

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

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UNITED STATES OF AMERICA,

Plaintiff,

v.

TIMOTHY TIERNEY,

Defendant.

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ORDER

02-cr-155-bbc

On February 11, 2016, shortly after he was released from his term of imprisonment in this case, defendant filed a motion to modify the conditions of his three-year term of supervised release, specifically Special Condition No. 2, which requires him to participate in substance abuse treatment and testing as directed by his supervising probation officer. Defendant was sentenced in 2003 to a term of imprisonment of 168 months after having been convicted of one count of possessing pseudoephedrine to manufacture a controlled substance, in violation of 18 U.S.C. § 2252(a)(4). On February 27, 2015, the term was reduced to 130 months under 18 U.S.C. § 3582 and the retroactive amendment to the drug guidelines in Amendment 782. Neither the term of supervised release nor the conditions that were imposed were amended when defendant's sentence was reduced.

Defendant was sentenced before the Court of Appeals for the Seventh Circuit ruled that defendants must be given an opportunity to be heard on any conditions of supervision

imposed on them at the time of sentencing. He had notice of the conditions that the probation office was proposing well in advance of sentencing, but he was not asked specifically at his sentencing whether he had any objections to any conditions and he was not provided an explanation of the reasons for each particular condition, as the court of appeals now requires. United States v. Thompson, 777 F.3d 368 (7th Cir. 2015). As imposed, Special Condition No. 2 requires him to “abstain from any use of alcohol and illegal drugs and from association with drug users and sellers, and participate in substance abuse treatment and testing as directed the probation officer.”

I believe that this condition was appropriate for defendant in light of several facts: First, his conviction was drug-related. Second, he had eight prior convictions for alcohol or drug-related crimes, as well as two pending drug-related crimes. Third, he disclosed to the probation officer before sentencing that he had a long history of drug and alcohol abuse. Fourth, he told the probation office he had concerns about his use of alcohol and drugs, particularly cocaine, and thought that his use might be the source of problems with his family.

Defendant began his term of supervised release on October 30, 2015, in the District of Minnesota. That district is requiring him to participate in a drug aftercare and relapse prevention program at New Directions for Change in Minneapolis, Minnesota, which requires him to attend sixteen group counseling sessions, at least six individual counseling sessions and weekly support groups. In addition, he will be subject to random drug testing. The Minnesota probation office believes that this program will provide defendant the

support he needs while making his transition back to the community.

At the time of defendant's sentencing, I believed that it was appropriate to require him to participate in substance abuse and treatment; defendant wants this court to remove the special condition (No. 2), requiring him to do so. He says that he has had more than 64 drug tests, all of which were negative for drugs, and that he has attended NA and AA meetings once a week for the last seven months. He also says that it is difficult for him to attend his treatment group because of his work and family.

If defendant wants an opportunity to be heard in person on the conditions of his supervision, he should advise this court promptly so that a hearing may be scheduled. I will give defendant 10 days in which to advise the court of a time within the next two weeks at which he could appear in Madison for a hearing on the conditions of his supervision.

If defendant does not take advantage of this opportunity for a hearing, I will keep Special Condition No. 2 in place, but amend it to add a provision requiring him to participate in substance abuse treatment, with no requirement that he pay the costs of that program unless it is shown that he has the funds to do so.

#### ORDER

IT IS ORDERED that if defendant wishes to have a hearing before the court to contest the imposition of Special Condition No. 2 (or any other condition of his supervised release), he is to advise the court no later than March 4, 2016 of his desire for a hearing. Such a hearing will be held no later than that March 18, 2016. If defendant does not advise

the court of his desire for a hearing, he will continue on supervised release as previously ordered and the following amendment will be made to Special Condition No. 2:

Defendant shall participate in substance abuse treatment. If defendant is eligible for funding from any source to cover the cost of treatment, defendant is to make reasonable efforts to obtain such funding. Participation in treatment does not require payment by defendant unless it is clear defendant can afford it. Defendant shall submit to drug testing beginning within 15 days of defendant's release and 60 drug tests annually thereafter. The probation office may utilize the Administrative Office of the U.S. Courts' phased collection process.

and the other conditions of his supervised release will remain as entered on May 20, 2003.

Entered this 23d day of February, 2016.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge