

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

UNITED STATES OF AMERICA,

Plaintiff,

ORDER

v.

10-cr-116-bbc-1

TERRANCE NEWCOMB,

Defendant.

A hearing on the probation office's petition for judicial review of Terrance Newcomb's supervised release was held on October 28, 2014, before U.S. District Judge Barbara B. Crabb. The government appeared by Assistant U.S. Attorney Elizabeth Altman. Defendant was present in person and by counsel, Robert Ruth. Also present was Deputy Chief U.S. Probation Officer Tracy L. Russom.

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 March 2, 2011, following his conviction for possession of pseudoephedrine with the intent to manufacture a controlled substance, in violation of 21 U.S.C. § 841(c)(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 84 months, with a three-year term of supervised release to follow. On March 8, 2012, defendant's sentence was amended and his prison term was reduced to 62 months.

Defendant's term of supervised release began on January 27, 2014. On February 26, 2014, the court was notified by the probation office that defendant had violated his conditions of supervision by ingesting an opiate medication without a valid prescription. Defendant agreed to participate in mental health and substance abuse counseling and was referred for dual diagnosis treatment.

Defendant violated Standard Condition No. 6 of his terms of supervised release requiring him to notify the probation officer at least ten days before making any change in residence or employment. On August 26, 2014, the supervising U.S. probation officer went to defendant's last reported address and was informed that he had moved from the residence on August 19, 2014. On August 28, 2014, the supervising U.S. probation officer was informed by defendant's employer that he had been terminated from his job on August 8, 2014. Defendant failed to report the changes in his residence and employment to his supervising U.S. probation officer.

Defendant violated Standard Condition No. 2 of his terms of supervised release requiring him to report to the probation officer as directed by the court or probation officer, when he failed to report to the probation office on August 27, 2014 as instructed.

Defendant violated Special Condition No. 5 of his terms of supervised release requiring him to participate in mental health treatment, when he attended only one mental health assessment on May 7, 2014, and failed to attend any other sessions. Defendant violated Standard Condition No. 3 of his terms of supervised release requiring him to answer truthfully all inquiries by the probation officer, when he told his probation officer on July 7, 2014 that he had attended a mental health appointment on July 1, 2014 and had another appointment scheduled. This information was false.

Defendant's conduct falls into the category of Grade C violations. Section 7B1.3(a)(2) of the advisory guidelines provides that the court may revoke supervised release, extend the term of supervised release or modify the conditions of supervision upon a finding of a Grade C violation.

CONCLUSIONS

Defendant's violations warrant revocation. Accordingly, the three-year term of supervised release imposed on defendant on March 2, 2011 and affirmed on March 8, 2012, will be revoked.

Defendant's criminal history category is V. With a Grade C violation, defendant has an advisory guideline term of imprisonment of 7 to 13 months. Under 18 U.S.C. § 3583, the statutory maximum to which defendant can be sentenced upon revocation is 24 months because his offense of conviction is a Class C felony.

18 U.S.C. § 3583(h) authorizes another term of supervised release to follow imprisonment.

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

ORDER

IT IS ORDERED that the period of supervised release imposed on defendant Terrance Newcomb on March 2, 2011, and affirmed on March 8, 2012, is REVOKED. Defendant is committed to the custody of the Bureau of Prisons for a term of 10 months, with 26 months' supervised release to follow. All conditions previously imposed shall remain in effect.

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 imprisonment.

Entered this 29th day of October 2014.

BY THE COURT:

/s/

Barbara B. Crabb

U.S. District Judge