

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

FREDERICK L. GRAHAM,

Defendant.

ORDER

01-CR-98-C-02

A hearing on the revocation of Frederick L. Graham's supervised release was held in this case on July 19, 2005, before United States District Judge Barbara B. Crabb. The government appeared by Assistant United States Attorney John Vaudreuil. Defendant was present in person and by counsel, Jonas Bednarek. 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 Western District of Wisconsin on November 27, 2001, following his conviction for aiding and abetting an escape, in violation of 18 U.S.C. § 751(a) and 2. This crime is a Class D felony. Defendant was committed to the custody of the Bureau of Prisons to serve a term of imprisonment of 24 months, with a three-year

term of supervised release to follow.

Among other special conditions of supervised release, defendant was to abstain from the use of alcohol and illegal drugs. On December 15, 2003, I modified defendant's supervised release by requiring him to reside at Rock Valley Community Programs for up to 120 days. This modification was necessary to assist defendant's re-entry into the community.

Defendant began his three-year term of supervised release on March 8, 2004. His first term of supervised release was revoked on May 26, 2004 for his failure to follow halfway house program rules, his use of marijuana and his absconding from the halfway house. He was ordered to serve 12 months in prison and a two-year term of supervised release. As special conditions of supervised release, he was ordered to abstain from using illegal drugs and complete a 120-day halfway house placement at Rock Valley Community Programs.

Defendant began his two-year term of supervised release on April 28, 2005. On June 3, 2005, he was terminated once again from Rock Valley Community Programs for failing to follow program rules. He also submitted a urine sample on June 4, 2005, which tested positive for THC.

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. Upon a finding of a Grade C violation, the court may revoke supervised release, extend the term of supervised release or modify the conditions of supervision.

CONCLUSIONS

Defendant's violations require revocation. He was placed at Rock Valley for the second time to assist him in returning to the community. He was to find employment and save money to obtain a place to live. Defendant failed to obtain a job and he used illegal drugs. It is clear that defendant is not taking his supervised release seriously. Accordingly, the two-year term of supervised release imposed on defendant on May 26, 2004, will be revoked.

Defendant's original criminal history category was IV. A Grade C violation and a criminal history category IV add up to a guideline range of 6 to 12 months. The restricted statutory maximum to which defendant can be sentenced upon revocation of supervised release is 12 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 the defendant was sentenced previously was a Class D felony.

After reviewing the non-binding policy statements in Chapter 7 of the sentencing guidelines, I have selected a sentence at the top of the guideline range. This sentence is necessary to hold defendant accountable for his behavior, protect the community and impress upon defendant the seriousness of complying with his court-ordered conditions.

ORDER

IT IS ORDERED that the period of supervised release imposed on defendant on May

26, 2004, is REVOKED and defendant is committed to the custody of the Bureau of Prisons for a term of 12 months. No term of supervised release shall follow.

Defendant does not have the financial means or earning capacity to pay the cost of incarceration. Execution of this sentence begins immediately.

Entered this 19th day of July, 2005.

BY THE COURT:

/s/

BARBARA B. CRABB

Chief District Judge