

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

FREDRICK CUNNINGHAM,

Defendant.

ORDER

98-CR-77-C-01

A hearing on the revocation of Fredrick Cunningham's supervised release was held on February 21, 2007, before United States District Judge Barbara B. Crabb. The government appeared by Assistant United States Attorney Timothy M. O'Shea. Defendant was present in person and by counsel, Erika Bierma. Also present was Senior United States Probation Officer Helen H. Raatz.

From the parties' stipulation, I make the following findings of fact.

FACTS

Defendant was sentenced in the Western District of Wisconsin on December 16, 1998, following his conviction for bank robbery in violation of 18 U.S.C. § 2113(a). This offense is a Class C felony. Defendant was committed to the custody of the Bureau of

Prisons to serve a term of imprisonment of 96 months with a three-year term of supervised release to follow.

As a mandatory condition of supervised release, defendant was prohibited from committing another federal, state or local crime. As standard conditions, he was required to work regularly at a lawful occupation and to notify the probation officer within 72 hours of any change in residence or employment. As a special condition, he was required to abstain from the use of alcohol and participate in alcohol testing as required by the probation officer.

Defendant began his term of supervised release on October 13, 2005. On November 7, 2005, after defendant was discharged from the Fahrman Center in Eau Claire, Wisconsin, for failing to follow rules and for consuming alcohol, I modified the conditions of supervised release to include a special condition requiring him to reside at the Chippewa County jail in Chippewa Falls, Wisconsin, for a period of not less than 30 days and not more than 120 days.

On March 23, 2006, the probation office filed a violation report in response to defendant's failure to work regularly and notify the probation officer of his change of employment; his failure to notify his probation officer within 72 hours of his change in residence; and his failure to report for alcohol testing as directed. On March 24, 2006, I ordered that a warrant be issued for defendant's arrest.

On January 5, 2007, I ordered that defendant's arrest and conviction on new traffic offenses in Dooly County, Georgia, be considered at this judicial review hearing. The arrests and convictions were for driving under the influence, suspended license, reckless driving while driving under the influence, failure to stop for blue lights and siren, open container, giving false name and date of birth, expired tag and failure to maintain lane. He was also found in contempt of court.

Defendant has stipulated that he violated the mandatory condition that prohibits him from committing a new federal, state or local crime. As noted above, he was arrested on May 25, 2006, in Dooly County, Georgia, on multiple traffic law violations. On June 6, 2006, he was convicted of these violations.

Defendant has stipulated that he violated Special Condition No. 5, which requires him to work regularly at a lawful occupation, and Special Condition No. 6, which requires him to notify the probation officer within 72 hours of any change in residence or employment. On March 20, 2006, defendant left his employment and residence and never returned.

Defendant has stipulated that he violated Special Condition No. 2, which required him to report for alcohol testing. Beginning on March 20, 2006, defendant failed to report for all required alcohol testing.

Defendant's conduct falls into the category of Grade C violations, as defined by

§7B1.1(a)(3) 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 violations warrant revocation. Accordingly, the three-year term of supervised release imposed on defendant on December 16, 1998, will be revoked.

Defendant's original criminal history category was VI. With a Grade C violation and a criminal history category of VI, his guideline range would be 8 to 14 months' imprisonment. The statutory maximum 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 if the offense for which he was sentenced previously was a Class C felony.

After reviewing the non-binding policy statements of Chapter 7 of the sentencing guidelines, I have selected a sentence above the guideline range. The intent of this sentence is to impress upon defendant the seriousness of his substance abuse problem, to insure the safety of the community at large and to afford him an opportunity to participate in the 500-hour residential substance abuse treatment program offered by the Bureau of Prisons.

ORDER

IT IS ORDERED that the period of supervised release imposed on defendant on December 16, 1998, is REVOKED and defendant is committed to the custody of the Bureau of Prisons for a term of 24 months. No term of supervised release shall follow the sentence of imprisonment. Defendant does not have the financial means or earning capacity to pay the cost of incarceration. Execution of this sentence will begin immediately.

Entered this 21st day of February 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

Chief District Judge