

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

UNITED STATES OF AMERICA,

Plaintiff,

ORDER

v.

99-CR-66-C-01

WARREN J. BRAZEAU,

Defendant.

A hearing on the revocation of Warren J. Brazeau's supervised release was held in this case on September 3, 2003, before United States District Judge Barbara B. Crabb. The government appeared by Assistant United States Attorney Beth Altman. Defendant was present in person and by counsel, Kim Zion. Also present was United States Probation Officer Paul G. Billmeyer.

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

FACTS

Defendant was sentenced in the Western District of Wisconsin on November 19, 1999, following his conviction for felon in possession of a firearm, in violation of 18 U.S.C.

§ 922(g). 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 33 months, with a 36-month term of supervised release to follow.

As mandatory conditions of supervised release, defendant was not to commit another federal, state or local crime or illegally possess controlled substances. As a special condition of supervised release, defendant was to abstain from alcohol and illegal drug use.

Defendant began his first term of supervised release on February 25, 2002. On September 26, 2002, I revoked defendant's term of supervised release after he had violated state law by operating a motor vehicle on July 16, 2002, after his driving privileges had been revoked, and illegally possessing four diazepam pills that had not been prescribed for him. (Diazepam is a Schedule IV controlled substance.) I committed defendant to the custody of the Bureau of Prisons for a term of four months with a 24-month term of supervised release to follow.

Defendant began his second term of supervised release on December 30, 2002. On February 20, 2003, in response to his failure to complete his stay in a community corrections center, I modified the conditions of his release by adding special condition #6, requiring him to participate in a program of home detention with electronic monitoring for up to 90 days.

Defendant stipulates that he has violated the mandatory conditions of his supervised release requiring him not to commit another crime or illegally possess a controlled substance.

He was arrested on May 27, 2003, by Eau Claire, Wisconsin, police officers and charged with possession of drug paraphernalia, possession of THC, and possession of a prescription drug (Wellbutrin). In addition, defendant violated special condition #2 of his supervised release, requiring him to abstain from illegal drug use, by using marijuana on or around July 9, 2003 and may have ingested D-Methamphetamine inadvertently while smoking parts of three marijuana cigarettes. On August 4, 2003, defendant submitted a urine specimen which tested positive for the use of THC metabolite and cocaine. All of the drug use is confirmed either by a positive urine specimen or by his admission to his probation officer.

Each of defendant's controlled substances violations is categorized as a Grade C violation.

CONCLUSIONS

Defendant's violations require revocation. Accordingly, the two-year term of supervised release imposed on defendant on September 26, 2002, will be revoked.

Defendant's original criminal history category was II. A Grade C violation and a criminal history category II result in a guideline range of 4 to 10 months. The statutory maximum to which defendant can be sentenced upon revocation is 20 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. Defendant's supervised release was previously revoked and he was sentenced to a four-month term of imprisonment.

After reviewing the non-binding policy statements in Chapter 7 of the sentencing guidelines, I have decided to sentence defendant at the top of the guideline range. I note that defendant's first term of supervised release was revoked for a new law violation and illegally possessing controlled substances, the same reasons for the current revocation. Defendant does not appreciate the seriousness of his substance abuse problem. He did not take advantage of the treatment opportunities available to him while on supervised release but continued to use drugs and associate with drug users, even after his arrest on May 27, 2003. The purpose of this sentence is to impress upon defendant the seriousness of his drug use, to afford him an opportunity to receive treatment in a controlled setting and to protect the community.

ORDER

IT IS ORDERED that the period of supervised release imposed on defendant on September 26, 2002, is REVOKED and defendant is committed to the custody of the Bureau of Prisons for a term of 10 months. No term of supervised release will follow the sentence of imprisonment. 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. Execution of this sentence will begin immediately.

Entered this 3d day of September, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge