

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

SAMUEL A. THORNTON,

Defendant.

ORDER

01-CR-95-C-02

A hearing on the revocation of Samuel A. Thornton's supervised release was held in this case on February 7, 2006, before United States District Judge Barbara B. Crabb. The government appeared by Assistant United States Attorney Timothy O'Shea. Defendant was present in person and by counsel Toni Laitsch. Also present was United States Probation Officer Michael D. Harper.

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 February 15, 2002, following his conviction for unlawful use of access devices, in violation of 18 U.S.C.

§ 1029(a)(2). Defendant's crime is classified as a Class C felony. He was committed to the custody of the Bureau of Prisons to serve a term of imprisonment of 18 months, with a 36-month term of supervised release to follow, and ordered to pay restitution in the amount of \$74,000.

As special conditions of supervised release, defendant was required to abstain from illegal drug use and from association with drug users and sellers and participate in substance abuse treatment and testing.

Defendant began his term of supervised release on June 4, 2003. On March 29, 2004, I modified special condition #2 to include a condition requiring defendant to abstain from all alcohol use. I modified the conditions of his release again by adding special condition #5, requiring defendant to be placed on home confinement with electronic monitoring for a period of 90 days.

Defendant has stipulated to violating standard condition #7 and special condition #2 by testing positive for marijuana use on November 15 and 16, 2005 and on December 12, 2005. In addition, he failed to report for drug testing on November 12, 2005, and then again on December 21, 22 and 27, 2005. His 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. 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 require revocation. Defendant has continued to use marijuana and has consistently thwarted rehabilitative attempts to correct the problems in his life. Although defendant admits to having an addiction to marijuana, he is unwilling to address that addiction. Instead, he made himself unavailable for required drug testing, foiled confirmation of a preliminary test by dropping it and denied use. Defendant's violations and his attitude toward treatment lead me to conclude that defendant cannot control his marijuana use in a community setting. Accordingly, the three-year term of supervised release imposed on defendant on February 15, 2002, 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 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.

I have selected a sentence at the top of the guideline range to hold defendant accountable for the serious violations he committed and to 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 11 months. I recommend that defendant serve the last 10% of his sentence of confinement in a federally approved community corrections center with work release privileges. No term of supervised release will follow the term of imprisonment. Defendant is to be registered with local law enforcement agencies and the state attorney general before his release from confinement. Restitution in the amount of \$74,000 is affirmed. Defendant can make payments while in custody through the Bureau of Prisons' Financial Responsibility Program.

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

Defendant is to report to the U.S. Marshal no later than noon on Tuesday, February 14, 2006, to begin service of his term of imprisonment.

Entered this 7th day of February, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB
Chief District Judge