also present was United States Probation Officer Paul G. Billmeyer.

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

FACTS

Defendant was sentenced in the Western District of Wisconsin on April 25, 1997, following his conviction for attempting to obtain bank funds by false pretenses, in violation

of 18 U.S.C. § 1344(2), a Class B felony. He was committed to the custody of the Bureau of Prisons to serve a term of imprisonment of 24 months, with a five-year term of supervised release to follow. Defendant was further ordered to pay \$33,976.68 in restitution. Defendant began his term of supervised release on August 19, 1998.

As a general condition of supervised release, defendant was prohibited from committing another federal, state, or local crime

Defendant stipulates that he violated standard condition #1 of his supervised release, prohibiting him from committing another federal, state or local crime when he caused criminal damage to property in the fourth degree. Defendant was convicted of this offense on October 2, 2001, in Ramsey County, Minnesota, case # K2-00-1425.

Defendant's conduct falls into the category of a Grade C violation, as defined by § 7B1.1(a)(3)(A) of the sentencing guidelines policy statement for violations of supervised release. Section 7B1.3(a)(2) provides that upon a finding of a Grade C violation, the court has the discretion to revoke supervised release, extend it or modify the conditions of supervision.

CONCLUSIONS

Defendant's violation requires revocation. On August 19, 1998, defendant completed his sentence and was released to the Immigration and Naturalization Service for possible deportation. Defendant was released by the INS on December 22, 1998, without notification to the U.S. Probation Office. The probation office did not know that defendant was out of custody until his arrest in Minnesota during August 2001. Defendant was later convicted in Ramsey County, Minnesota, of criminal damage to property and has a charge of felony theft pending in Hennepin County, Minnesota, and is subject to Minnesota detainers because he fled the state of Minnesota. Defendant's whereabouts remained unknown until his arrest in California on August 5, 2003. Defendant's conviction and flight warrant revocation. Accordingly, the five-year term of supervised release imposed on defendant on April 25, 1997, will be revoked.

Defendant's original criminal history category was III. A Grade C violation and a criminal history category III result in a guideline range of 5-11 months. The statutory maximum to which defendant can be sentenced upon revocation is three years, 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 three years if the offense for which he was sentenced previously was a Class B felony.

After reviewing the non-binding policy statement in Chapter 7 of the sentencing

guidelines, I have selected a sentence at the bottom of the guideline range. When coupled with a halfway house placement such sentence will hold defendant accountable for his behavior, protect the community and address defendant's special needs. Defendant will be ordered to reside in a community corrections center in Minneapolis, Minnesota, where members of the Vietnamese community are willing to assist him in learning English and in finding employment.

ORDER

IT IS ORDERED that the period of supervised release imposed on defendant on April 25, 1997, is REVOKED and defendant is committed to the custody of the Bureau of Prisons for a term of five months. A four-year period of supervised release shall follow with all conditions previously ordered remaining in effect. As an additional special condition of supervised release, defendant shall reside in a federally approved community corrections center, namely the Volunteers of America, 2825 East Lake St., Minneapolis, Minnesota, for six months with work release privileges. Defendant is to abide by all rules and regulations of the facility and attend English as a Second Language classes. Defendant will be required to pay 25 percent of his gross pay as per diem as well as pay all medical expenses. It is further ordered that after defendant's release from the Volunteers of America, he is to continue attending English as a Second Language classes until his instructors and his

supervising probation officer determine that his attendance is not needed.

Defendant is to be registered with local law enforcement agencies and the state attorney general before his release from confinement.

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

Entered this 2nd day of October, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge