

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

FORREST GABOR,

Defendant.

ORDER

DOCKET NO. 02-CR-20-S-01

DOCKET NO. 07-CR-73-S-01

Petition for revocation of defendant's supervised release came on to be heard before the Court in the above-entitled matter on June 28, 2007. The government having appeared by Daniel Graber, Assistant United States Attorney for the Western District of Wisconsin; the defendant was present in person and by counsel, Jeff Nichols. The Honorable John C. Shabaz, District Judge, presided.

From the record the Court makes the following findings of fact.

FACTS

The defendant was sentenced in the Eastern District of Virginia on March 7, 2000 (Case No.00-CR-74-01) following his conviction for Count 1: threatening the President, a Class D felony, in violation of 18 U.S.C. § 871(a); and Count 2: threatening persons protected by the Secret Service, a Class D felony, in violation of 18 U.S.C. § 879(a)(2). He was committed to the custody of the Bureau of Prisons to serve a term of

imprisonment of 40 months, with a four-year of supervised release on Count 1 and a one-year term of supervised release on Count 2.

The defendant was sentenced in the Western District of Wisconsin on August 7, 2002, (Case No. 02-CR-20-S-01) following his conviction for Count 1: threat by mail to kill the President of the United States, a Class D felony, in violation of 18 U.S.C. § 871(a); and, Count 3: threat to use a biological weapon, a Class A felony, in violation of 18 U.S.C. § 2332a(a)(2). He was committed to the custody of the Bureau of Prisons to serve a term of imprisonment of 57 months, with a three-year term of supervised release on Count 1 and a four-year term of supervised release on Count 3. The defendant began the terms of supervised release on January 26, 2007.

On May 9, 2007, jurisdiction in Eastern District of Virginia's case 00-CR-74-01 was transferred to the Western District of Wisconsin (becoming Western District of Wisconsin 07-CR-73-S-01).

Special Condition No. 3 of supervised release in Case No. 02-CR-20-S-01 and Special Condition No. 1 in Case No. 07-CR-73-S-01 require the defendant to abstain from alcohol and illegal drugs. Special Condition No. 5 in Case No. 02-CR-20-S-01 requires the defendant to reside at a residential re-entry center for 180 days.

The defendant has stipulated that he violated Special Condition No. 3 in 02-CR-20-S-01 and Special Condition No. 1 in Case No. 07-CR-73-S-01 when the defendant provided a urine specimen on May 10, 2007, which tested positive for THC. He also violated Special Condition No. 5 in Case No. 02-CR-20-S-01 when he was terminated

from the 180-day residential re-entry program in April 2007, and when he absconded from supervision on June 13, 2007.

The defendant committed Grade C violations, as defined by §7B1.1(a)(3) 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 it, or modify the conditions of release.

CONCLUSIONS

The defendant's violations warrant revocation. Accordingly, the terms of supervised release imposed on March 7, 2000, and on August 7, 2002, will be revoked.

The defendant's criminal history category is V. Grade C violations and a criminal history category of V result in a guideline range of 7 to 13 months' imprisonment. 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 two years if the offense for which a person was sentenced was a Class D felony, and may not be required to serve more than five years if the offense for which a person was sentenced previously was a Class A felony.

After reviewing the non-binding policy statements in Chapter 7 of the sentencing guidelines, the Court has selected a sentence outside the policy guideline range. This defendant has not in any way been deterred by those sentences which have been previously imposed and there is nothing which would suggest he will follow a sentence

within the guideline range. This sentence will serve as a reasonable deterrent to the defendant and perhaps others, promote respect for the law, and protect the community from further criminal behavior by the defendant.

ORDER

IT IS ORDERED that the periods of supervised release imposed on the defendant on March 7, 2000, and on August 7, 2002, are REVOKED and the defendant is committed to the custody of the Bureau of Prisons for a term of 30 months. While incarcerated, the defendant shall receive mental health treatment as deemed necessary by the Bureau of Prisons. One month prior to the defendant's release from custody, the defendant shall be examined by a mental health expert selected by the U.S. Secret Service to assess his future dangerousness. Copies of all reports prepared by the mental health expert selected by the U.S. Secret Service shall be provided to the defendant's counsel, the U.S. Attorney's Office for the Western District of Wisconsin, the U.S. Secret Service, and the U.S. Probation Office. It is further ordered that the defendant not serve any of his custody in a residential re-entry center or on home confinement.

The defendant does not have the financial means or earning capacity to pay the cost of incarceration.

No term of supervised release will follow on Count 1 in Case No. 02-CR-20-S-01 or Counts 1 and 2 in Case No. 07-CR-73-S-01. A term of four years of supervised release is imposed on Count 3 of Case No. 02-CR-20-S-01.

As special conditions of supervised release, the defendant is to:

(1) Immediately, upon release from custody, for transitional purposes defendant is to reside at a federally approved residential re-entry center for a period of 180 days without home confinement. Defendant may be absent from the center only for employment and with the approval of this court. Defendant's absconding suggests that passes consistent with program rules will not be provided during the 180 days without court approval. The defendant will be required to pay 25 percent of his gross pay as per diem as well as pay all medical expenses. Early discharge from the facility is contingent upon the approval of both the facility administrator, the supervising U.S. probation officer and this court;

(2) Register with local law enforcement agencies and the state attorney general as directed by the supervising U.S. probation officer;

(3) Allow searches by the supervising U.S. probation officer of any residence or property under the defendant's control where there is reason to believe the defendant is in possession of illegal narcotics, stolen materials, firearms, or other contraband and permit confiscation of any contraband materials;

(4) Abstain from the use of alcohol and illegal drugs and from association with drug users and sellers and participate in substance abuse treatment. Defendant shall submit to drug testing beginning within 15 days of release and 60 drug tests annually thereafter. The probation office may utilize the Administrative Office of the U.S. Courts' phased collection process; and

(5) Participate in inpatient or outpatient mental health counseling as directed by the supervising U.S. probation officer.

Entered this 28th day of June, 2007.

BY THE COURT:

/s/

JOHN C. SHABAZ
District Judge