

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

UNITED STATES OF AMERICA,

Plaintiff,

ORDER

v.

02-CR-32-C-01

DAVID ARMOS,

Defendant.

A hearing on the revocation of David Armos's supervised release was held in this case on July 15, 2003, before United States District Judge Barbara B. Crabb. The government appeared by Assistant United States Attorney Jeffrey Anderson. Defendant was present in person and by counsel David A. Geier. Also present was United States Probation Officer Michael D. Harper.

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

FACTS

Defendant was sentenced in the Southern District of Ohio on June 26, 1996, following his conviction for possession with intent to distribute in excess of five kilograms of cocaine, in violation of 21 U.S.C. § 841, a Class A felony. Defendant was committed to the custody of the Bureau of Prisons to serve a term of imprisonment of 87 months, with a

60-month term of supervised release to follow. As general conditions of supervised release, defendant was prohibited from committing another federal, state or local crime and illegally possessing a controlled substance.

Defendant began his term of supervised release on December 22, 2000. Jurisdiction was transferred from the Southern District of Ohio to the Western District of Wisconsin on March 5, 2002.

Defendant stipulates that he has violated the general conditions of supervision that he not commit another crime and that he not illegally possess a controlled substance. On December 19, 2002, agents for the Drug Enforcement Agency arrested the defendant pursuant to a criminal complaint issued in case no. 03-CR-009-C-02, charging the defendant with conspiracy to possess with intent to distribute a schedule II controlled substance, cocaine, in violation of 21 U.S.C. § 846. During the arrest, agents found one-eighth ounce of cocaine in the defendant's residence.

Defendant's conduct falls into the category of Grade A violations, as defined by § 7B1.1(a)(1)(ii) of the sentencing guidelines policy statement for violations of supervised release. Section 7B1.1(a)(1) provides that upon a finding of a Grade A violation, the court shall revoke supervised release. Further, 18 U.S.C. § 3583(g) states that if the defendant possesses a controlled substance the court shall revoke the term of supervised release and require the defendant to serve a term of imprisonment.

CONCLUSIONS

Defendant's violations require revocation. Defendant possessed cocaine and committed a new crime while on supervised release. Defendant was convicted on April 23, 2003, and sentenced on July 15, 2003, in case no. 03-CR-009-C-02 in the Western District of Wisconsin for the offense of conspiracy to possess and possession with intent to deliver, in violation of 21 U.S.C. §§ 846 and 841. Accordingly, the five-year term of supervised release imposed on defendant on June 26, 1996, will be revoked.

Defendant's original criminal history category at the time of sentencing was I. A Grade A violation and a criminal history category I result in a guideline range of 24-30 months. The statutory maximum to which defendant can be sentenced upon revocation is 60 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 five years if the offense for which he was sentenced previously was a Class A 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. Defendant was on supervised release when he possessed an illegal substance and committed a new felony offense. His involvement in his new federal conviction is aggravated because his motivation is solely that of financial gain. He has no history of drug dependence or drug use. This sentence is fashioned to reflect the seriousness of defendant's criminal conduct and to protect the community.

ORDER

IT IS ORDERED that the period of supervised release imposed on defendant on June 26, 1996, is REVOKED and defendant is committed to the custody of the Bureau of Prisons for a term of 30 months. This sentence is to be served consecutively to the sentence imposed on defendant on July 15, 2003, in the United States District Court for the Western District of Wisconsin, in case no. 03-CR-0009-C-02. 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.

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

Entered this 15th day of July 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge