

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

UNITED STATES OF AMERICA,

Plaintiff,

ORDER

v.

99-CR-93-C-01

GERMAN GONZALEZ,

Defendant.

A hearing on the revocation of German Gonzalez's supervised release was held in this case on June 20, 2003, before United States District Judge Barbara B. Crabb. The government appeared by Assistant United States Attorney David Reinhardt. Defendant was present in person and by counsel, Kelly Mueller. Also present was Senior United States Probation Officer William T. Badger, Jr.

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

FACTS

Defendant was sentenced in the Eastern District of Wisconsin on February 18, 1993,

following his conviction for conspiracy to possess and possession with intent to distribute in excess of 500 grams of cocaine (counts 1 and 4), in violation of 21 U.S.C. §§ 841(a)(1) and 846. These crimes are Class B felonies. Defendant was also convicted of possession with intent to distribute cocaine (counts 2, 3, 5, 6 and 7), in violation of 21 U.S.C. § 841(a)(1). These counts are Class C felonies. Defendant was committed to the custody of the Bureau of Prisons to serve a term of imprisonment of 96 months on all counts, with the terms of imprisonment to run concurrently with each other. The terms of imprisonment were to be followed by a five-year term of supervised release on each count with all terms running concurrently with each other.

As standard conditions of supervised release, defendant was ordered not to use controlled substances and report to the probation office as directed.

Jurisdiction of this matter was transferred from the Eastern District of Wisconsin to the Western District of Wisconsin on September 21, 1999. Defendant began his terms of supervised release on February 23, 2001.

Defendant violated standard condition #7 of supervised release, prohibiting him from using controlled substances when, on March 13, 2003, he submitted a urine sample that tested positive for cocaine. Additionally, he violated standard condition #2, ordering him to report to his probation officer as directed when, on April 3, 2003, he failed to appear for

an appointment at the probation office as directed and later absconded from supervision.

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. Section 7B1.3(a)(2) provides that upon a finding of a Grade C violation, the court may revoke supervised release, extend the term or modify the conditions of supervision.

CONCLUSIONS

Defendant's violations require revocation. Defendant used cocaine while on supervision and then absconded from the district. Accordingly, the five-year terms of supervised release imposed on defendant on February 18, 1993, will be revoked.

Defendant's original criminal history category at the time of sentencing was I. A grade C violation and criminal history category of I result in a guideline range of three to nine months. The statutory maximum to which defendant can be sentenced upon revocation on counts 1 and 4 is 36 months, because the offenses are Class B felonies. The statutory maximum to which defendant can be sentenced upon revocation on counts 2, 3, 5, 6, and 7 is 24 months, as these offenses are Class C felonies. Pursuant to 18 U.S.C. § 3583(e)(3), 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 or more

than two years if the offense was a Class C felony.

After reviewing the non-binding policy statements in Chapter 7 of the sentencing guidelines, I have selected a sentence at the bottom of the guideline range. This sentence is fashioned to protect the community and to provide treatment opportunities for defendant upon his release from custody. Except for this matter before the court, defendant did well in the community for 2 ½ years. He made a poor choice when he used cocaine and left the district instead of meeting with his probation officer.

ORDER

IT IS ORDERED that each of the terms of supervised release imposed on defendant on February 18, 1993, are REVOKED and defendant is committed to the custody of the Bureau of Prisons for three months, with all sentences to be served concurrently. This sentence is to be followed by a 24-month term of supervised release on each count, with each term of supervised release to be served concurrently with each other. I recommend that defendant serve his sentence at a facility near his home in Dane County, Wisconsin. All conditions of supervision previously imposed will remain in effect upon defendant's release from custody.

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.

Entered this 20th day of June, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge