

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

UNITED STATES,

Plaintiff,

v.

KENNETH J. RANEY,

Defendant.

OPINION & ORDER

12-cr-100-wmc

Kenneth Raney was convicted in the Northern District of Illinois on two counts: Count 1 -- Transportation with intent to engage in a sexual act with a juvenile in violation of 18 U.S.C. § 2423(b), a Class C felony; and Count 2 -- Attempt to manufacture child pornography in violation of 18 U.S.C. § 2251(a), a Class C felony. On April 23, 2002, Raney was sentenced to serve two, concurrent 145-month terms of imprisonment, to be followed by concurrent three-year terms of supervised release. On February 10, 2012, Raney began his supervised release. On July 27, 2012, jurisdiction of his supervision was transferred to this court.

On October 8, 2014, this court held a hearing on the probation office's petition for judicial review of Raney's supervised release. Following that hearing, the court ordered the period of supervised release revoked and committed Raney to the custody of the Bureau of Prisons for a term of imprisonment of 9 months with a 24-month term of supervised release to follow. (Dkt. # 25.) On October 14, 2014, Raney filed a notice of appeal, which is currently pending before the Seventh Circuit Court of Appeals. *United States v. Raney*, No. 14-3265 (7th Cir., filed Oct. 14, 2014). Some five months later, on

March 17, 2015, Raney also filed a Motion for New Hearing and New Judge, as well as a Motion to Set Aside Revocation. (Dkts. #40, #41).¹

I. Motion for Recusal

Since it lacks jurisdiction to decide anything else while the appeal to the Seventh Circuit is pending, the court will construe Raney's Motion for a New Hearing and New Judge as a motion for recusal. Under 28 U.S.C. § 455, recusal is necessary in a number of circumstances, including when a judge's impartiality might reasonably be questioned or when he or she has a personal bias or prejudice concerning a party. In his motion, Raney states that his "rule 32 rights were violated" because he did not have a chance to speak on his own behalf, and that "he has been threatened by the Judge that he would be sentenced to 2 years if he ever came back before him again." Raney requests the chance to explain his side of the story, which he characterizes as a misunderstanding, not a violation of the condition of his supervised release.

No grounds for recusal exist. This court's impartiality cannot reasonably be questioned, and the court holds no personal bias or prejudice against Raney. The court's order revoking Raney's supervised release was the direct result of Raney's repeated misbehavior, recommendations of his supervising probation officer, and the court's interest in holding defendant accountable, protecting the community and providing

¹ Although Raney has been represented by counsel during his criminal case before this court, and is currently represented on his appeal to the Seventh Circuit, these motions were filed by Raney himself. The court will resolve these pending *pro se* motions, but will copy his counsel of record before this court and the Seventh Circuit, cautioning Raney that while he is represented by counsel, any future communications with the court should come through his attorney or, at minimum, indicate that he has consulted his counsel and, with his advance consent, elected to act *pro se*.

deterrence. Following admission of evidence, as well as a lengthy exchange with counsel for both sides, the court also gave Raney the opportunity to address the court before rendering its decision, which he did. (Tr. of 10/8/14 Judicial Review, Dkt. #31, at 85-85.)

Clear and convincing evidence supports the court's conclusion that on multiple occasions Raney violated a fundamental condition of the terms of his supervised release, which was to provide truthful information to his supervising probation officer.² Moreover, in imposing a sentence for the violations, the court did not exceed its discretion, arriving at a sentence near the middle of the guideline range. Nothing in the record, nor the court's recollection of these proceedings indicates that this matter should not continue before me. Accordingly, Raney's motion for a new judge will be denied.

II. Motion for Stay of Imposition of Sentence

In Raney's "Motion to Set Aside Revocation," he asks this court to set aside the revocation of his supervised release until his appeals have been resolved, which is essentially a motion to stay under Fed. R. Crim. 46(c) and 18 U.S.C. § 3143(b).³ Rule 46(c) explains that to prevail on a request to be released from custody pending appeal, the defendant has, among other things, the "burden of establishing that [he] will not . . . pose a danger to any other person or the community."

² In fact, despite a prior violation of the terms of his supervised release, the court previously granted Raney leniency, choosing not to revoke Raney's supervised release while warning him that continued failures to comply would likely result in a return to prison. (Dkt. #21, at 21-22.)

³ Again, if Raney is seeking any other relief than a stay of his sentence, this court would lack jurisdiction to decide if pending resolution of his appeal.

Given the nature of his underlying crimes for child abuse and repeated, serious violations of the terms and conditions of release involving undisclosed contact with minor children, Raney does not begin to meet his burden of proof. The court's October 14, 2014, revocation order considered extensive evidence that had been presented during the revocation hearing. The court found clear and convincing evidence that Raney violated the condition of his supervised release that required him to answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer. The evidence showed that on multiple occasions Raney took unauthorized day-trips with minors and then lied to his probation officer about being at a location with individuals who were or appeared to be minors.

The court concluded that as a result of Raney's untruthfulness, he had access to minors for approximately four months without his supervising probation officer's knowledge. The court further held that Raney's conduct constituted a Grade C violation, and pursuant to USSG § 7B1.3(a)(2), revoked his supervised release.

In his motion, Raney does not point to an error in the court's order. Rather, he requests release or home confinement, stating that he has a residence and a job lined up, as well as strong family connections, including his mother who lives in a nursing home. He states that if his appeal is successful, any time served after February 10, 2015, would be time he did not have to serve. Although the court appreciates Raney's efforts to find employment and support his family, he has not provided grounds for reconsideration. Accordingly, the Motion to Set Aside Revocation is denied.

ORDER

IT IS ORDERED that Defendant Kenneth Raney's Motion for a New Hearing and New Judge (dkt. #40) and Motion to Set Aside Revocation (dkt. # 39) are both DENIED. Raney is CAUTIONED that while he is represented by counsel, the court will not consider any subsequent communications with the court that are not filed by his appointed counsel absent evidence the counsel is aware and consents to his proceeding *pro se*.

Entered this 11th day of June, 2015.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge