

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

UNITED STATES OF AMERICA,

Plaintiff,

ORDER

v.

06-CR-0047-C-01

HORATIO GARDNER,

Defendant.

A hearing on the revocation of Horatio Gardner's supervised release was held in this case on August 21, 2007, before United States District Judge Barbara B. Crabb. The government appeared by Rita Rumbelow, Assistant United States Attorney for the Western District of Wisconsin. Defendant was present in person and by counsel, Morris Berman. Also present was Senior United States Probation Officer Helen Healy Raatz.

From the defendant's stipulation, I make the following findings of fact.

FACTS

Defendant was sentenced in the Western District of Wisconsin on August 8, 2006, following his conviction for felon in possession of firearm, a Class C felony, in violation of 18 U.S.C. § 922(g)(2). He was committed to the custody of the Bureau of Prisons to serve

a term of imprisonment of 12 months, with a two-year term of supervised release to follow. Defendant began the initial term of supervised release on January 19, 2007.

General Condition No. 1 of supervised release prohibits defendant from committing any new crimes. Standard Condition No. 2 requires defendant to report to the probation officer as instructed and to submit complete and truthful monthly report forms by the first of the month. Standard Condition No. 11 requires defendant to report any police contact within 72 hours.

Defendant has stipulated that he violated General Condition No. 1 on May 2, 2007, when he was cited for operating a vehicle while suspended. This conduct resulted in a default judgment and fine on July 10, 2007. Defendant violated General Condition No. 1 again on July 18, 2007, when he was arrested for second degree reckless endangering-domestic and related activity involving domestic criminal damage to property, domestic disorderly conduct, and disorderly conduct. His July 18 arrest resulted in his plea of no contest on August 8, 2007 to battery, criminal damage to property, and disorderly conduct (Circuit Court for Dane County Case No. 07CF001377). Defendant was sentenced to six months in jail for battery, six months in jail for criminal damage to property, and 90 days in jail for the disorderly conduct charge, with all terms to run concurrently. Defendant violated Standard Condition No. 2 and Standard Condition No. 11, when he failed to report the April 18, 2007 police contact to the probation officer.

Defendant's most serious violations fall into the category of Grade C violations, as defined by §7B1.1(a)(3) of the sentencing guidelines policy statement for violations of supervised release. Upon a finding of a Grade C violation, pursuant to §7B1.3(a)(2), the court may revoke supervised release, extend it or modify the conditions of release.

CONCLUSIONS

Defendant's Grade C violations warrant revocation because the violations began within months of his release from custody and he caused physical damage to another person and to property. Defendant's criminal behavior has escalated and he is a danger to the community. Accordingly, the two-year term of supervised release imposed on August 6, 2006, will be revoked.

Defendant's criminal history category is I. With his Grade C violations and a criminal history category of I he has a guideline range of 3 to 9 months. 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 he was sentenced previously was a Class C felony.

After reviewing the non-binding policy statements in Chapter 7 of the sentencing guidelines, I have selected a sentence at the bottom of the policy guideline range in recognition of defendant's work on his GED and his involvement in drug counseling and

treatment. This sentence will hold defendant accountable for violating his supervision conditions.

ORDER

IT IS ORDERED that the period of supervised release imposed on defendant on August 8, 2006, is REVOKED and he is committed to the custody of the Bureau of Prisons for a term of three months, to be served consecutively to the jail terms he is currently serving in Dane County Circuit Court Case No. 07CF1377. A 21-month term of supervised release shall follow the term of imprisonment.

As special conditions of supervised release, defendant shall:

- (1) Reside at a federally approved residential re-entry center for a period of 120 days immediately following his release from custody. Defendant may be absent from the center for employment purposes and for passes consistent with program rules. Defendant will be required to pay 25 percent of his gross pay for the daily costs of his stay and pay all medical expenses. He may be discharged early from the facility upon the approval of both the facility administrator and the supervising U.S. probation officer;
- (2) Register with local law enforcement agencies and the state attorney general as directed by the supervising U.S. probation officer;
- (3) 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;

- (4) Submit his person, residence, office or vehicle to a search conducted by a U.S. probation officer at a reasonable time and in a reasonable manner whenever the probation officer has reasonable suspicion of contraband or of the violation of a condition of release; failure to submit to a search may be a ground for revocation; defendant shall advise other residents that the premises he is occupying may be subject to searches, pursuant to this condition; and
- (5) Participate in an anger management or a domestic violence program or both as directed by the supervising U.S. probation officer.

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

Entered this 22d day of August, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge