

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

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UNITED STATES OF AMERICA,

Plaintiff,

AMENDED ORDER

v.

08-cr-80-c-1

EDGAR MARTINEZ,

Defendant.

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A hearing on the probation office's petition for judicial review of Edgar Martinez' s supervised release was held on October 4, 2013, before U.S. District Judge Barbara B. Crabb. The government was represented by Assistant U.S. Attorney David Reinhard. Defendant appeared in person and by counsel, Peter A. Bartelt. Also present was Senior U.S. Probation Officer Michael J. Nolan.

From the record and the parties' stipulation, I make the following findings of fact.

FACTS

Defendant was sentenced in the Western District of Wisconsin on November 14, 2008, following his conviction of conspiracy to possess with intent to distribute and distribution of cocaine, in violation of 21 U.S.C. § 846. This offense is a Class C felony. Defendant was committed to the custody of the Bureau of Prisons to serve a term of imprisonment of 55 months, with a three-year term of supervised release to follow.

Defendant began his term of supervised release on May 11, 2012.

Defendant violated the mandatory condition that he not commit another federal, state or local crime, and the mandatory condition that as a convicted felon he not possess a firearm. On June 22, 2013, defendant was in possession of a firearm as observed in a digital image stored on his personal cell phone. On August 21, 2013, defendant admitted that the digital image contained on his personal cell phone was of him holding a firearm.

Defendant violated Standard Condition No. 7 and Special Condition No. 5, both of which prohibit him from using a controlled substance and any illegal drugs. On August 21, 2013, defendant admitted that he had used cocaine on August 8 and 16, 2013. On August 15 and 21, 2013, defendant submitted urine specimens that tested positive for cocaine.

Defendant violated Standard Condition No.1, prohibiting him from leaving the judicial district without permission from the court or probation officer, when he traveled to the Eastern District of Wisconsin without permission.

Defendant's conduct falls into the category of Grade A violations. In addressing such violations, the court has the discretion to revoke supervised release, extend the term or modify the conditions of release.

CONCLUSIONS

Defendant's violations warrant revocation. Defendant's criminal history category is II. With a Grade A violation, he has an advisory guideline range of imprisonment of 15 to 21 months. Under 18 U.S.C. § 3583(e)(3), the statutory maximum term to which he can be sentenced upon revocation is two years because his original offense of conviction was a Class C felony.

After reviewing the non-binding policy statements of Chapter 7 of the Guidelines Manual, I have selected a sentence above the advisory guideline range to hold defendant accountable for his violations and to protect the community.

ORDER

IT IS ORDERED that the period of supervised release imposed on Edgar Martinez on November 14, 2008, is REVOKED and defendant is committed to the custody of the Bureau of Prisons for a term of 15 months with a 21-month term of supervised release to follow. All standard and special conditions of supervised release previously imposed shall remain in effect. As a special condition of supervised release, defendant is to spend three months in a halfway house.

Defendant is to be registered with local law enforcement agencies and the state attorney general upon his release from confinement

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

Entered this 10th day of October, 2013.

BY THE COURT:

/s/

BARBARA B. CRABB

U.S. District Judge