

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

UNITED STATES OF AMERICA,

Plaintiff,

ORDER

v.

09-cr-13-bbc-1

JAMES L. HROBSKY,

Defendant.

A hearing on the probation office's petition for judicial review of James L. Hrobsky's supervised release was held on September 10, 2013, before U.S. District Judge Barbara B. Crabb. The government appeared by Assistant U.S. Attorney Paul W. Connell. Defendant was present in person and represented by counsel, Supervisory Associate Federal Defender Michael W. Lieberman. Also present was Senior U.S. Probation Officer Helen Healy Raatz.

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 May 21, 2009, following his conviction for conspiracy to possess with intent to distribute and to distribute cocaine, a Schedule II controlled substance, in violation of 21 U.S.C. §§ 846 and 841(a)(1).

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 30 months, with a 36-month term of supervised release to follow.

On July 25, 2011, defendant began his term of supervised release. On November 29, 2011, a judicial review hearing was held to address defendant's violations of supervised release involving alcohol consumption. His supervision was continued with all conditions previously imposed to remain in effect.

On March 9, 2012, a second judicial review hearing was held to address defendant's technical violations, as well as his cocaine use. A sentence of time served was ordered, to be followed by a 30-month term of supervised release. In addition, defendant was ordered to complete an inpatient treatment program and a public law placement. Both placements were completed successfully.

On October 16, 2012, defendant violated the mandatory condition requiring him not to commit another federal, state or local crime when he was arrested for operating with a suspended licence by a Dodge County, Wisconsin, sheriff's deputy, following an early morning traffic stop (Dodge County Circuit Court case no. 12CT375). On December 17, 2012, defendant entered into a 12-month deferred prosecution agreement. On March 3, 2013, defendant violated this mandatory condition again when he was arrested

for operating while intoxicated and bail jumping by the Watertown police, following a pre-dawn traffic stop. On August 1, 2013, defendant was convicted on both charges and ordered to serve a combined 25-day jail term (Jefferson County Circuit Court Case No. 13CM159).

Defendant violated Standard Condition No. 6, requiring him to notify the probation office at least ten days prior to any change in employment, when he failed to report that he was terminated from his employment in May 2013.

Defendant violated Standard Condition No. 7 and Special Condition No. 5, requiring him to abstain from alcohol and illegal drug use. On October 24, 2013, he admitted that he had consumed alcohol the previous weekend. On March 4, 2013, he admitted that he had consumed alcohol and cocaine the previous evening. On July 16, 2013, he admitted that he had consumed hydrocodone without a prescription.

Defendant's conduct falls into the category of Grade C violations. Section 7B1.3(a)(2) of the advisory sentencing guidelines provides that the court has the discretion to revoke supervised release, extend the term or modify the conditions of release.

CONCLUSIONS

This is the third judicial review hearing held since November 2011 regarding

defendant's use of alcohol and illegal drugs. Defendant's behavior has escalated to driving while intoxicated, which puts other citizens at risk. Further, he committed the offense after entering into a pretrial diversion agreement for a separate criminal traffic offense. Defendant's violations warrant revocation.

Defendant's criminal history category is II. With a Grade C violation and a criminal history category of II, defendant has an advisory guideline term of imprisonment of 4 to 10 months. The statutory maximum to which he can be sentenced upon revocation is two years under 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 two years if the offense for which a defendant was sentenced previously was a Class C felony.

After reviewing the non-binding policy statements of Chapter 7 of the Sentencing Guidelines, I have selected a sentence at the top of the guideline range. The intent of this sentence is to hold defendant accountable for his criminal activity.

ORDER

IT IS ORDERED that the period of supervised release imposed on defendant on March 9, 2012, is revoked. Defendant is sentenced to ten months' custody to be followed by a 20-month term of supervised release. All standard and special conditions of supervised release previously imposed shall remain in effect with the exception of Special Condition No. 10. Special Condition No. 11 is modified to allow up to 90 days in a residential reentry center if defendant does not receive a prerelease placement.

Defendant does not have the financial means or earning capacity to pay the cost of his incarceration. Defendant is to be registered with local law enforcement agencies and the state attorney general before his release from confinement.

Entered this 10th day of September, 2013.

BY THE COURT:

/s/

Barbara B. Crabb

U.S. District Judge